IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2952 of 2009

M/s. Hindustan Lever Ltd. .... ***Petitioner***

M/s.S. Lal, Sujit Lal, Advocates

-versus-

Alekh Prasad Mohapatra, Food Inspector, Keonjhar. .... ***Opposite Party***

Mr. Sk. Zafarulla, Addl. Standing Counsel

CORAM:
JUSTICE S. PUJAHARI

ORDER
06.05.2022

Order No.	
19.	**1.** This is an application filed under Section 482 of the Code of Criminal Procedure, 1973, seeking for quashing of the proceeding in 2(C) C.C. No.76 of 2007 registered under Section 16(1)(a)(i) read with Section 7(1) of the Prevention of Food Adulteration Act, 1954 (for short "the Act") in the court of the learned J.M.F.C., Barbil, qua the petitioner and its nominee, namely, Sanjay Pradhan.

2. Heard the learned counsel for the petitioner and the learned Addl. Standing counsel appearing for the State, and perused the relevant papers on record.

3. The prosecution referred to above, has been launched pursuant to the prosecution report / complaint submitted by the then Food Inspector, Keonjhar arraigned as opposite party herein. It is averred by the complainant that on 28.04.2006 he visited the shop premises of the vendor – Siddharth Sarathi Kar, Proprietor of Maa Laxmi Enterprises at Baneikela, and suspecting some food items including Vanaspati (Dalda) to be adulterated, he collected samples thereof and after completing the formalities he sent the sample of Vanaspati and other food items to the Public Analyst for chemical examination on 01.05.2006, and as per the report dated 06.06.2006, the sample of Vanaspati was found to be adulterated. The opposite party filed prosecution report dated 26.04.2007 in the court of the learned J.M.F.C., Barbil on 18.05.2007 against the vendor, the petitioner-company (Commission agent of the Marketeer company), the nominee of the petitioner-company, the Marketeer company and its Directors, and the Manufacturing company and its Directors for alleged contravention of the provisions of Section 16(1)(a)(i) read with Section 2(i-a)(m) and Section 7(i)(iv) of the Act and the Rules framed thereunder. The learned JMFC, accordingly, took cognizance directing the accused persons including the petitioner-company and its nominee to be proceeded against.

4. The local Health Authority by his letter dated 11.05.2007 informed the petitioner in view of Section 13(2) of the Act of its right to apply to the JMFC, Barbil within ten days of receipt of the said letter / intimation, for sending of the sample to the Central Laboratory. Due to the delay in launching of the prosecution and in giving intimation to the petitioner under Section 13(2) of the Act, the petitioner contends that its valuable right to get the sample examined by the Central Laboratory has been defeated and the prosecution against it vitiated, inasmuch as the sample of Vanaspati got highly decomposed and lost its condition fitness to be analyzed in Central Laboratory. Emphasis is laid by the petitioner on the inscription that was available on the pouch of Vanaspati (Dalda brand) in question, to make the purchasers aware that the content was best before six months from packing. The sample was packed on 03/2006, and the inscription aforesaid has been extracted by the complainant in the prosecution report. To put in other words, it is not in dispute that the sample was best to be used only before six months from packing. It is also an admitted fact that although the sample collected on 28.04.2006 was sent to the public analyst on 01.05.2006, and the report of the said analyst was dated 06.06.2006, the prosecution report was filed before the Court on 18.05.2007, and intimation under Section 13(2) of the Act was issued to the petitioner on 11.05.2007, i.e., more than one year after the packing of the Vanaspati.

5. In the case of ***Municipal Corporation of Delhi vrs. Ghisa Ram,*** reported in AIR 1967 SC 970, the Apex Court held as follows:-

"7. It appears to us that when a valuable right is conferred by Section 13(2) of the Act on the vendor to have the sample given to him analysed by the Director of the Central Food Laboratory, it is to be expected that the prosecution will proceed in such a manner that that right will not be denied to him. The right is a valuable one, because the certificate of the Director supersedes the report of the Public Analyst and is treated as conclusive evidence of its contents. Obviously, the right has been given to the vendor in order that, for his satisfaction and proper defence, he should be able to have the sample kept in his charge analysed by a greater expert whose certificate is to be accepted by court as conclusive evidence. In a case where there is denial of this right on account of the deliberate conduct of the prosecution, we think that the vendor, in his trial, is so seriously prejudiced that it would not be proper to uphold his conviction on the basis of the report of the Public Analyst, even though that report continues to be evidence in the case of the facts contained therein.

11. In *Municipal Corporation, Gwalior v. Kishan Swaroop* it was held that, where there was delay in launching the prosecution, it deprived the accused of the valuable right to challenge the report of the Analyst in the

> manner prescribed by Section 13(2) of the Act, and when this right was denied to the accused for no fault of his, but wholly due to the inordinate laches of the prosecution, no weight could be given to the report of the Public Analyst. That decision proceeded on the basis of the value of the report of the Public Analyst being affected by the fact that the accused had been deprived of his right to challenge that report by obtaining a certificate from the Director of the Central Food Laboratory. The report of the Public Analyst, as we have said earlier, does not cease to be good evidence merely because a certificate from the Director of the Central Food Laboratory cannot be obtained. The reason why the conviction cannot be sustained is that the accused is prejudiced in his defence and is denied a valuable right of defending himself solely due to the deliberate acts of the prosecution."

6. In the case at hand, there being no explanation from the side of the complainant regarding the inordinate delay in filing of the prosecution report, and the unexplained delay in sending of the intimation to the petitioner resulting in the virtual denial of its right as conferred under Section 13(2) of the Act having caused prejudice to it, continuance of the prosecution against it and its nominee will amount to abuse of the process of the Court.

7. Hence, the CRLMC is allowed with quashment of the proceeding in 2(C) C.C. No.76 of 2007 against the petitioner-company and its nominee – Sanjay Pradhan.

8. L.C.R. received along with a copy of this order be sent back forthwith.

9. Urgent certified copy of this order be granted on proper application.

(S.Pujahari)
Judge

MRS