

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.752 of 2005

AFR

Cargil India Pvt. Ltd.

....

Petitioner

Mr. Devashis Panda, Advocate

-Versus-

State of Odisha

....

Opposite Party

Mr. Pradip Kumar Rout, AGA

CORAM:

JUSTICE R.K. PATTANAIAK

DATE OF JUDGMENT:16.12.2022

1. Invoking inherent jurisdiction of this Court, the petitioner has assailed the impugned order dated 26th February, 2005 under Annexure-1 passed in 2(C)CC No.2 of 2005 by the learned S.D.J.M., Puri whereby the request for dropping of the proceeding due to delay in sending the sample to the Central Food Laboratory as no fruitful purpose would be served since it had outlived for the said purpose was rejected being oblivious to the relevant provisions of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'the Act') and therefore, it is not tenable in law and hence, liable to be set aside in the interest of justice.

2. In fact, a complaint was filed by the Food Inspector, who had inspected M/s. Sarala Agencies suspected the stock to be adulterated and collected samples of Mustard Oil, Refined Soyabin Oil and Refined Sunflower of the brands specified and sent the same to the Public Analyst, State Public Health Laboratory, Bhubaneswar for testing. It is further made to appear that the Food Inspector purchased the oil from the petitioner and collected the invoice dated 9th June, 2004 and thereafter, he received the report of the Public Analyst dated 7th August, 2004 with the result that the

sample of Refined Sunflower oil (Nature Fresh Brand) was adulterated as the quality fell below the prescribed standard and then after obtaining sanction from the State Local Health Authority, the complaint was filed in the court of learned S.D.J.M., Puri on 3rd January, 2005 whereupon the court took cognizance of the offence under Section 16 of the Act read with Rule 7 of the Prevention of Food Adulteration Rules, 1955 (shortly as 'the Rules of 1955'). Later thereto, an opportunity to have the sample sent to the Central Food Laboratory was offered to the petitioner which was availed by him on 20th January, 2005 by making an application in terms of Section 13(2) of the Act. However, sometime thereafter, the petitioner moved the learned court below to drop the proceeding as it would be a futile exercise to send the second sample to the Central Laboratory as the six months shelf-life from the date of manufacture had since long expired, inasmuch as, eight months elapsed not only from the date of manufacture but also from the date of collecting the sample which may not be in a fit condition for analysis. However, according to the petitioner, the learned S.D.J.M. Puri vide the impugned order under Annexure-1 declined such a request and decided to allow the sample to be sent to the Central Laboratory as it had already been ordered while dealing with the application dated 20th January, 2005. Being aggrieved of, the petitioner challenged it on a solitary ground that the learned court below ought to have dropped the proceeding instead of sending the sample to the Central Laboratory despite the fact that there was expiry of six months shelf-life of the sample by then and such analysis would be a failed exercise possibly with no result. According to the learned court below such a move of the application is incongruous to the earlier request for sending the second sample for test and analysis and therefore, deemed it proper to deny the relief sought for and to drop the proceeding as was prayed for.

3. Heard Mr. Devashis Panda, learned counsel for the petitioner and Mr. P.K. Rout, learned AGA appearing for the State.

4. Mr. Panda, learned counsel for the petitioner submits that the alleged purchase of oil by the Food Inspector was made on 7th June, 2004 and then the Food Inspector sent it to the Laboratory for analysis on 30th June, 2004 and the Public Analyst's report was received with the finding that the sample of Refined Sunflower oil was found to be adulterated as its quality was short of the prescribed standard received by the Food Inspector on 20th August, 2004 and thereafter on 3rd December, 2004, the Joint Director, Health Services (PH) and State Local Health Authority, Orissa consented for prosecution and finally the PR was filed before the learned court below on 3rd January, 2005 and then on 20th January, 2005, the application was moved to send the sample to the Central Food Laboratory, however, shortly thereafter, another application dated 2nd February, 2005 was filed to drop the proceeding which was not entertained. Mr. Panda referring to the scheme of the Act and after making the Court to go through the relevant provisions thereof read with the Rules of 1955 contended that the packed oil so collected by the Food Inspector carried the month and year of manufacture which indicated its shelf-life and according to Rule 32 of the Rules, 1955 Explanation VIII which indicates the marketability and quality of the product best before the date which signifies the end of the period under any stated storage conditions. It is claimed by Mr. Panda that application dated 20th January, 2005 was filed to avoid any finding to the effect that such a statutory right as envisaged in Section 13(2) of the Act has been waived but immediately moved the second application dated 2nd February, 2005 for dropping of the proceeding on the ground that shelf-life of the sample having expired, further analysis would be a futile exercise as in number of cases acquittal has been directed for having sent the samples for

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analysis after expiry of the shelf-life period. While advancing such an argument, Mr. Panda cited the following decisions, such as, **Municipal Corporation of Delhi Vrs. Ghisa Ram** decided by the Apex Court in Cri. Appeal No.194 of 1996 and disposed of on 23rd November, 1966; **Nestle India Limited Vrs. Shri A.K. Chand, Food Inspector and Another 1995 CriLJ 3053**; **Mohammad Zahir Vrs. Food Inspector, Food Cell and Another** deiced in Criminal Revision No.225 of 2003 (dated 23rd April, 2004); **The State of Assam Vrs. Shri Shiew Kumar Jain and Shiv Kumar 1992 CriLJ 1479** besides an order dated 18th July, 2017 of this Court in CRLMC No.839 of 2003 (**Hindustan Coca Cola Beverages Pvt. Limited Vrs. State of Orissa**). Above all, one more decision in the case of **PepsiCo India Holding Private Limited Vrs. Food Inspector and another** reported in (2011) 1 SCC 176 is placed reliance on wherein the criminal proceeding was quashed in absence of the method and parameters adhered to for the purpose of analysis of the samples.

5. Per contra, Mr. Rout, AGA for the State submits that the learned court below did not err and committed any illegality having declined to drop the proceeding since the request for sending the second sample to the Central Laboratory had already been allowed by that time and that too it was on the request of the petitioner who indeed availed the statutory right under Section 13(2) of the Act. In other words, Mr. Rout, learned AGA justifies the impugned order under Annexure-1.

6. By Section 13(2) of the Act, on receipt of report of the result of the analysis under sub-section (1) to the effect that the article of food is adulterated, the Local Health Authority shall after the institution of prosecution forward a copy of the said report to the person concerned informing him that if he so desired to make an application to the court within ten days of the date of receipt of such report to get the sample analyzed by the Central Food

Laboratory. In the instant case, such an application was made by the petitioner but thereafter applied for dropping of the criminal prosecution. The said statutory right under Section 13(2) was availed of on 20th January, 2005 but after realizing the fact that the shelf-life had expired in the meantime, the petitioner applied for closure of the proceeding. There is no denial to the fact that the sample oil was collected on 29th June, 2004 with a manufacture month and year of May, 2004 and by the time, the prosecution had been launched which was on 31st December, 2004, there was expiry of the shelf-life period of six months. The question is, whether, under the above circumstances when the complaint was filed long after period from of fitness of consumption with a shelf-life indicated in the sample packet, any purpose would be achieved in the continuance of the proceeding as the result of the Central Laboratory might not yield any useful purpose?

7. Exercise of jurisdiction under Section 482 Cr.P.C. is well defined by catena of decisions and more prominently in the case of **State of Haryana Vrs. Ch. Bhajan Lal** reported in **1992 Supp (1) SCC335**. In fact, such jurisdiction has not been conferred on the High Courts but it only reminds that the Court is possessed of such power to be exercised to give effect to an order under the Code; to prevent abuse of process of Court; and to otherwise secure the ends of justice. The jurisdiction under Section 482 Cr.P.C. is to do real and substantial justice for the administration of which alone the Courts exist. However, there is a rider that inherent jurisdiction which is so wide and expansive, it has to be exercised sparingly which has been reiterated time and again in plethora of decisions of the Supreme Court. It is a settled law that the Court would be justified in exercising the inherent jurisdiction for quashing of a criminal proceeding subject to satisfaction that denial of it would tantamount to abuse of process of law or otherwise needed to advance the cause of justice.

8. In **Nestle India Limited** (supra), the legality of the criminal proceeding was challenged in respect of the prosecution under the Act and therein the food item was stated to have been manufactured in the month of 1992 with a declaration on the package that the same would be fit for consumption within nine months from the date of manufacture and the sample was collected in the September, 1992 and the prosecution report was prepared next year in the same month and thereafter the complaint was instituted on 10th September, 1992 and under the circumstances and with a conclusion that such a criminal action was initiated long after the period of consumption, quashed the proceeding since the allegation would be indefensible. In **Shiew Kumar Jain** (supra), the Gauhati High Court concluded that there is a limitation prescribed in the Act and Rules of 1955 prescribing the Public Analyst to submit the report within the stipulated time and in case of non-compliance thereof, the finding would be vitiated. In the case at hand, the sample was collected and it was sent to the Public Analyst, whose report was received in the month of August, 2004. The same was dispatched in the month of June, 2004 and the report was received in August, 2004, however, the present challenge is not on the ground of non-compliance of any such provision of the Act and Rules leading as was in the case of **Shiew Kumar Jain**. But the purpose of reliance of the aforesaid decision is to suggest that due to passage of time, articles of food deteriorate and therefore, the Legislature fixed an outer limit for getting the samples tested scientifically in order to find out if they are adulterated or otherwise. In the present case, the contention is that there is a shelf-life in the package of the oil manufactured in May, 2004 and sending the sample in February, 2005 close to a year after would be an exercise which might not bring any positive result of adulteration. In **Mohammad Zahir** case (supra), this Court had the occasion to examine the delay aspect with reference to CRLMC No.752 of 2005

Section 13(2-A) of the Act which stipulates that the Court shall require the Local Health Authority to forward the sample kept by the authority upon a requisition made in that respect within a period of five days from the date of receipt of such requisition. It has been held therein that violation of Section 13(2-A) of the Act is likely to cause serious prejudice to the rights of the accused and even if the accused is tried on the complaint of the Food Inspector, no conviction could be recorded against him on the basis of such report which though continues to be a piece of evidence and hence concluded that any such continuation of the proceeding would amount to abuse of process of the Court. It is claimed that there has been delay of eight months in lodging the complaint since the date of manufacture and in the meanwhile, the period of fitness of consumption had lapsed and as such, the valuable right of the petitioner conferred under Section 13(2) of the Act read with Rule 7(3) of the Rules, 1955 is violated. In the decision (supra), the accused had not made an application for sending the sample to the Central Food Laboratory and for other reasons, the Apex Court held that he could not be said to have been prejudiced for any such delay in view of Section 13(2) of the Act. In **Hyderabad Beverages Private Limited etc. Vrs. State of U.P. 2006 CriLJ 3988**, the A.P. High Court declined to quash the prosecution for delay in furnishing the copy of the report of the Public Analyst beyond expiry of best before date or shelf-life of the product.

9. The law is well settled that the accused is having an invaluable right under Section 13(2) of the Act to submit a requisition for direction to the authority by the Court to forward the sample to the Central Food Laboratory. In fact, the Local Health Authority is to inform the person the rights to send the sample to the Central Food Laboratory and to make an application within the stipulated time for scientific analysis in view of Section 13(2) of the Act and it shall be forwarded on receiving a requisition in terms of sub-section CRLMC No.752 of 2005

(2-A) thereof. Herein the petitioner no doubt submitted the requisition but then claimed for dropping of the prosecution on expiry of the shelf-life period of the sample oil referring to its date of month of manufacture. It is not necessarily that in all cases that a sample is held to be unsuitable for test and analysis after expiry of the shelf-life period which is what has been held in **M/s Hyderabad Beverages Pvt. Ltd.** The reason being a food article is held to be best before use a particular period for the purpose of human consumption but that does not mean that it has become unsuitable for analysis to find out whether the same is adulterated or not. An article of food would still be sent for analysis on a requisition made under Section 13(2-A) of the Act even after expiry of the best before use date or its shelf-life if such a request is made in terms of Act and according to the Rules 1955. Some amount of delay from the best before use date cannot be a justifiable ground to reject a criminal prosecution. Though the petitioner applied for sending the sample after receiving a report of the public analyst, however, challenged the action on account of delay of eight months, the Court is of the view that it cannot and could not have been a ground to drop the proceeding. However, it is contended that DGHS method was adopted which was conveniently followed having no support of law and that too in absence of any prescribed mode of analysis under Section 23(1A)(hh) of the Act and in that connection, the decision of **PepsiCo India Holding Private Limited** (supra) is placed reliance on, wherein, it is observed that in absence of parameters which ought to have been defined by the Central Government under Section 23(1A)(hh) & (ee) of the Act, samples could not be considered as adulterated. It is further added that relying on the above decision, this Court in **Ashok Khandelwal Vrs. P.Singh & Another** reported in **2018 (2) FAC 215** quashed the proceeding. It is not denied by the State that the Public Analyst failed to submit the report within the time limit as prescribed in

Rule 7(3) of the Rules, 1955 which is required to be adhered to. It is also not drawn to the notice of the Court if the sample was added with any preservative. In the above fact situation, when the complaint is lodged after 8 months, the re-testing by the Central Laboratory might not have yielded a positive result. That apart, the decision in **Babu Lal Hargovindas Vrs. State of Gujarat AIR 1971 SC 1277** is sought to be distinguished by the defence and also the inapplicability of the judgment of **State of Gujarat & Another Vrs. Saileshbhai Mansukhlal Shah** reported in **2007(7) SCC 71** as to the obligation to deposit the amount for sending the sample for testing as the earlier decision in **J. Kutty Vrs. State of Kerala FAC 1991(1)133** was prevalent. In any ways, there has been undue delay by passage of time for the sample to be re-tested in the Central Food Laboratory. Would any purpose still be served in sending the sample for analysis on the application under Section 13(2-A) of the Act at this distant point of time? The answer is not in the affirmative considering the totality of the facts and circumstances of the case and the Court after bestowing anxious consideration to all the aspects is of the considered view that the criminal proceeding should be terminated in exercise of its inherent jurisdiction.

10. Accordingly, it is ordered.

11. In the result, the CRLMC stands allowed. As a logical sequitur, the impugned order dated 26th February, 2005 under Annexure-1 and the entire criminal proceeding in connection with 2(C) CC No.2 of 2005 pending in the file of the learned S.D.J.M., Puri is hereby quashed.

(R.K. Pattanaik)
Judge