

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1340 of 2013

M/s. Adani Wilmar Ltd. & another. Petitioners

*M/s. Subash Ch. Lal, S. Lal,
M. Agrawal, Advocates*

-versus-

***P.C. Naik, Food Inspector, Opposite Party
Sundergarh.***

Addl. Standing Counsel)

**CORAM:
JUSTICE S. PUJAHARI**

**ORDER
17.08.2022**

**Order
No.**

09. **1.** This is an application filed under Section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") by the petitioners seeking for quashing of the proceeding in 2(C) C.C. No.15 of 2005 pending in the court of the learned J.M.F.C., Rajgangpur, against them.
- 2.** Heard the learned counsel appearing for both the sides 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 Food Inspector, Sundergarh district (opposite party herein) on the allegation, inter-alia, that adulterated mustard oil under the brand name “Fortune Kachighani Pure Mustard Oil” manufactured by the petitioner no.1-company was found to have been stored and sold by the co-accused – Sushil Kumar Agarwal in his grocery shop, namely, “Nikhil Store” at Khadagali, Rajagangpur. Sushil Kumar Agarwal disclosed to have purchased the same from the Wholesaler, namely, “M/s. Magadh Store”, OCL Market, Rajgangpur. Basing upon the report of the Public Analyst, Odisha, the opposite party filed the prosecution report suggesting trial of the present petitioners under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (for short the “PFA Act”) for contravention of the provisions under Section 7(i)(v) of the said Act and the Rules framed thereunder, and also trial of the co-accused persons for similar and other offences.

4. The learned counsel for the petitioners has sought for quashing of the prosecution, qua the petitioners mainly on the following grounds;

(i) Since there is a nominee duly appointed under Section 17(2) of the PFA Act and the said fact was duly intimated to the opposite party, and there being nothing on record to show consent or connivance of the petitioner no.2 – Managing Director in the matter of the alleged contravention, the prosecution against the petitioner no.2 is liable to be quashed. He has placed reliance on a decision of this Court in the case of **Managing Director, ITC Agrotech Ltd. vs. P.C. Mishra**, reported in (2002) 22 OCR. He has also placed reliance on the pronouncement of the Apex Court in the case of **R. Banerjee and others vs. H.C. Dubey and others**, reported in 1992 (1) FAC 128.

(ii) No Rule having been framed by the Central Government under Rule-23 (1-A) (hh) of the P.F.

Rules, 1955, prescribing the method of analysis of samples, much less prescribing DGHS method, the opinion of the Public Analyst which is based upon DGHS method is without any authority of sanction of law, and hence the same can not be acted upon.

- (iii) The petitioner no.1 having exercised its valuable right under Section 13(2) of the PFA Act for sending the second sample to the Central Laboratory for analysis, and the said right having been denied to the petitioner no.1 owing to the laches of the prosecution and mistake of the Court as apparent on record, the proceeding has been vitiated. He in support of his contention, has cited a decision of the Apex Court in the case of **Calcutta Municipal Corporation vs. Pawan Kumar Saraf**, reported in (1999) 2 SCC 400.

5. This Court on having gone through the papers on record finds merit in the contentions of learned counsel for the petitioners. As it appears, pursuant to the notice

issued by the opposite party under his letter No.2093 dated 12.10.2004, the petitioner no.1 sent the copy of the Nomination in Form-VIII under Section 17(2) of the PFA Act showing Sri Bhupender Lavania to have been nominated by a Resolution passed at the meeting of the Company held on 02.07.2000. The said nomination paper appears to have been reviewed by the opposite party on 02.02.2005 and the CDMO, Sundergarh on 05.03.2005. There is also no material / allegation from the prosecution that the petitioner no.2 had any consent to connivance in the alleged contravention under the PFA Act or Rules. In that view of the facts, the prosecution against the petitioner is prima-facie found to be not sustainable. In the context, a reference may be made to the pronouncement of the Apex Court in the case of **R. Banerjee** (supra) which is quoted here below;

“It is clear from the scheme of Section 17 that where a company has committed an offence under the Act, the person nominated under sub-section (2) to be in charge of, and responsible to, the company for the conduct of its business shall be proceeded against unless it is shown that the offence was committed with the

consent/connivance/negligence of any other Director, Manager, Secretary or Officer of the company in which case the said person can also be proceeded against and punished for commission of the said offence. It is only where no person has been nominated under sub-section (2) of Section 17 that every person, who at the time of the commission of the offence was in charge of and was responsible to the company for the conduct of its business can be proceeded against and punished under the law. xxxx ”

6. There is also no dispute that the public analyst adopted DGHS method in the test / analysis conducted by him in absence of any Rule prescribed under Rule 23(1-A)(hh) of the P.F. Rules, 1955. Hence, it can not be held that the analysis was made in accordance with law. The third contention of the petitioners also remains unassailable, inasmuch as what the order sheets of the Court below show, till 27.07.2012 the request made by the nominee of the petitioner no.1 on 31.03.2005 for sending the second sample to the Central Food Laboratory was rejected by the J.M.F.C. for the reason stated in the order, and although the said order was set-aside by the Revisional Court with a direction for sending the sample to Central Laboratory vide the order dated 10.05.2008, no action was taken by the J.M.F.C.

till 27.07.2012, and no follow up was taken by the prosecution as well.

7. For the reasons stated, the prosecution being liable to be quashed, qua the petitioners is hereby quashed, and the CRLMC is allowed accordingly.

(S.Pujahari)
Judge

MRS

