

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 229 OF 2023

Manish s/o Nandkishor Pediwal & another

Applicants

Versus

State of Maharashtra

Respondent

Mr. R. R. Chandak, Advocate for the applicants.

Mrs. G. L. Deshpande, APP for the State.

CORAM : R. M. JOSHI, J.

DATE : 12th SEPTEMBER, 2023.

PER COURT :

1. This application is filed under Section 482 of the Code of Criminal Procedure for quashment of SCC No. 153/2011 filed under the provisions of Prevention of Food Adulteration Act, pending before Judicial Magistrate First Class, Aurangabad.

2. It is the case of applicants that applicant No. 1 is doing the business of distributorship of soap, oil, agarbatti and pure ghee under the name and style as M/s Gayatri Agencies at Aurangabad and applicant No. 2 is conducting retail outlet of grocery items. On 18th June, 2003, applicant No. 1 purchased ghee of 'Saras' brand

from Ms/ Kailash Traders who is accused No. 3 in the said proceeding. The said ghee was purchased in 200 gms and 500 gms packet and stored for sale in same condition in which it was purchased. On 6th August, 2003, the Food Inspector visited the shop and asked for samples of Saras ghee packets of 500 gms. Notice was issued under Form No.6 and 14A of the Act. The applicants were asked about the name of the manufacturer/supplier of the said product and the applicants provided requisite information to the Food Inspector. There is no dispute about the fact that the sample was obtained on 6th August, 2003. The said sample was sent to the analyst and report thereof was received on 3rd September, 2003. The Food Inspector instituted a complaint against applicants and co-accused under the provisions of the Act on 29th June, 2004.

3. Learned counsel for the applicants submits that only on the ground that complaint has been filed after the shelf life of the product got expired, and in view of provisions of Section 13(2) of the Act, the present proceeding cannot be permitted to be continued. It is his contention that the panchanama drawn in form No. 6 at the time of seizure of articles shows the date of manufacturing as March 2003 and it is best for six months therefrom. Thus, according to

him, the quality of the product shall not remain the same after period of six months and hence if any analysis is to be done, it must be done within such period. Since admittedly, complaint is filed on 29th June, 2004, i.e. much after shelf life of the product was expired, there is non-compliance of Section 13(2) of the Act which has resulted into denying opportunity to accused to defend themselves.

4. Learned APP opposed the said contention with submission that other compliances under the act are also not done in this case and it is not evidence about necessary precaution being taken while selling the food articles. Perusal of the complaint shows that except for the offence punishable under Sections 7(i) read with Section 2(ia) and 2(ia)(m) punishable under Sections 16 and 17 of the Act, no other charge has been levelled against present applicants.

5. In order to appreciate submissions made by rival sides, it would be necessary to take note of relevant provisions of Section 13 of the Act which read thus :-

13. Report of public analyst.—

(1) The Public Analyst shall deliver, in such form as may be prescribed, a report to the Local (Health) Authority of the result of the analysis of any article of food submitted to him for analysis.

(2) On receipt of the 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 against the persons from whom the sample of the article of food was taken and the person, if any, whose name, address and other particulars have been disclosed under section 14A, forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both of them may make an application to the court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory.

(2A) x x x

(2B) x x x

(2C) x x x

(2D) Until the receipt of the certificate of the result of the analysis from the Director of the Central Food Laboratory, the court shall not continue with the proceedings pending before it in relation to the prosecution.

(2E) If, after considering the report, if any, of the food inspector or otherwise, the Local (Health) Authority is of the opinion that the report delivered by the public analyst under sub-section (1) is erroneous, the said Authority shall forward one of the parts of the sample kept by it to any other public analyst for analysis and if the report of the result of the analysis of that part of the

sample by that other public analyst is to the effect that the article of food is adulterated, the provisions of sub-sections (2) to (2D) shall, so far as may be, apply.]

(3) The certificate issued by the Director of the Central Food Laboratory ⁵⁴ [under sub-section (2B)] shall supersede the report given by the public analyst under sub-section (1).

(4) Where a certificate obtained from the Director of the Central Food Laboratory ⁵⁴ [under sub-section (2B)] is produced in any proceeding under this Act, or under sections 272 to 276 of the Indian Penal Code (45 of 1860), it shall not be necessary in such proceeding to produce any part of the sample of food taken for analysis.

(5) Any document purporting to be a report signed by a public analyst, unless it has been superseded under sub-section (3), or any document purporting to be a certificate signed by the Director of the Central Food Laboratory, may be used as evidence of the facts stated therein in any proceeding under this Act or under sections 272 to 276 of the Indian Penal Code.

[Provided that any document purporting to be a certificate signed by the Director of the Central Food Laboratory [not being a certificate with respect to the analysis of the part of the sample of any article of food referred to in the proviso to sub-section (1A) of section 16] shall be final and conclusive evidence of the facts stated therein.

Aforesaid provision clearly indicates that provision of Section 13(2) gives right to the accused to sent one of the portions of the sample to the Central Food Laboratory after filing of proceeding. Sub-section (2-D) provides that in case of such application is made

and sample is sent to the Central Food Laboratory, until receipt of the certificate of the result of the analysis from the Director of the Central Food Laboratory, the Court cannot continue with the proceeding pending before it in relation to the prosecution. Section 13(3) makes analysis report of Central Food Laboratory to prevail over the report given by public analyst under Section (1). All these provisions underline the importance of the sample to be sent to Central Food Laboratory and its relevance to the right of defence of any accused.

6. Thus, it is an indispensable right of the accused to seek sending of sample to the Central Food Laboratory for its reanalysis. In the instant case, there is no denial of the fact that the sample of the product which was manufactured in March 2003 with shelf life of six months. Admittedly, complaint is lodged on 29th June, 2004 i.e. after expiry of shelf life of product. Thus, the indispensable right of the accused as contemplated under Section 13 of the Act is denied. In such circumstances, the proceeding cannot be permitted to be continued.

7. Though learned APP sought to impress upon this Court that there are other breaches committed by applicants of provisions of Act and hence entire proceeding can not be quashed, but perusal of complaint shows that except for offence under Section 7, no other breach has been alleged against applicants. In such circumstances, there is no impediment to terminate entire proceeding. Hence, application is allowed. SCC No. 153/2011 pending before Judicial Magistrate First Class (Corporation Court) at Aurangabad stands quashed qua applicants.

(R. M. JOSHI)
Judge

dyb