

# Mead Johnson Nutrition India Pvt. Ltd vs Unknown on 10 September, 2021

**Author: Kausik Chanda**

**Bench: Kausik Chanda**

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10.09.2021

rrc CRR 1767 of 2021 In re : An application under Section 482 of the Code of Criminal Procedure, 1973.

In the matter of : Mead Johnson Nutrition India Pvt. Ltd.

..... petitioner Mr. Sudipta Sarkar Mr. J. Lal Mr. Suddhakar Prasad Mr. Pradipta Bose .....For the petitioner The prosecution, in this case, was launched on the basis of an F.I.R. being no. 333 of 2015 dated November 10, 2015, registered by the Charu Market Police Station under Sections 269/270/272/273/114 of the Indian Penal Code, 1860. Following the said F.I.R., after a lapse of about four years, on May 29, 2019, a notice was issued under Section 91 of the Code of Criminal Procedure, 1973, by the relevant police station against the authorized person/director of the petitioner company.

The said notice was replied to by the petitioner in a letter dated June 4, 2019.

Thereafter again a notice was issued on August 30, 2020, against one of the directors of the petitioner company under Section 160(1) of the Code of Criminal Procedure, 1973, requesting him to appear before the investigating officer.

By filing this revisional application, the petitioner prays for quashing the proceeding.

Mr. Sudipta Sarkar, learned senior advocate appearing for the petitioner submits that in this case there has been no report in terms of Section 46(2) of the Food Safety and Standards Act, 2006 and therefore, the prosecution is liable to be quashed. He relies upon a judgment reported at 2010 SCC Online All 1708 [M/s. Pepsico India Holdings (Pvt) Limited and another Vs. State of U.P. and others] delivered in the context of Prevention of Food Adulteration Act, 1954, wherein it has been held as follows:-

"Section 42 empowers the Food Safety Officer for inspection of food business, drawing samples and sending them to Food Analyst for analysis. The Designated Officer, after scrutiny of the report of Food Analyst shall decide as to whether the contravention is punishable with imprisonment or fine only and in the case of contravention punishable with imprisonment, he shall send his recommendations to

the Commissioner of Food Safety for sanctioning prosecution. Therefore, invoking Sections 272 and 273 of the Penal Code, 1860 in the matter relating to adulteration of food pursuant to the impugned government order is wholly unjustified and non est."

Mr. Sarkar further relies upon paragraph 8 of the judgment reported at (2009) 15 SCC 64 (Girishbhai Dahyabhai Shah Vs. C.C.Jani and another) in support of his contention.

Admittedly, in this case, a notice under Section 91 of the Code of Criminal Procedure, 1973, was issued after four years from the lodging of the relevant F.I.R. and, thereafter, again after a delay of about two years, further notice under Section 160(1) of the Code of Criminal Procedure, 1973, was issued against the director of the petitioner company.

Prima facie, I am of the view that the prosecution against the petitioner cannot continue under Sections 51 and 59 of the Food Safety and Standards Act, 2006, when the same was initiated without any report under Section 46(2) of the Food Safety and Standards Act, 2006. The Sections under Indian Penal Code, 1860 are not applicable for alleged violation of the provisions of the Food Safety and Standards Act, 2006.

In view of the aforesaid, there shall be a stay of all further proceedings in connection with Charu Market Police Station Case No. 333 under Sections 269/270/272/273 and 114 of the Indian Penal Code, 1860, and Sections 51 and 59 of the Food Safety and Standards Act, 2006, for a period of eight weeks from date.

The petitioner shall serve a copy of this application upon the opposite parties within a period of two weeks, indicating that this application shall be taken up for hearing after six weeks under the heading "Contested Application". The petitioner shall file an affidavit-of-service to that effect on the next date of hearing.

List this application after six weeks under the heading "Contested Application".

(Kausik Chanda, J.)