

Vasudev vs The State Of Madhya Pradesh on 11 July, 2023

Author: Anil Verma

Bench: Anil Verma

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IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE ANIL VERMA
ON THE 11th OF JULY, 2023
MISC. CRIMINAL CASE NO. No. 51940 of 2021

BETWEEN: -
VASUDEV S/O LT. MULCHAND CHHABLANI,
AGED ABOUT 48 YEARS,
OCCUPATION: BUSINESS,
R/O: 44, VATSALYA, OPP. SEWA BAZAR,
STATION ROAD, SHAJAPUR,
DISTRICT SHAJAPUR (M.P.)

(BY SHRI AKSHAT PAHADIA - ADVOCATE)

.....PETI

AND
THE STATE OF MADHYA PRADESH
THROUGH FOOD SAFETY OFFICER,
FOOD SAFETY ADMINISTRATION,
DISTRICT SHAJAPUR (M.P.)

(BY SHRI H.S. RATHORE - GOVERNMENT ADVOCATE)

.....RESPON

This application coming on for admission this day, the court passed
the following:

ORDER

1/ The petitioner has preferred this petition under Section 482 of the Code of Criminal Procedure, 1973 (in short "Cr.P.C.") for quashment of Criminal Case No.192/2015 pending before the Judicial Magistrate First Class, Shajapur.

2/ Brief facts of the case are that on 16.10.2014 Food Safety Officer, Shajapur along with his team visited the shop of the petitioner and had purchased Soyabean Oil 2 Litre, 4 packs of Chana Dal, Besan 500 grams of Silver Coin brand and 4 packs of Vimal Pan Masala containing 30 pouches in each packet for the purpose of sending them for testing to the Food Analyst, State Food Laboratory.

On 16.10.2014 Food Safety Officer issued an intimation to the designated officer, Food Safety Administration, Shajapur for despatching the sample of Premium Vimal Pan Masala to the food analyst and to deposit remaining 3 parts of the said sample with 3 memorandum to Form No.VI in safe custody. Then the sample was sent to the Food Analyst, State Food Laboratory for its analysis. Vide report dated 3.11.2014 the Food Analyst declared that the aforesaid sample is unsafe under Section 3(zz)(xi)(Mgco3) of the Food Safety and Standards Act, 2006. Petitioner was not satisfied with the aforesaid report and intimated his willingness to get the disputed sample re-tested. Then he sent a letter to the designated officer along with the Demand Draft of Rs.1,000/- requesting to get the disputed sample tested from the Central Laboratory. Thereafter, respondent sent a letter to the designated officer for grant of sanction and written sanction was granted on 2.2.2015. Then complaint has been filed before the CJM, Shajapur which was registered as Criminal Case No.192/2015.

3/ Petitioner has filed an application under Section 46 and 47 of the Food Safety and Standards Act. Vide order dated 26.2.2015 his application was allowed and the trial Court has ordered to issue letter to the respondent directing to get the sample tested from the Central Laboratory. Then respondent has filed Criminal Revision No.49/2015 before the 1st Addl. Sessions Judge, Shajapur but the same was dismissed vide order dated 1.10.2015. Then on 12.2.2021 trial Court has issued a letter to the respondent asking for reasonable answer as to why the sample has not been sent to the Central Laboratory, but the respondent has not given any justification for not complying the order, nor they sent the sample to the Central Laboratory for its testing.

4/ Learned counsel for the petitioner submits that the petitioner has a valuable right of appeal and a valuable right to get the sample reanalysed from the Central Laboratory, which was not made available by the respondents, therefore, in absence of the same no offence is made out against him. Despite of the repeated orders passed by the trial Court and the first appellate court, respondent did not comply with the aforesaid orders and disputed sample has not been sent to the Central Laboratory. Therefore, there is no conclusive proof about the unsafeness of the disputed sample, for which the petitioner can be prosecuted. The shelf life of the disputed sample was of 6 months from the date of its packing and it was expired in March, 2015 and the respondents have not taken any steps for re-testing by the Central Laboratory. The aforesaid valuable right of the petitioner has been deprived of and defeated. Petitioner is innocent and he has been falsely implicated in this matter. The entire case is based upon the Analyst's report, therefore, in absence of the Analyst's report of the Central Laboratory, no offence is made out against the petitioner. Hence, he prays that all the proceedings of Criminal Case No.192/15 pending before the trial Court be quashed.

5/ Per contra, learned counsel for the respondent/State opposes the prayer and prays for its rejection by submitting that as per the provisions of Section 46(4) of the Food Safety and Standards Act, 2006 petitioner did not file application for re-testing the sample within the scheduled period and the designated officer has no jurisdiction to send the sample after lapse of the scheduled time period of 30 days. Therefore, the petition filed by the petitioner is liable to be dismissed.

6/ I have heard the learned counsel for both the parties and perused the record.

7/ Sub-sections (1) & (2) of Section 13 of the Prevention of Food Adulteration, 1954 (in short "the Act of 1954") reads 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".

8/ Under sub-section (2) of Section 13, it is mandatory for the Local (Health) Authority to forward a copy of the report of the Public Analyst to the person from whom the sample of the food has been taken in such a manner as may be prescribed. Further mandate of sub-section 5 (2) of Section 13 is that a person to whom the report is forwarded should be informed that if it is so desired, he can 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 analysed by Central Food Laboratory. The report is required to be forwarded after institution of prosecution against the person from whom the sample of the article of food was taken. Apart from the right of the accused to contend that the report is not correct, he has right to exercise an option of sending the sample to Central Food Laboratory for analysis by making an application to the Court within ten days from the date of receipt of the report. If a copy of the report of the Public Analyst is not delivered to the accused, his right under sub-section (2) of Section 13 of praying for sending the sample to the Central Food Laboratory will be defeated. Consequently, his right to challenge the report will be defeated. His right to defend himself will be adversely affected. This Court in the case of Vijendra (supra) held that mere dispatch of the report to the accused is not a sufficient compliance with the requirement of subsection (2) of Section 13 and the report must be served on the accused.

9/ Therefore, the purpose of Section 13 of the Act of 1954 is to give second opportunity to the accused persons against whom the prosecution is initiated under the Act of 1954, based on the Public Analyst's report, to get the sample tested again by the Central Laboratory since the Central Laboratory's report will have precedence over the Public Analyst. This is a valuable opportunity to the accused persons to claim exoneration from the criminal proceedings on account of non compliance of the same.

10/ It is settled by Hon'ble Supreme Court in *Municipal Corporation of Delhi v. Ghisa Ram*, AIR 1967 SC 970, that where inordinate delay in instituting prosecution has resulted in denial of the right under Section 13(2), it is deemed to have caused serious prejudice to the accused such that their conviction on the basis of the Public Analyst's report cannot be upheld. The Hon'ble Supreme Court in para 9 has held as under:-

"9. In the present case, the sample was taken on the 20th September, 1961. Ordinarily, it should have been possible for the prosecution to obtain the report of the Public Analyst and institute the prosecution within 17 days of the taking of the sample. It, however, appears that delay took place even in obtaining the report of the Public Analyst, because the Public Analyst actually analysed the sample on 3rd October, 1961 and sent his report on 23rd October, 1961. It may be presumed that some delay in the analysis by the Public Analyst and in his sending his report to the prosecution is bound to occur. Such delay could always be envisaged by the prosecution, and consequently, the elementary precaution of adding a preservative to the sample which was given to the respondent should necessarily have been taken by the Food Inspector. If such a precaution had been taken, the sample with the respondent would have been available for analysis by the Director of the Central Food Laboratory for a period of four months which would have expired about the 20th of January, 1962. The report of the Public Analyst having been sent on 23rd October, 1961 to the prosecution, the prosecution could have been launched well in time to enable the respondent to exercise his right under s. 13(2) of the Act without being handicapped by the deterioration of his sample. The prosecution, on the other hand, committed inordinate delay in launching the prosecution when they filed the complaint on 23rd May, 1962, and no explanation is forthcoming why the complaint in Court was filed about seven months after the report of the Public Analyst had been issued by him. This, is, therefore, clearly a case where the respondent was deprived of the opportunity of exercising his right to have his sample examined by the Director of the Central Food Laboratory by the conduct of the prosecution. In such a case, we think that the respondent is entitled to claim that his conviction is vitiated by this circumstance of denial of this valuable right guaranteed by the Act, as a result of the conduct of the prosecution."

11/ In the instant case, petitioner had conveyed his intention on 12.11.2014 that he is not satisfied with the report dated 3.11.2014 of the Public Analyst and disputed sample be re-tested. Even he has sent a letter to the designated officer along with the DD of Rs.1,000/-, but designated officer did not send the second sample to the Central Laboratory. Then petitioner preferred an application before the trial Court, the same was allowed on 19.2.2015 and also upheld by the revisional court, but despite of the repeated orders issued by both the courts below, respondents did not comply the aforesaid orders directing to get the sample tested from the Central Laboratory and thus they have violated the valuable rights of the petitioner. Therefore, the aforesaid valuable right of the petitioner has been deprived of and defeated.

12/ Hon'ble Supreme Court in the matter of M/s Alkem Laboratories Ltd. v. State of Madhya Pradesh SLP (Cr.) No.3995 of 2018 decided on 29.11.2019 has held as under:-

"Applying the abovementioned test to the present case, it has to be seen whether first, the Appellant was entitled to apply for testing of the Jelly by the Central Laboratory under Section 13(2); second, whether the denial of the right was the Respondents' fault and third, whether such denial is prejudicial to the Appellant's case. With respect to the first point, the Respondents have relied upon the Public Analyst's Report which states that the Jelly contains 'sugar/sucrose', so as to institute a complaint for misbranding under Section 2(ix)

(g) of the 1954 Act. This is because the label on the packaging claims that the Jelly is 16 S.L.P. (Cr.) No. 3995 of 2018 decided on 29.11.2019 14 'sugarless'. Hence, the Public Analyst's finding on whether 'sugar' as an ingredient is present in the Jelly sample is crucial to proving the offence of 'misbranding' against the Appellant. Thus, the Appellant ought to have had the opportunity to make an application under Section 13(2) for a second opinion from the Central Laboratory on the contents of the Jelly sample."

With respect to the second point, we are of the view that Respondent No. 2 erred in not making query to the Retailer, at the first instance, about the marketer of the Jelly, as she was empowered to do under Section 14A of the 1954 Act. If she had done so, the Appellant could have been notified in 2008 itself that the Jelly is being taken for analysis. Even if this lapse is condoned, once the Retailer had intimated the Respondents that the Appellant was the marketer of the Jelly, they ought to have made more efforts in notifying the Appellant of the alleged irregularity found in the Jelly sample, as per Section 13(2). We do not find merit in the Respondents' submission that the delay in informing the Appellant was because the Appellant was deliberately avoiding service of notice. Even if the address produced by the Retailer was of the Appellant's Indore Branch, the label on the packaging of the Jelly clearly indicated that the official address for communication would be "Alkem House, Senapati Bapat Marg, Lower Parel, Mumbai 400013". Hence even if no response was being received from the Indore branch, the Respondents could have attempted to send the details of the Public Analyst's Report to the Appellant's Mumbai address. Thus it is clear that the Appellant lost their chance to get the Jelly sample retested under Section 13(2) on account of the Respondents' negligence.

Finally, with regard to the third point, it is true that non compliance with Section 13(2) would not be fatal in every case, if it is found that the sample is still fit for analysis (T. V. Usman v. Food Inspector, Tellicherry Municipality, Tellicherry, (1994) 1 SCC (754)). However the Respondents have not disputed that the shelf life of the Jelly sample would have, in all probability, expired at this stage. Hence we find that this is a fit case for quashing of proceedings against the Appellant on account of denial of their valuable right under Section 13(2).

13/ This Court in the matter of Sandeep Tiwari v. State of Chhattisgarh in Cr.M.P. No.1050 of 2019 decided on 23.11.2020 has held in paragraph 30 as under :-

"30. Finally, reverting the facts of the present case in light of the aforesaid principles of law laid down by Their Lordships of the Supreme Court, it is quite vivid that the valuable right of the petitioner under Section 13(2) of the Act of 1954 to get the second sample analysed by the Central Food Laboratory is lost as the product in question 17 Cr.M.P. No. 1050 of 2019, decided on 23.11.2020 15 'Bru Instant Coffee Chicory Mixture' was manufactured in March, 2008 and it was best before 18 months from the date of packaging and thereafter the product in question had lost its shelf life as it was to be used before September, 2009, and the complaint was filed before the jurisdictional criminal court on 27/04/2010, as such, the petitioner has been deprived of his valuable and indefeasible right to get the second sample of the product reanalyzed from the Central Food Laboratory under Section 13(2) of the Act of 1954 as the report from the Director of the Central Food Laboratory supersedes the report of the Public analyst by virtue of Section 13(3) of the Act of 1954 and consequently, the petitioner has suffered great prejudice in defending himself in the prosecution launched against him, as such, the entire prosecution against the petitioner deserves to be quashed on this short ground alone."

14/ The Various High Courts have reiterated the same view that it is necessary on the part of the prosecution to afford an opportunity to the accused for sending the sample under Section 13 (2) of the PFA Act, 1954 to the Central Food Laboratory during the shelf life of the product in question, if no such opportunity is granted to the accused, the petitioner has suffered great prejudice in defending himself in the prosecution launched against him and on this count alone, the entire prosecution launched against the petitioner deserves to be quashed.

15/ The Gwalior Bench of this Court in the case of Sri Prakash Desai and another Vs. State of M.P. vide order dated 21.9.2015 passed in MCRC No.629/2012 has held as under:-

"12.The Bombay High Court after considering AIR 1967 SC 970 (Municipal Corporation of Delhi vs. Ghisa Ram); (1999) 8 SCC 190 (State of Haryana v. Unique Farmaid (P) Ltd.); 2008 (3) Scale 563 (Medicamen Biotech Ltd. v. Rubina Bose), opined that the valuable right of accused persons under Section 13(2) of the PFA Act is violated because the complaint was filed after shelf life of the product. The justification of delay on the basis of administrative reasons and limitation of three years for filing complaint was not accepted by the High Court. For this reason also, the impugned order cannot sustain judicial scrutiny. This judgment of Bombay High Court was put to test before Supreme Court in State of Maharashtra vs. Shivkumar @ Shiwalamal N. Chugwani, reported in 2011 (1) FAC 41 (Special Leave to Appeal (Cri) No. 6332/2010).

The said SLP was dismissed on merits by Supreme Court on 13th September, 2010. Suffice it to say that after shelf life of a product is over, remedy under Section 13(2) of the PFA Act is of no use to the accused. Even if by order dated 11.8.2011, the court below rejected similar contention of the petitioner, it is of no help to the respondent. In view of the law laid down in Shivkumar @ Shiwalamal N. Chugwani (supra) and affirmed by Supreme Court, the said objection pales into

insignificance."

16/ From the return filed by the State, it is quite clear that respondents are not disputing that the shelf life of the product has already been expired on the date of filing of the complaint, therefore, it is a fit case for quashing of the proceedings against the petitioner on account of denial of his valuable right to get the second sample of the product analysed from the Central Food Laboratory under Section 13(2) of the Act, 1954.

17/ In view of the aforesaid legal analysis, I have no hesitation to hold that the prosecution case against the petitioner deserves to be quashed in exercise of jurisdiction conferred under Section 482 of Cr.P.C. Consequently, the Criminal Case No.192/2015 pending before the Judicial Magistrate First Class, Shajapur is hereby quashed.

18/ Accordingly, this petition filed under Section 482 of Cr.P.C. is allowed to the extent sketched hereinabove.

Certified copy as per rules.

(ANIL VERMA) JUDGE Trilok/-

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