



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.344 OF 2010

1. Anil Agrawal
Director of M/s. Bunge Agri
Business, India Ltd. Housefin
Bhavan Suit No.701, Bandra
Kurla complex, Bandra (E),
Mumbai 400 051
2. Siddhant Khosla,
Director of M/s. Bunge Agri
Business India Ltd. Housefin
Bhavan Suit No.701, Bandra
Kurla complex, Bandra (E),
Mumbai 400 051
3. Sudhakar Desai,
Director of M/s. Bunge Agri
Business India Ltd. Housefin
Bhavan Suit No.701, Bandra
Kurla complex, Bandra (E),
Mumbai 400 051
4. M/s. Bunge Agri Business India Ltd.,
Housefin Bhavan Suit No.701,
Bandra Kurla complex, Bandra (E),
Mumbai 400 051

.. Applicants
(Original Accused
No.7 to 10)

Versus

State of Maharashtra at the instance of Food
Inspector Shri. Tuljadas Chandidarrao Boralkar
Food Inspector, office of Joint Commissioner of
Food and Drug Administration (MS) Latur

.. Respondent
(Original Complainant)

Mr. D. S. Bagul, Advocate for Applicants;
Ms. Vaishali S. Choudhari, A.P.P. for Respondent

CORAM : S. G. MEHARE, J.
Reserved on: 22-08-2024
Pronounced on: 23-09-2024

JUDGMENT:-

1. The applicants have filed present application under Section 482 of the Code of Criminal Procedure and Article 227 of the Constitution of India for quashing and setting aside the prosecution/complaint of the respondent against the applicants and the process issued by the Court for an offence under Section 7(1) read with Sections 2(ia) and 2(ia)(m) punishable under Sections 16 and 17 of the Prevention of Food Adulteration Act, 1954 (for short, “the Act”).

2. The applicants are the Directors of the Company. M/s Bunge Agri Business India Ltd is engaged in the manufacturing of vanaspati, margarine, butter, etc. The company is duly registered under the Companies Act.

3. The learned counsel for the applicants argued that there were no averments in the Complaint that the applicants were in charge and responsible for the business of the company. In the absence of such averment or evidence as required under Section 17 of the Act, no vicarious liability could be fastened on the Directors. Section 17 of the Act provides that when the offence is committed by the company, only the person in charge and responsible for the business of the company can be prosecuted. Nothing was there before the learned Judicial Magistrate First Class, Udgir, showing that the applicants were in charge and

responsible for the business of the company. Hence, the process issued against them is *prima facie* illegal.

4. It was further argued that in this case, the samples were drawn on 31.05.2004 and were analyzed on 15.07.2004. The Local Health Authority, on 13.08.2004, directed the Food Inspector to take an action against the concerned. The Complaint was filed in the Court thirty-five months after taking the samples and thirty-three months after the date of analysis. Therefore, the applicants could not get opportunity to send the samples to the Central Food Laboratory for reanalysis. It was not a ritual formality but a statutory requirement of law. They may exercise their right if the seized samples were in a fit condition for analysis. The applicants have lost the right to get the sample reanalyzed from the Central Food Laboratory. Hence, they are entitled to claim that prejudice has been caused to them.

5. In short, he argued that when the rights were accrued, the samples were not fit for analysis. Therefore, they have lost their valuable rights to disapprove the allegations. Inordinate delay in lodging the Complaint resulted in failure to keep the samples fit for chemical analysis at the instance of the accused as provided under Section 13(2) of the Act. In the circumstances, the petition became *infructuous*. The impugned order was passed mechanically and without application of mind. Since the legal right of the applicants

under Section 13(2) of the Act has been violated, it would be futile to go for the trial.

6. Per contra, the learned A.P.P. for the State argued that the complainant has specifically averred about the role attributed to the applicants in the Complaint. The applicants were manufacturers. The Food Inspector, on the same day served the relevant papers of action upon the seller of the samples. The notice under Section 11(1)(a) of the Act was sent to the Sales Department of the Company immediately on 29.12.2004. The analysis report was received on 15.07.2004. The accused supplied the names of the responsible officers belatedly. Therefore, the sanction to prosecute the applicants was delayed. However, the analysis was done diligently. Some delay was caused in obtaining the sanction. Therefore, the Complaint was delayed. The Directors are presumed to be responsible for the business unless a person responsible for day-to-day business is nominated. The application deserves no merit. Hence, it is liable to be dismissed.

7. Let us deal with the issue of who is responsible for the offence committed in this case.

8. Section 17 of the Act speaks of the offences by companies. Sub-section (1) of Section 17 of the Act is where an offence under this Act has been committed by a company- (a)(i) the person, if any, who has been nominated under sub-section (2) to be in

charge of, and responsible to the company for the conduct of the business of the company (hereafter in this section referred to as the person responsible), or (ii) where no person has been so nominated, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company; and (b) the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. It has been provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.

9. Sub-section (2) of Section 17 of the Act further provides that any company may, by order in writing, authorize any of its directors or managers (such manager being employed mainly in a managerial or supervisory capacity) to exercise all such powers and take all such steps as may be necessary or expedient to prevent the commission by the company of any offence under this Act and may give notice to the Local (Health) Authority, in such form and in such manner as may be prescribed, that it has nominated such director or manager as the person responsible, alongwith the written consent of such director or manager for being so nominated.

10. Explanation to the above sub-section is where a company has different establishments or branches or different units in any establishment or branch, different persons may be nominated under this sub-section in relation to different establishments or branches or units, and the person nominated in relation to any establishment, branch or unit shall be deemed to be the person responsible in respect of such establishment, branch or unit.

11. Sub-Section (3) of Section 17 of the Act provides that the person nominated under sub-section (2) shall, until- (i) further notice cancelling such nomination is received from the company by the Local (Health) Authority; or (ii) he ceases to be a director or, as the case may be, manager of the company; or (iii) he makes a request in writing to the Local (Health) Authority, under intimation to the company, to cancel the nomination [which request shall be complied with by the Local (Health) Authority], whichever is the earliest, continue to be the person responsible. It is provided that where such person ceases to be a director or, as the case may be, manager of the company, he shall intimate the fact of such cesser to the Local (Health) Authority. It is further provided that where such person makes a request under clause (iii), the Local (Health) Authority shall not cancel such nomination with effect from a date earlier than the date on which the request is made.

12. The above provision says that there shall be no cancellation

of such nomination with retrospective effect. It is implicit that unless the company or person, if any, who has been nominated under Sub-Section (2) to be in charge of and responsible to, the company is deemed guilty of the offences and liable to be prosecuted under this Act.

13. The burden is on the applicants to place the material before the Court that Section 17(1)(a)(i) of the Act has been complied with. In the absence of any material as such, it is presumed that the company did not nominate a Director or Manager to be in charge of and responsible to the conduct of the business of the company. Therefore, at this juncture, it could not be accepted that the applicants, being the Directors of the Company, were not responsible for the conduct of the business of the company and they were not liable to be prosecuted.

14. The question has been raised since there was an inordinate delay in making an opportunity available to the applicants for the seized sample to the Central Food Laboratory, there would be no fair trial, and the Complaint would be *infructuous*. *Even if seized samples were sent to the Central Chemical Laboratory, it would be a futile attempt because the sample so seized could not be appropriately analyzed, and could not give proper results as the shelf life of the seized product has already been over. The prosecution failed to comply with Section 13(2) of the Act.*

15. The averments of the Complaint were that the then Food Inspector, along with others, visited the manufacturing unit at Udgir with one Shaikh Mahammad Faiyajoddin s/o Nasruddin on 31.05.2004 and one Kohinoor Food Products of Sk. Abdul Samad Makbool Sahab (accused No.1) was looking after the sales management of the food products. The Food Inspector purchased 600 Grams Flakier and Testier Puffs, Lilly Margrin 15 kg pack and 1500 grams Fine Wheat Flour from unlabelled open gunny bags. He paid money for those products and obtained the receipt. He immediately issued notice to the seller in form No.VI prescribed under Section 14A of the Act. Thereafter, the Food Inspector, as per the provisions, divided the samples into three parts, filled them in the bottle, labelled it and obtained the signature of the persons present. On 01.06.2004, he sent the samples to the Food Analyzer, State Health Laboratory, Pune. He received analysis report on 15.07.2004. The analysis report was that the sample bearing L(H)A code No. ABD/LTR & Serial No.0150 does not conform to the standard of Table Margarine as per PFA Rules, 1955. On 31.05.2004, he asked accused No.1 to produce the details of the licensee.

16. Section 11 of the Act provides for the procedure to be followed by the Food Inspectors. Soon after taking the sample of food for analysis, the Food Inspectors shall give a notice in writing and make his intention clear that the samples collected are to be

analyzed. The notice should be given to the person from whom he has taken the sample and to the person, if any, whose name, address, and other particulars have been disclosed under section 14A.

17. Section 11 of the Act was amended w.e.f. 1.4.1976. Proviso clause (1) of Section 11 of the Act is that if an application is made to the Magistrate, in this behalf by the person from whom any article of food has been seized, the Magistrate shall by order in writing direct the food inspector to produce such article before him within such time as may be specified in the order.

18. Section 13(2) of the Act provides that 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 person 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 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 analyzed by the Central Food

Laboratory.

19. The record reveals that after receiving the analysis report, the Local (Health) Authority sent the report to the Food Inspector, Latur, for further action. It was a letter dated 13.08.2004. The Complaint was filed on 11.05.2007. The record and proceeding of the trial Court, particularly the roznama shows that on 15.05.2007, the Local Health Officer intimated the applicants under Section 13(2) of the Act. Applicant No.3 - Sudhakar Desai appeared before the Court on 27.10.2009, and Applicants No.1 Anil Agrawal and No.2 Siddhant Khosla appeared in the Court on 22.03.2010.

20. The record did not show that either of the applicants applied to the Magistrate within ten days from the receipt of the copy of the report, as the Local (Health) Authority intimated them to send the sample to the Central Food Laboratory for further analysis. It is apparent that the applicants did not exercise their right as provided under Sub-Section (2) of Section 13 of the Act. Instead of exercising their right from the date of appearance within the time prescribed, they immediately rushed to this Court by filing the petition under Section 482 of the Cr.P.C. There was no delay on the part of the Food Inspector in sending the samples to the State Food Laboratory. The delay was caused in filing the complaint because much time was spent in supplying the information of the directors and other persons responsible for the business of the Company.

21. To bolster the arguments on “Best Before Use”, question the learned counsel for the applicants relied on the case ***Marico Ltd. And Ors. Vs. State of Delhi and Ors. Crl.M.C.No.1218 of 2011, decided on 27.01.2015, MANU/DE/0275/2015***, the facts of the case were that the applicant was the manufacturer of the product Blended Edible Vegetable Oil. The sample of his manufacturing product was taken. An adverse report of public analysis was received. The complaint was filed after ten months after receipt of the report and on the same day, summons were issued. Notice under Section 13(2) of the Act was issued on 17th March, 2011 to the applicant company to get the sample reanalyzed by the Central Food Laboratory where the sampled product with 9 months shelf-life became 7 months beyond the best before date/use. Under this premise, the Delhi High Court held that delay of 10 months in initiating the prosecution after the receipt of the report of the Public Analyst by the L.H.A., the inordinate delay is fatal to the case of the prosecution. Therefore, the right of the applicant company to get the sample of the product reanalyzed is vitiated. In this case, the facts before the Court were that shelf-life of the product was 9 months. Under this premise, the Court held that the right of the petitioner company to get samples of the produce reanalyzed is vitiated.

22. The facts of ***Marico Ltd. (supra)***, were that it was mentioned on the product that “Best Before Nine Months from

Packaging" as per the requirements of PFA Rules. In the said case, the case of **Shri Rohit Mull v. State of Goa, MANU/MH/1090/2005 : 2006 (1) fac 58** was considered with approval by a Division Bench in **Shivkumar v. State of Maharashtra (supra)**, the Court had reproduced the observations made in case of **Shri Rohit Mull (supra)**, which reads thus;

"6. ...'Best Before Date' shown on the label is in terms of Rule 32(i) of the Prevention of Food Adulteration Rules, 1955 and in terms of Explanation VII below the said Rule it means the date which signifies the end of the period under any stated storage conditions during which the product will remain fully marketable and will retain any specific qualities for which tacit or express claims have been made. The explanation also states that however, provided that beyond the date the food may still be perfectly satisfactorily.

....

15. By now there is unanimity of judicial opinion that when a valuable right is lost to the accused to get the sample reanalysed from the Director, Central Food Laboratory, he can very well claim that prejudice has been caused to him and this is because the report of the Director, Central Food Laboratory, supersedes that of the Public Analyst. Section 13(2) of the Act confers a valuable right on the seller of the article of food to get the sample analysed by the Central Food Laboratory, and while it is in a condition fit for such analysis and in our

case that would be on or before the 'Best Before Date'.

21. As already noted in the case of the two of the purchases the notice given to the petitioners/accused was given much after the 'Best Before Date' and in cases of the third purchase, the notice was given just before two days of the said 'Best Before Date' thereby making it impossible for the Petitioners, even if they were stationed in this State, to exercise the said right of making an application to the Court concerned to get the sample of the article of food kept by the Local Health Authority analysed by the Central Food Laboratory. Even if the petitioners had made such an application immediately after receiving the said report of the Public Analyst, it would have been impossible for the petitioners to have exercised the said right given to them in such a short period. In other words, the Complainants made it impossible for the accused to exercise the right under Subsection 2 of Section 13 of the Act. In such a situation no conviction against the accused would be possible and therefore no useful purpose would be served by continuing with the prosecutions under Sections 7/16 of the Act."

23. In the case of ***State of Haryana v. Brij Lal Mittal, AIR 1998 SC 2327***, there was a delay in filing a Complaint till the expiry of the shelf life of drugs, hence, it was held that it cannot be treated as a ground to quash the prosecution. However, the case is not only distinguishable on facts but also on law. In that case, manufacturers' right, under sub-Section (4) of Section 25 of the

Drugs and Cosmetics Act, 1940, to get the sample tested by the Central Drugs Laboratory had expired four months before the expiry of the shelf life upon their failure to notify intention, in accordance with sub-section (3), to adduce evidence in controversion of report of Government Analyst within the prescribed period of twenty-eight days from the receipt of the copy thereof.

24. Chapter VII of the Prevention of Food Adulteration Rules, 1955 (for short, "Rules of 1955"), has a title, "Packing and Labelling of Foods". Clause (f) of Rule 32(2) first proviso provides for the month and year of manufacturing/packing or preparing shall be given if the "Best Before Date" of the product is more than three months. It has further provided that in case of any package containing a commodity which has a short shelf life of less than three months, the date, month and year in which the commodity is manufactured or prepared or prepacked shall be mentioned on the label. Clause (i) is about the samples of the letters to be printed or displayed with a clear indication about the best for consumption. The proviso of clause (i) is that in the case of wholesale packages the particulars under clauses (b), (f), (g), (h) and this clause need not be specified.

25. The applicants have no case or material to satisfy the Court that the sample seized from the package and gunny bag indicated

the date of manufacturer/packing or the “Best Before Date”. The Complaint is also silent about it. Therefore, for want of the material before the Court, at this juncture, it would be difficult to accept that since the shelf life of the product has been expired, sending the samples deposited with Local Health Authority to the Central Chemical Laboratory is a futile attempt.

26. It is implicit that the applicants did not exercise their right to apply to the Court for sending the samples deposited with the Local Health Authority within ten days of the receipt issued by him. The conduct of the applicants made it apparent that they knew the provisions of the law and the effects of delaying the analysis of the samples from the Central Food Laboratory. A court summons is not necessary to exercise the rights under Section 13(2) of the Act. Such notice itself was the intimation of filing the Complaint. However, instead of appearing in the Court after the notice as mentioned above was served, they waited till the Court summons were served upon them.

27. Reading the law in the context of the rights of applicants to get the samples analyzed from the Central Food Laboratory, it was the duty of the accused/applicants to exercise their rights first within the time prescribed by the law. They cannot blame the authorities for their fault. In view of the facts, herein the case, the ratio laid in ***State of Haryana v. Brij Lal Mittal*** (supra) applies.

28. *Prima facie*, the contents of the Complaint reveal that the complainant has followed the due procedure of law and sufficient to take cognizance. A *prima facie* case is made out against the applicants.

29. For the above reasons, the Court is not satisfied that it is a fit case to exercise the power under Section 482 of the Code of Criminal Procedure. Hence, the criminal application stands dismissed.

(S. G. MEHARE)
JUDGE

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