

HIGH COURT OF MADHYA PRADESH**BENCH AT GWALIOR****SINGLE BENCH****BEFORE JUSTICE S.K.AWASTHI****Misc. Cri. Case No. 2017/2015**

M/s Sai Enterprises

Versus

State of MP and another

Shri Sanjay Bahirani, Advocate for the applicant.
 Shri S.S.Dhakad, Additional Public Prosecutor for the
 respondent/State.
 None for the respondent No.2.

Whether approved for reporting : Yes

Law laid down	Relevant paras
Defence of the applicant in respect of adulteration would be severely prejudiced if the right available under Section 13(2) of the Prevention of Food Adulteration Act, 1954 is taken away. (Followed the decision in MCRC No. 2414/2011, (M/s R.Jagdish Tea Company vs. State of MP) , decided on 4.2.2015; and MCRC No. 4296/2012 (Udaibhan Singh and others vs. State of MP), decided on 5.2.2015).	Para 6
The provisions of Section 13(2) of the Prevention of Food Adulteration Act, 1954 do not apply on the sample, if found misbranded, and therefore, no right is available to the accused under Section 13(2) of the Act of 1954.	Para 6

ORDER
(24.10.2017)

This application under Section 482 of Cr.P.C. is filed for challenging the order dated 31.01.2015 passed in Criminal Case No. 1367/2009 by the Court of Judicial Magistrate First Class, Guna, whereby the Trial Court has framed charges under Section 7/16 of the Prevention of Food Adulteration Act, 1954 (in short, 'Act of 1954') and has also rejected the application moved under Section 20-A of the Act of 1954.

2. The facts necessary for disposal of the present application are that on 29.09.2017, the Food Inspector in discharge of his duties carried out an inspection at a shop namely Jain Shree Traders and observed that some of the products sold at the shop are adulterated and misbranded. Consequently, the Food Inspector purchased three packets of Radhika Chai as also three packets of Haldi manufactured by Shree Ji Agmark Masale. Thereafter, the samples were sealed and sent for testing by Public Analyst. According to the report of Public Analyst, the pack of Radhika Chai was in order although the sample of Haldi was found to be adulterated and misbranded.

3. Upon receiving the report of the Public Analyst, the Food Inspector filed a complaint against the shop owner as well as the manufacturer who is the present applicant. The Court below after examining the record and upon finding substance in the complaint filed by the Food Inspector proceeded to take cognizance against the present applicant for commission of

adulteration and misbranding. While passing the order taking cognizance against the present applicant, the Court below also proceeded to reject the application moved by the present applicant for seeking discharge under Section 20-A of the Act of 1954.

4. It was vehemently argued by the learned counsel for the applicant that the present applicant has been wrongly prosecuted in the present matter because it is clear from perusal of the record that the sample was taken by the respondent on 29.09.2007 and at that relevant point of time, the shelf life of the sample of 'Haldi' was mentioned clearly as one year i.e. between July 2007 to June 2008. However, the report prepared by the Public Analyst was available with the Food Inspector since around November 2007 but the complaint was filed in 25.06.2009 which is almost after one year from the date on which the shelf life of the sample of 'Haldi' lapsed. Therefore, the valuable right available to the present applicant under Section 13 (2) of the Act of 1954 to request for re-examination of the sample from the Central Food Laboratory, was defeated which has substantially cause prejudice to the defence of the applicant and the same vitiates the entire proceedings. Hence, it was submitted by the learned counsel for the applicant on the strength of judgments pronounced by this Court in MCRC 2414/2011 and MCRC 4296/2012 that the entire prosecution initiated against the present applicant be quashed.

5. *Per contra*, learned counsel for the respondent

has emphasized that there is no infirmity in the impugned order and the impact of the right available under Section 13 (2) of the Act of 1954 can only be gone into after conclusion of evidence by both the parties. Therefore, at the present stage, no indulgence can be shown by this Court.

6. Having considered the rival contentions by the parties, it will be proper to first examine the merits of the contention raised by the applicant before adverting to the judgments pronounced by this Court in aforesaid matters. It is borne out from the record that the present applicant is the manufacturer of the seized article and is alleged to have committed adulteration and misbranding under the provisions of the Act of 1954. With respect to the question of adulteration, I find force in the arguments of the learned counsel for the applicant that the shelf life of Haldi had lapsed prior to filing of complaint before the Competent Court and therefore, this Court has no hesitation in observing that the defence of the present applicant would be severely prejudiced if the right available under Section 13 (2) of the Act of 1954 is taken away. Therefore, following the decisions taken in MCRC No. 2414/2011 (**M/s R.Jagdish Tea Company vs. State of MP**), decided on 4.2.2015; and MCRC No. 4296/2012 (**Udaibhan Singh and others vs. State of MP**), decided on 5.2.2015, the cognizance taken under Section 2 (i), Section 7 (i) read with Section 16 (1) (a) (i) of the Act of 1954, to the extent it relates to adulteration only, is hereby set aside. However, with respect to the allegations of

misbranding, the contentions advanced by the learned counsel for the applicant in terms of Section 13 (2) of the Act of 1954 are not acceptable for the reason that the valuable right so provided under Section 13 (2) of the Act of 1954 is irrelevant with respect to the charge of misbranding because in the instant case, there is a *prima facie* case made out against the applicant from the perusal of the complaint that the complete name and address of the manufacturing or packaging Unit has not been provided on the cover of the seized article. In this regard, perusal of Para 8 of Annexure P-2 would be relevant. At this stage, it would also be relevant to consider the decision taken by a Co-ordinate Bench of this Court in the case of ***Indrajeet Walia v. Food Inspector, MCRC No. 993/2012 decided on 18.12.2014 (Indore Bench)***, wherein it was categorically held that the provisions of Section 13 (2) of the Act of 1954, do not apply on the sample, if found misbranded, and, therefore, no right is given to the Accused under section 13(2) of the Act of 1954.

7. Taking into consideration the aforesaid position of law and without elaborating much on the merits of the case, the present application is hereby partially allowed to the extent that the cognizance taken under Section 2 (i), Section 7 (i) read with Section 16 (1) (a) (i) of the Act of 1954, to the extent it relates to Adulteration only, is quashed. However, the cognizance under the remaining provisions of the Act of 1954 is just and proper and therefore, the Court below shall proceed with the trial to the extent

indicated above.

A copy of this Order be sent to the Trial Court for necessary compliance and information.

(S.K.Awasthi)
Judge.

(yogesh)