

HONOURABLE Dr. JUSTICE CHILLAKUR SUMALATHA

CRIMINAL APPEAL Nos.1871 and 1886 of 2009

COMMON JUDGMENT:

Criminal Appeal No.1871 of 2009 is filed by the State aggrieved by the judgment of acquittal that is rendered by the Court of Judicial Magistrate of First Class, Deverakonda in C.C.No.90 of 2005, dated 10.4.2008.

2. Criminal Appeal No.1886 of 2009 is also filed by the State aggrieved by the judgment of acquittal that is rendered by the same Court on the same day but in C.C.No.89 of 2005.

3. The accused in both the Calendar Cases are one and the same. The said accused are the respondents in these Appeals. Thus, for convenience of discussion, the appellant would hereinafter be referred as “the complainant” and the respondents as “the accused”.

4. The facts of the case, in nutshell, as could be culled out through the complaints filed in both the cases are that on 18.06.2004, at about 4 pm, P.W-1, who is a Gazetted Food Inspector, inspected M/s Balaji Cool Drinks Agencies which is located at K.M.Pally Village, Deverakonda Mandal,

Nalgonda District and at that time, Accused No.1 was present and was transacting the business of cool drinks. In the presence of P.W-2, who is an independent witness, P.W-1 enquired Accused No.1 about the cool drinks. Accused No.1 informed that Thums Up crates 700 x 24 x 200 ml (subject product in Crl.A.No.1886 of 2009) are meant for sale to public for human consumption. He also informed that Limca crates (subject product in Crl.A.No.1871 of 2009) are also meant for sale to public for human consumption. Suspecting adulteration, P.W-1 purchased three sealed bottles of Thums Up and three sealed bottles of Limca, 200 ml each, and paid the price. Notices as required under Form VI were issued to Accused No.1. The seized products were sealed and labelled as required under law. Purchase bills were produced by Accused No.1 for both the products. Separate panchanamas were drafted.

5. On 19.6.2004, one part of the sealed sample bottles (Thums Up and Limca) were sent to the Public Analyst for analysis under intimation to Local (Health) Authority. Letters were addressed to Accused Nos.2 and 3-firms. The

Public Analyst delivered separate reports on 15.7.2004. The opinion of the Public Analyst as far as the sample of Thums Up cool drink is concerned is that it does not conform to the standard of total plate count and therefore, adulterated. The opinion of the Public Analyst as far as the sample of Limca cool drink is concerned is that it does not conform to the standard of total plate count, yeasts and molds count and therefore, adulterated. Detailed case files were submitted to the State Food (Health) Authority, Hyderabad on 12.8.2004. The Director, I.P.M.PH Labs and Food (Health) Authority, Hyderabad, accorded written consent on 24.01.2005 to launch prosecution against the accused.

6. The complaints were taken on file by the Court of Judicial Magistrate of First Class, Deverakonda. The said Court issued summons to the accused in both the cases and thereafter proceeded with the trial in both the cases. On recording the evidence and subjecting it to scrutiny, the learned judge of the trial Court finally came to a conclusion that the complainant failed to establish its case and therefore, acquitted the accused of the offences which, as per the version of the complainant, were alleged to have

been committed by them. Aggrieved by the said judgments of acquittal, the State is before this Court through these appeals.

7. Learned Assistant Public Prosecutor appearing on behalf of the State-complainant made her submission that the impugned judgments of the trial Court are erroneous and the complainant established through the evidence before the trial Court that the Food Inspector seized the Thums Up and Limca bottles from the shop of Accused No.1 suspecting that they were adulterated and that the said seizure is as per the procedure established under the Prevention of Food Adulteration Act, 1954 (hereinafter be referred as “the Act” for brevity) and the seized products were sealed and labelled as provided under the same legislation. Thereafter, one part of the seized products in both the cases were sent to the Public Analyst for analysis. She further states that the Public Analyst delivered his reports stating that the samples sent for analysis are found adulterated and therefore, after obtaining written consent from the concerned, prosecution was launched by way of complaint. The complainant, by all the evidence it has

produced, has established beyond all reasonable doubt that the seized products are adulterated, but, without considering the same, the learned judge of the trial Court acquitted the accused which is unreasonable. Learned Assistant Public Prosecutor also contends that the trial Court based on the gravity of the offence ought to have convicted the accused, but it did not do so and therefore, the State preferred the present appeals. She finally submits that considering the evidence that is brought on record, the accused have to be convicted.

8. Opposing the said submission, the learned counsel appearing for the respondents-accused in both the cases submits that the procedure adopted for search and seizure are erroneous and therefore, the trial Court, considering the same, extended the benefit of doubt. The learned counsel further submits that apart from the aforementioned lapse regarding search and seizure, the major lapse is that no opportunity was given to the accused for sending the sample for re-analysis to the Central Food Laboratory. The said right is a valuable right which is granted to the accused by the Act and when such an

opportunity is denied to the accused by the complainant, any length of evidence would not bind the accused and observing the same, the accused were acquitted by the trial Court.

9. Thus, in the light of the above contentions and rival contentions, the point that emerges for consideration is whether the complainant has established its case beyond all reasonable doubt before the trial Court. Before deciding the said point, in the light of the submission of the learned counsel for the accused that the valuable right of the accused to get the samples re-analysed through the Central Food Laboratory was denied and therefore, the case of the complainant fails, the point that has to be discussed and decided is:

Whether the right of the accused for getting the samples re-analysed through the Central Food Laboratory was denied by the complainant and if so, whether the said denial is fatal to the case of the complainant.

10. To analyse and discuss the merits in the contentions of the learned Assistant Public Prosecutor who is appearing for the appellant/complainant and the learned counsel for

the respondents/accused, few dates and events requires a prominent mention, which are as follows:-

Sl. No	Date of event	Thumsup which is subject matter in Crl.A.No.1886 of 2009	Limca which is subject matter in Crl.A.No.1871of 2009
1.	Date of manufacture	10.6.2004	11.6.2004
2.	Best before	Six months=09.12.2004	Six months=10.12.2004
3.	Date of inspection	18.6.2004	18.6.2004
4.	Date on which sample was sent to Public Analyst	19.6.2004	19.6.2004
5.	Date on which Public Analyst delivered his report	15.7.2004	15.7.2004
6.	Date on which written consent was obtained to launch prosecution	24.01.2005	24.01.2005
7.	Date on which complaint was filed	28.02.2005	28.02.2005
8.	Date on which cognizance of the offence was taken	05.3.2005	05.3.2005
9.	Date on which notice was issued under Section 13(2) of the Act	09.3.2005	09.3.2005

11. Bringing to the notice of this Court the above events, the learned counsel for the respondents/accused contends that the product in both the cases were seized on 18.6.2004, notices under Section 13(2) of the Act were issued on 09.3.2005 i.e., after “best before date” of the seized products and therefore, the accused lost their valuable right of getting the samples re-analysed through the Central Food Laboratory and thus, the prosecution fails. Learned counsel also states that getting the sample re-analysed through the Central Food Laboratory is a valuable right that is given to the accused under the provisions of the Act and as the said valuable right is denied, the trial Court rightly acquitted the accused.

12. On the other hand, the learned Assistant Public Prosecutor contends that though the samples are not subjected to re-analysis by the Central Food Laboratory, yet the reports of the Public Analyst are available on record, which clearly goes to show that the seized products are adulterated and the genuineness of the reports of the Public Analyst cannot be doubted. Hence, the trial Court

ought to have convicted the accused basing on the said reports.

13. As rightly submitted by the learned Assistant Public Prosecutor, the reports of the Public Analyst, which are marked as Ex.P-23 in both the cases, goes to show that he is of the opinion that the samples does not conform to the standards and therefore, they are adulterated.

14. Thus, as per the version of the learned Assistant Public Prosecutor, though the seized samples are not subjected to re-analysis through the Central Food Laboratory and though the said opportunity is not given to the accused, yet basing on the reports of the Public Analyst, the Court can pass judgment of conviction on the ground that the prosecution has proved that the seized samples are found adulterated.

15. The Prevention of Food Adulteration Act, 1954 is aimed at prevention of adulteration of food. It deals with prohibition of manufacture, storing, sale or distribution of any adulterated and misbranded food, etc. In the said legislation, Section 2(i) defines what an 'adulterant' is and Section 2(ia) defines what 'adulterated' means.

16. Section 2(ii) of the Act defines “Central Food Laboratory” as any Laboratory or institute established or specified under Section 4. Section 11 of the Act envisages the procedure to be followed by Food Inspectors. Suffice to mention that as per Section 11(3) of the Act, when a sample of any article of food (or adulterant) is taken, the Food Inspector shall, by the immediately succeeding working day, send a sample of the article of food or adulterant or both in accordance with the Rules prescribed to the Public Analyst for the local area concerned. Therefore, it is clear that immediately i.e., on the very next working day of seizure of the food material, the Food Inspector is bound to send the same to the Public Analyst for analysis.

17. Coming to the next stage, Rule-7 of the Prevention of Food Adulteration Rules, 1955 (hereinafter be referred as “the Rules” for brevity) lays down that in case, the sample container received by the Public Analyst is found to be in broken condition or unfit for analysis, he shall within a period of seven days from the date of receipt of such sample inform the Local (Health) Authority about the same and send requisition to him for sending second part of the

sample. The said Rule also lays down that if the Public Analyst causes the sample to analysis, he shall within a period of 40 days from the date of receipt of such sample for analysis send his report of the result of such analysis in Form III to the Local (Health) Authority.

18. Coming to the next stage, as per Section 13(2) of the Act, the Local (Health) Authority, after the institution of prosecution against the persons from whom the sample of the article of food was taken and the persons whose particulars have been disclosed under Section 14A of the Act, shall forward a copy of the report of the result of the analysis to those persons informing that if they so desire, 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 of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory. Thus, it is clear that after receipt of the report of the Public Analyst, if the complainant gets sanction for institution of prosecution, the Local (Health) Authority should, after such institution of prosecution, send the report of the Public Analyst to the concerned duly

mentioning that they can get the sample analysed through the Central Food Laboratory by filing an application before the Court concerned within 10 days from the date of receipt of the report.

19. Under Section 13(2A) of the Act, it is clearly mentioned that when an application is made to the Court under sub-section (2), the Local (Health) Authority shall forward the part or parts of the sample to the Court within a period of five days from the date of receipt of such requisition. Furthermore, Section 13(2B) of the Act envisages that when such part of sample is sent to the Central Food Laboratory, the Director of the Central Food Laboratory on analysis shall send a Certificate to the Court in the prescribed form specifying the result of analysis within one month from the date of receipt of the part of the sample. Thus, at every stage, the Act has fixed the time lines to be followed by all concerned so that the culprits would be booked under law and further, the so-called accused would not lose their opportunity of getting the sample re-analysed through the Central Food Laboratory.

20. Now, coming to another crucial aspect, i.e., in respect of the value to be attached to the report of the Central Food Laboratory, the submission of the learned Assistant Public Prosecutor, as earlier narrated, is that despite not sending the samples for re-analysis to the Central Food Laboratory, as the reports of the Public Analyst are available on record, which discloses that the samples sent are adulterated, the same can be taken into account by the Court of law and the Court can convict the accused basing on the said reports.

21. No doubt, the report of a Public Analyst is the report of a public servant, that too, having required qualification. But, in this regard, the provision of law that is envisaged under Section 13(3) of the Act needs a mention. Section 13(3) of the Act envisages as follows:-

“The certificate issued by the Director of the Central Food Laboratory shall supersede the report given by the Public Analyst under sub-section (1).”

22. Therefore, it is clear that the certificate issued by the Director of Central Food Laboratory shall supersede the report given by the Public Analyst. Thus, a higher degree of

value should be given to the certificate issued by the Director of Central Food Laboratory than that of the report given by the Public Analyst. If the accused are not afforded the opportunity of getting the sample re-analysed through Central Food Laboratory, it cannot be held that the report of the Public Analyst is sufficient to act upon and pass a judgment of conviction holding that the seized product is adulterated.

23. This view of mine gains support from the judgment of the Hon'ble Supreme Court in the case between ***Laborate Pharmaceuticals India Limited and Others Vs. State of Tamilnadu***¹, wherein their Lordships, dealing with similar set of facts, at para 8 held as follows:-

“All the aforesaid facts would go to show that the valuable right of the appellant to have the sample analysed in the Central Laboratory has been denied by a series of defaults committed by the prosecution; firstly, in not sending to the appellant manufacturer part of the sample as required under Section 23(4)(iii) of the Act; and secondly, on the part of the Court in taking cognizance of the complaint on 4-3-2015 though

¹ (2018) 15 SCC 93

the same was filed on 28-11-2012. The delay on both counts is not attributable to the appellants and, therefore, the consequences thereof cannot work adversely to the interest of the appellants. As the valuable right of the accused for reanalysis vested under the Act appears to have been violated and having regard to the possible shelf life of the drug we are of the view that as on date the prosecution, if allowed to continue, would be a lame prosecution.”

24. Though in the said case, the provisions of the Drugs and Cosmetics Act, 1940, were dealt with, yet, the same analogy is applicable to the provisions of the Prevention of Food Adulteration Act, 1954.

25. Dealing with the same scenario, the Hon’ble Supreme Court in the case between **Medipol Pharmaceutical India Pvt. Ltd Vs. Post Graduate Institute of Medical Education & Research and another**², at para 14 observed as follows:-

“Though the aforesaid judgments pertain to criminal prosecutions under the Drugs and Cosmetics Act, Prevention of Food Adulteration Act and Insecticides Act, yet, they lay down that a valuable right is granted to a person who is sought to be penalized under these

² 2020 SCC Online SC 638

Acts to have a sample tested by the Government Analyst that is found against such person, to be tested by a superior or appellate authority, namely, the Central Drugs Laboratory. These judgments lay down that if owing to delay which is predominantly attributable to the State or any of its entities, owing to which an article which deteriorates with time is tested as not containing the requisite standard, any prosecution or penalty inflictible by virtue of such sample being tested, cannot then be sustained. We have seen that on the facts of this case, the sample drawn and analyzed by the Government Analyst was delayed for a considerable period resulting in the sample being drawn towards the end of its shelf life. Even insofar as the samples sent to the Central Drugs Laboratory, there was a considerable delay which resulted in the sample being sent and tested 8 months beyond the shelf life of the product in this case. It is thus clear that the valuable right granted by Section 25 of the Drugs and Cosmetics Act kicks in on the facts of this case, which would necessarily render any penalty based upon the said analysis of the sample as void.”

26. In a recent judgment of this Court in Criminal Appeal No.1868 of 2009, dated 06.01.2022, between **Food Inspector, Medak District, repled., by the Public Prosecutor Vs. V.Prabhakar**, while dealing with identical set of facts

and discussing at length with regard to the legal position,
at paras 13 to 18 it is observed as follows:-

“13. Section 11 of the Act prescribes the procedure to be followed by the Food Inspector. As per the said provision, when the Food Inspector takes the sample of food for analysis, he shall give notice in writing then and there to the person from whom he has taken the sample revealing his intention to have the said sample analyzed. Thereupon, the Food Inspector shall by the immediate succeeding working day, send the sample of the article seized to the Public Analyst for analysis.

14. Section 13 of the Act indicates the duty of the Public Analyst. As per the said Section, the Public Analyst shall deliver the report to the Local (Health) Authority of the result of the analysis of the article of food submitted to him for analysis.

15. Rule 7 of the Prevention of Food Adulteration Rules, 1955 (for brevity “the Rules” hereinafter) lays down the duties of the Public Analyst on receipt of the package containing the sample of food for analysis from the Food Inspector. Rule 7(3) of the Rules mandates that the Public Analyst shall within a period of 40 days from the date of receipt of the sample for analysis send his report narrating the result of the said analysis in Form – III to the Local (Health) Authority.

16. Reverting back to the Act, as per Section 13, on receipt of the report of the result of analysis, the Local (Health) Authority shall, after institution of prosecution against the persons from whom the sample of the article of food was taken and the person, if any, whose name and other particulars have been disclosed under Section 14-A forward a copy of the report of the result of the analysis to those persons informing them that if they desire, they may make application to the Court within a period of 10 days from the date of receipt of the copy of the report to get the sample of the article of food kept by Local (Health) Authority, analyzed by the Central Food Laboratory.

17. Rule 9(b) of the Prevention of Food Adulteration Rules, 1955 is framed in aid of Section 13(2) of the Act.

18. Thus, in the light of the above provisions, it has to be seen whether the Accused was accorded his justifiable opportunity to get the sample analyzed through the Central Food Laboratory. As earlier discussed, though the Analyst submitted his report on 17.10.2002, the Prosecution for the reasons best known, could not file the complaint till 04.08.2003. After filing of complaint, notice, as required under Section 13(2) of the Act, was issued on 11.09.2003. The same is evident as per the contents of Ex.P-23 and Ex.P-24. Thus, there is delay of about 11 months in according

opportunity to the Accused for getting the sample analyzed through the Central Food Laboratory. As rightly projected by learned counsel for the respondent/Accused, the condition of the sweets, which were seized might have become so worse that they could not be subjected for analysis, even if they were sent. One could take notice through common sense, that any edible object, that too, the things like sweets, would get damaged, becomes inedible and unfit for chemical or scientific examination by passage of considerable time. Therefore, it can unhesitatingly be held that the Accused had lost his valuable opportunity of getting the sample analyzed through Central Food Laboratory.”

27. In the complaint itself, it is stated that there is a mention over the products that they should be used “best before six months from the date of manufacture”.

28. Part-VII of the Rules deals with packing and labelling of foods. Rule 32 of the Rules lays down the contents which every pre-packaged food should carry as label.

29. Explanation VIII to Rule 32 of the Rules says what “best before” means and it reads as under:

“best before” means the date which signifies the end of the period under any stated storage

conditions during which the product shall remain fully marketable and shall retain any specific qualities for which tacit or express claims have been made and beyond that date the food may still be perfectly satisfactory.

30. Explanation VIIIA of Rule 32 of the Rules says what “date of manufacture” means and it reads as under:

“date of manufacture” means the date on which the food becomes the product as described.

31. Explanation VIIIB of Rule 32 of the Rules says what “date of packaging” means and it reads as under:

“date of packaging” means the date on which the food is placed in the immediate container in which it will be ultimately sold.

32. Explanation VIIC of Rule 32 of the Rules says what “use - by date” or “recommended last consumption date” or “expiry date” means and it reads as under:

“use - by date” or “recommended last consumption date” or “expiry date” means the date which signifies the end of the estimated period under any stated storage conditions, after which product probably will not have the quality attributes normally expected by the consumers and the food shall not be marketable.

33. Shelf life which is synonymously referred as “best before date” is the life time during which a product remains usable, fit for consumption or saleable. Thus, there is every necessity for getting the sample analysed through the Central Food Laboratory at any cost before “best before date”.

34. Now, a question may arise what happens if the product is analysed after the best before date. By the definition of “best before” itself, it is clear that the product would be containing its original contents when it is put to use before “best before date”. Therefore, after expiry of the said period, it can be presumed that it would lose its valuable contents or the original contents that may lead to a different result when subjected to analysis. Admittedly, for mentioning “best before date” on a product, there requires scientific analysis and only after such analysis, “best before date” would be prescribed. Thus, it is incumbent on the part of the complainant to afford the accused the valuable right of getting the sample re-analysed by the Central Food Laboratory within “best before date”. If it is not done, it can unhesitatingly be said

that the valuable right of the accused is lost and that has prejudiced his cause.

35. In the case on hand, “best before date” for the product in Crl.A.No.1886 of 2009 (Thums Up) is 09.12.2004. Likewise, “best before date” for the product in Crl.A.No.1871 of 2004 (Limca) is 10.12.2004. Admittedly, in both the cases, written consents to launch prosecution were obtained after the expiry of the said “best before date”, i.e., on 24.01.2005 and complaint was filed much thereafter i.e., on 28.02.2005. Later, cognizance of the offences was taken by the Court concerned on 05.3.2005 and finally, notices under Section 13(2) of the Act were issued to the accused on 09.3.2005. Thus, it can be held that the complainant has not given any value to the provisions of the Act, more particularly the time lines prescribed by the Act and the Rules and thereby, the accused have lost their valuable right of getting the samples re-analysed through Central Food Laboratory. Therefore, on this count alone, the case of the complainant fails. Thus, this Court is of the view that there is no

requirement for moving further in these appeals and discussing other aspects.

36. In the result, these Criminal Appeals are dismissed confirming the judgments rendered by the Court of Judicial Magistrate of First Class, Deverakonda, in C.C.Nos.89 and 90 of 2005, dated 10.4.2008.

37. In number of cases, it is observed that the complaints filed by the Food Inspectors are failing before the Courts only due to lapses in filing the complaints within the prescribed time. The Officers, i.e., the Food Inspectors, the Public Analysts and others, at the helm of affairs, more particularly the officers working under the authority which accords sanction for prosecution are of high cadres, but they are unable to follow the procedure prescribed by the Act and the Rules. Therefore, for the sake of their convenience and to enlighten, the time lines prescribed by the Act and the Rules are reiterated as under:

(1) The Food Inspector is bound to send the seized sample to the Public Analyst immediately or on the succeeding working day for analysis (Section 11(3) of the Act).

- (2) In case, the Public Analyst finds the sample broken or unfit for analysis, he has to intimate the same to the Local (Health) Authority within seven days from the date of receipt of the sample (Rule 7 of the Rules).*
- (3) In case, the Public Analyst subjects the sample to analysis, he is bound to deliver his report within 40 days from the date of receipt of the sample (Rule 7 of the Rules).*
- (4) The Local (Health) Authority has to obtain sanction from the concerned immediately if he intends to launch prosecution against the accused.*
- (5) The officer who accords sanction should not cause any delay in according sanction.*
- (6) On obtaining sanction, prosecution has to be launched/complaint has to be filed, immediately.*
- (7) The Court concerned, before whom the complaint is lodged, if satisfied, should take cognizance of the offence immediately and not later than three working days preferably.*
- (8) On institution of prosecution, the Local (Health) Authority should send copy of the report of Analyst to the accused as required under Section 13(2) of the Act duly intimating that the accused can make an*

application to the Court concerned to send the sample to the Central Food Laboratory for analysis within ten days from the date of receipt of the copy of the report.

(9) In case, the accused prefers to get the sample analysed through Central Food Laboratory, the Local (Health) Authority should send to the Court concerned the part of sample within five days from the date of receipt of such requisition (Section 13(2A) of the Act).

(10) The Director of the Central Food Laboratory should send certificate specifying the result of the analysis within one month from the date of receipt of the part of sample (Section 13(2B) of the Act).

(11) In all the cases, the complainant is required to see that the accused is afforded the opportunity of getting the sample re-analysed through the Central Food Laboratory before the shelf life of the sample expires i.e., before “best before date” mentioned over the said product.

38. Registry is directed to mark a copy of this judgment to the Director, Health, Medical and Family Welfare Department, State of Telangana. The Director in turn to

circulate the same to the Food Inspectors and Public Analysts working in the state of Telangana.

39. As a sequel, pending Miscellaneous Petitions, if any, shall stand closed.

Dr. JUSTICE CHILLAKUR SUMALATHA

16.02.2022

LR copy to be marked.

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