

**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRMP No. 1050 of 2019****Order reserved on 01/10/2020****Order delivered on 23/11/2020**

Sandeep Tiwari, S/o Om Narayan Tiwari, Aged about 53 years, Nominee Hindustan Unilever Ltd. Ring Road No. 1, Raipura, Raipur Depot, Distt. Raipur, Chhattisgarh.

---Petitioner**Versus**

State of Chhattisgarh, Through Sangarsh Kumar Mishra, Food Inspector, Food and Drug Administration, Chhattisgarh, Raipur Chhattisgarh.

--- Respondent

For Petitioner :-

Mr. Surendra Singh, Senior Advocate
with Mr. Abhishek Sinha, Advocate

For State :-

Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Order**

1. Proceedings of this matter have been taken up for final hearing through video conferencing.
2. Petitioner herein, being one of the co-accused in criminal case No. 171/2011, seeks quashment of that pending criminal trial including the charge-sheet filed against him by the respondent



for offence punishable under Section 7 read with Section 16 of the Prevention of Food Adulteration Act, 1954 (hereinafter called as "the Act of 1954") on the following factual backdrop :-

(2.1) The respondent filed a charge-sheet for the aforesaid offences against one Mahesh Kumar Mahawar, Hindustan Unilever Ltd. and the petitioner herein as a nominee of Hindustan Unilever Ltd. Stating inter alia that on 13/07/2008, he (respondent - Food Inspector) lifted a sample of 'Bru Instant Coffee Chicory Mixture' from the shop - M/s Sriram Agency of one Mahesh Kumar Mahawar. The label on the product mentioned the packaging date as March, 2008 and the best before date mentioned was 18 months from the date of packaging i.e. September, 2009. The said detail was captured by the respondent in Form VI (Annexure P/2) during collection of the sample and it is also a part of the complaint (Annexure P/1) filed by him.

(2.2) The sample collected by the respondent-Food Inspector was sent to the Public Analyst, who by his report dated 08/09/2008 (Annexure P/3), found the sample to be sub-standard and hence adulterated and ultimately, the complaint





was filed by the respondent-Food Inspector on 27/04/2010 before the jurisdictional criminal Court against the proprietor of the shop namely Mahesh Kumar Mahawar, manufacturer of the product i.e. Hindustan Unilever Ltd. and the petitioner herein as a nominee of Hindustan Unilever Ltd.

3. It is the case of the petitioner that Hindustan Unilever Ltd. had filed a petition i.e. Cr.M.P. No. 130/2012 seeking quashment of the criminal proceeding pending against him in Criminal Complaint Case No. 171/2011 which was dismissed by this Court on 07/05/2012 (Annexure P/5) holding that the period during which the product was to be used i.e. the best before date has not been mentioned and the petitioner therein i.e. Hindustan Unilever Ltd. has not exercised the right available under Section 13(2) of the Act of 1954 to analyse the sample from the Central Food Laboratory. Hindustan Unilever Ltd. thereafter filed an SLP which was dismissed as withdrawn.

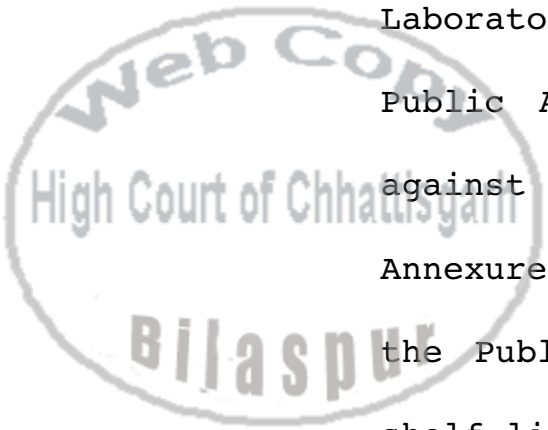
4. It is further case of the petitioner that the co-accused Mahesh Kumar Mahawar was prosecuted in a criminal trial before the Judicial Magistrate First Class, Dhamtari and on





30/07/2019, learned Magistrate acquitted Mahesh Kumar Mahawar finding that the date of packaging on the sample 'Bru Coffee Chicory Mixture' was mentioned as March, 2008 and it was best before 18 months from the date of packaging, therefore, it expired in the month of September, 2009, whereas the prosecution was laid on 27/04/2010 due to which Mahesh Kumar Mahawar could not avail the benefit of Section 13(2) of the Act to get the sample analysed by the Central Food Laboratory which prevails over the Report of the Public Analyst. Therefore, the complaint filed against the petitioner deserves to be quashed as Annexure P/2 i.e. Form VI and Annexure P/3 i.e. the Public Analyst Report clearly indicate the shelf-life of the sample in question 'Bru Instant Coffee Chicory Mixture' that it was packaged in March, 2008 and it was best before 18 months from the date of packaging i.e. till September, 2009 whereas the complaint was filed on 27/04/2010, therefore, he could not avail the valuable right available to him under Section 13(2) of the Act of 1954.

5. The respondent/State has filed its return on 16/09/2019 stating inter alia that the petition filed by the co-accused Hindustan Unilever Ltd.





Under Section 482 of CrPC has already been dismissed by this Court as no such time limit with regard to the expiry of the sample has been prescribed on its packet and moreover, the petitioner has also not exercised his right under Section 13(2) of the Act of 1954 to get the sample analysed by the Central Food Laboratory, as such, the instant petition deserves to be dismissed.

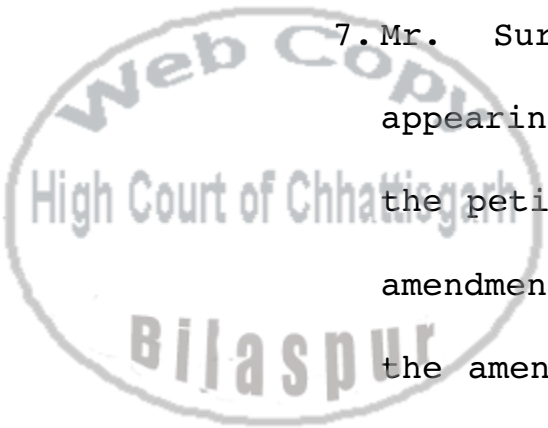
6. This Court, on 18/03/2020, noticed the fact that in paragraph 16 of the reply, the respondent/State has stated that no such time limit with regard to the shelf life of the product has been prescribed on the packet and nothing has been mentioned relating to its best use before some months of its packaging, and directed the petitioner to file rejoinder and also directed the respondent/State to file additional affidavit as to whether Annexure P/2 which is Form VI under Rule 12 of the Food Adulteration Rules, 1955 (hereinafter, 'the Rules of 1955') is a part of original case diary or not as it has been stated therein that the product in question 'Bru Instant Coffee Chicory Mixture' is best before 18 months from the date of packaging. In compliance of the said order





passed by this Court, respondent/State amended his return and in paragraph 16 it was stated that "as per Form VI of the Rule 12 of the Rules of 1954 dated 30/07/2008, which is part of the complaint sheet it is mentioned that in the said packets (of Bru Instant Coffee-Chicory Mixture, 50 gm) Code No. N 52M, PKD - 03/2008, MRP Rs. 50/- and the said packets are best before 18 months from packaging" and thereafter, the matter was heard.

7. Mr. Surendra Singh, learned Senior counsel appearing with Mr. Abhishek Sinha on behalf of the petitioner, would submit that in view of the amendment carried out and the stand taken in the amended return filed by the respondent/State in paragraph 16 and as per Annexure P/2 i.e. Form VI of Rule 12 of the Rules of 1955 and Annexure P/3 i.e. Report of the Public Analyst, it is quite clear that shelf life of the product in question 'Bru Instant Coffee Chicory Mixture' is clearly indicated in its packaging stating that it was packaged in March, 2008 and it was best before 18 months from the date of packaging i.e. till September, 2009, whereas the complaint was filed on 27/04/2010 due to which the petitioner has lost his right of getting the





sample analysed by the Central Laboratory under Section 13(2) of the Act of 1954. He would further submit that dismissal of the earlier petition Cr.M.P. No. 130/2012 filed by the co-accused Hindustan Unilever Ltd. Would not come in the way of the petitioner as correct facts were not brought before this Court and even otherwise, in the matter of prosecution each of the co-accused is entitled to be heard separately and the petitioner is entitled to draw the attention of the Court to the material available on record and merely because the petition filed by the co-accused has been dismissed earlier, the Hon'ble Court would not refuse the petitioner to get the relief which he is otherwise entitled to on merits on the basis of material on record. Moreover, on the same set of facts on which the petitioner is relying upon, another co-accused namely Mahesh Kumar Mahawar has already been acquitted by the criminal Court, as such, the continuation of prosecution against the petitioner is nothing but clear abuse of the process of the Court. Therefore, the criminal case filed against the petitioner including the charge-sheet deserves to be quashed.





8. Mr. Ravi Bhagat, learned Deputy Government Advocate appearing on behalf of the respondent/State, would submit that though by way of the amendment in the return it has been stated that as per Form VI of Rule 12 of the Rules of 1955 which is a part of the complaint the packaging date as well as the expiry date i.e. best before 18 months from the date of packaging is mentioned in the product sample in question 'Bru Instant Coffee Chicory Mixture', however, it is not a case where jurisdiction under Section 482 of CrPC has to be exercised as the petitioner is at liberty to join the trial pending before the trial Court, therefore, the instant petition be dismissed.

9. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.

10. The first question that arises for consideration would be, whether dismissal of the earlier petition filed by the co-accused Hindustan Unilever Ltd. Under Section 482 of CrPC would come in the way of the petitioner from getting the petition heard on merits ?





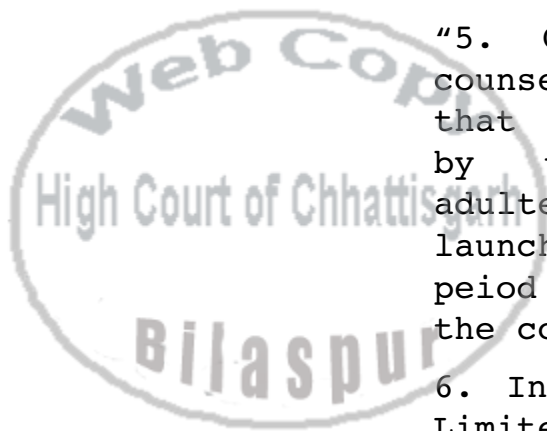
11. It is true that in the earlier petition filed under Section 482 of CrPC by the co-accused Hindustan Unilever Ltd., the respondent/State made the submission that no time limit as to the shelf life of the product in question 'Bru Instant Coffee Chicory Mixture' has been prescribed in its packaging and no period has been prescribed therein relating to its best use, relying upon which, this Court in Paragraphs 5, 6 and 7 held as under :-

"5. On the other hand, learned State counsel opposed the petition and submitted that packed food i.e. Coffee manufactured by the petitioner has been found adulterated. Although prosecution has been launched after one year nine months, but no period has been prescribed on the packet of the coffee relating to its best use.

6. In the matter of M/s. Hindustan Lever Limited (supra), this Court has quashed the proceeding on the ground that after the stipulated period i.e. best before use, the accused is deprived of his valuable right to analyse the sample from the Central Food Laboratory. But, in the present case, such time limit has not been prescribed on the packet.

7. As per copy of the complaint and other documents, nothing has been mentioned in the packet relating to its best use before some months of its packing. The petitioner has not exercised the right available under Section 13(2) of the Act to analyse the sample from the central Food Laboratory."

12. In the instant case also the respondent/State took the similar stand in the return filed by them, which is quoted below :-





"16. ... But, in the present case, such time limit has not been prescribed on the packed. As per copy of the complaint and other documents, nothing has been mentioned in the packet relating to its best use before some month of its packing. The petitioner has not exercised the right available under Section 13(2) of the Act to analyze the sample from the Central Food Laboratory."

Thereafter, pursuant to the query made by this Court 18/03/2020, the respondent/State amended his return with the leave of this Court and stated as under :-

"... In this regard it is respectfully submitted that this Hon'ble Court vide its order dated 7th May, 2012 has been pleased to dismissed the CRMP No. 130/2012 filed by Hindustan Unilever Vs. State of Chhattisgarh & Others. It is respectfully submitted that as per Form VI of the Rule 12 of the Prevention of Food Adulteration Rules 1955 dated 30/07/2008, which is part of complaint sheet it is mentioned that in the said packets (of Bru Instant Coffee – Chicory mixture, 50 gram) Code No. - N25M, PKD – 03/2008, MRP Rs. 50/- and the said packets are Best before 18 months from packaging."

13. A careful perusal of Annexure P/2 which is a copy of Form VI under Rule 12 of the Rules of 1955 would show that the details of food mentioned therein states as under :-

"L.H.A. Code Na. CFD

SL. No. 42/08

Paper Slip No. 003602

BRU Instant Coffee – chicory Mixture 50gr
x 6 pack per jar.



Code No – N25M, PKD – 03/2008, MRP Rs: 50/-
Best before 18 months from packaging.”

14. Likewise, the sample description mentioned in Annexure P/3 that is the Report of the Public Analyst under Rule 7(3) of the Rules of 1955 states as under :-

“Analysis Report :-

(I) Sample Description :-

Bru Instant Coffee – Chicory Mixture
(Coffee 70% Chicory 30%) Dgreen Net wt.
50GX2

PKD – 03/2008 Code No. N25M Best before
18 months”

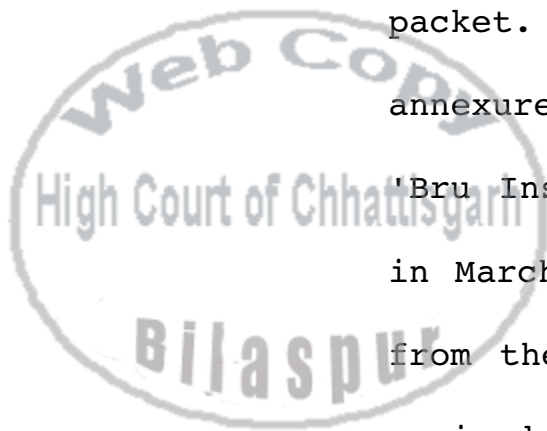
15. In Criminal Case No. 296/13 (State of Chhattisgarh v. Mahesh Kumar Mahawar & Ors.) decided on 30/07/2019, while acquitting the co-accused Mahesh Kumar Mahawar, learned trial Magistrate has recorded the following finding in paragraph 33 :-

“अतः प्रकरण में संलग्न समस्त दस्तावेजों एवं साक्षियों के कथन में आये तथ्यों से यह दर्शित होता है कि अभियोगी के द्वारा लिये गए नमूने की पैकिंग तिथि 03/2008 तथा उसकी गुणवत्ता अवधि पैकिंग तिथि से 18 माह तक अर्थात् 09/2009 थी | अभियोगी के द्वारा यह अभियोजन दिनांक 27/04/2010 को प्रस्तुत किया गया था इस प्रकार यह स्पष्ट है कि प्रकरण की कार्यवाही में अत्यंत ही विलम्ब किये जाने से अभियुक्त को धारा 13(2) का लाभ नहीं मिल पाया | जिसके कारण उसके हितो पर प्रतिकूल प्रभाव पड़ने की सम्भावना से इंकार नहीं किया जा सकता |”



16. Thus, from the return filed by the respondent/State as well as from Annexures P/2 and P/3 which are statutory documents under the Rules of 1955, which are a part of the original case diary, it is quite vivid that the complaint and other documents submitted by the respondent/State clearly indicates that the shelf life of the product in question i.e. packaging date as well as the best before date of the sample in question are mentioned in its packet. As per the complaint as well as annexures P/2 and P/3, the sample in question of 'Bru Instant Coffee Chicory Mixture' was packed in March, 2008 and it was best before 18 months from the date of packaging, and its shelf life expired in September, 2009 whereas the complaint was admittedly filed before the Court of Jurisdictional Magistrate on 27/04/2010, as such, it cannot be held that the period during which the food article was to be used has not been mentioned in its packet, therefore, in view of the aforesaid factual position on record, the instant petition deserves to be heard on merits.

17. It is well-known maxim 'Actus Curiae Neminem Gravabit' that an act of the Court shall prejudice no one and is especially applicable





where the Court is under an obligation to undo wrong(s) that has been or is being committed to a party by an act of the Court.

18. The Supreme Court, in the matter of **South Eastern Coalfields Ltd. v. State of M.P.**¹, while expounding on the maxim 'Actus Curiae Neminem Gravabit' held as under :-

"that no one shall suffer by an act of the court is not a rule confined to an erroneous act of the Court; the 'act of the Court' embraces within its sweep all such acts as to which the Court may form an opinion in any legal proceedings that the Court would not have acted had it been correctly appraised of the facts and the law."

19. Similarly, in the matter of **Dalbir Singh v. State of Punjab**², while holding that only ratio decidendi of a case decided has precedential value, Their Lordships of the Supreme Court held as under :-

"22. ... It is not everything said by a judge when giving judgment that constitutes a precedent. The only thing in a judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well settled theory of precedents every decision contains three basic ingredients:

(i) finding of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct or perceptible facts;

1 AIR 2003 SC 4482

2 1979 (3) SCC 745

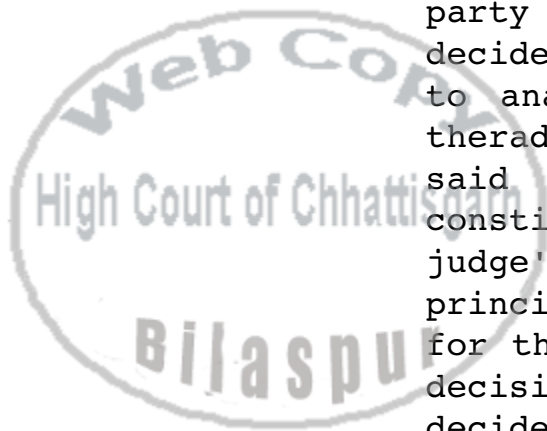


(ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and

(iii) Judgment based on the combined effect of (i) and (ii) above.

For the purposes of the parties themselves and their privies, ingredient No. (iii) is the material element in the decision for it determines finally their rights and liabilities in relation to the subject-matter of the action. It is the judgment that estops the parties from reopening the dispute. However for the purposes of the doctrine of precedents, ingredient No. (ii) is the vital element in the decision. This indeed is the ratio decidendi. It is not everything said by a judge when giving judgment that constitutes a precedent. The only thing in a judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. It is not everything said by a judge when giving judgment that constitutes a precedent. The only thing in a judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. In the leading case of *Qualcast (Wolverhampton) Ltd. v. Haynes*(2) it was laid down that the ratio decidendi may be defined if a statement of law applied to the legal problems raised by the facts is found, upon which the decision is based. The other two elements in the decision are not precedents. The judgement if not binding (except directly on the parties themselves), nor are the findings of facts. This means that even where the direct facts of an earlier case appear to be identical to those of the case before the Court, the Judge is not bound to draw the same inference as drawn in the earlier case."

20. Thus, from the aforesaid legal analysis, it is quite vivid that the petitioner/co-accused is entitled to be heard on merits in the matter of





his prosecution on the basis of undisputed material and evidence available on record and merely because the other petition filed by the co-accused Hindustan Unilever Ltd. has been dismissed, petitioner cannot be refused to be heard on merits of the matter for which he is legally entitled to as prosecution of a person for criminal offence is a serious matter and he has to be offered a fair and reasonable opportunity to be heard on the basis of the material available in consistent with his legal right as access to justice is part and parcel of right to life covered by Article 21 of the Constitution of India.

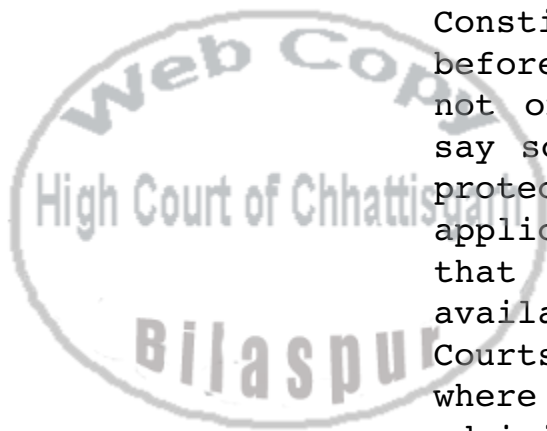
21. The Constitution Bench of the Supreme Court, in the matter of Anita Kushwaha v. Pushap Sudan³ speaking through Dr. T.S. Thakur, C.J.I. has held that access to justice is and has been recognised as a part and parcel of right to life in India and in all civilised societies around the globe which is covered by Article 21 of the Constitution of India and held as under :-

"31. Given the fact that pronouncements mentioned above have interpreted and understood the word "life" appearing in Article 21 of the Constitution on a broad spectrum of rights considered incidental and/or integral to the right to life, there



is no real reason why access to justice should be considered to be falling outside the class and category of the said rights, which already stands recognised as being a part and parcel of the Article 21 of the Constitution of India. If "life" implies not only life in the physical sense but a bundle of rights that makes life worth living, there is no juristic or other basis for holding that denial of "access to justice" will not affect the quality of human life so as to take access to justice out of the purview of right to life guaranteed under Article 21. We have, therefore, no hesitation in holding that access to justice is indeed a facet of right to life guaranteed under Article 21 of the Constitution. We need only add that access to justice may as well be the facet of the right guaranteed under Article 14 of the Constitution, which guarantees equality before law and equal protection of laws to not only citizens but non-citizens also. We say so because equality before law and equal protection of laws is not limited in its application to the realm of executive action that enforces the law. It is as much available in relation to proceedings before Courts and tribunal and adjudicatory fora where law is applied and justice administered. The Citizen's inability to access courts or any other adjudicatory mechanism provided for determination of rights and obligations is bound to result in denial of the guarantee contained in Article 14 both in relation to equality before law as well as equal protection of laws. Absence of any adjudicatory mechanism or the inadequacy of such mechanism, needless to say, is bound to prevent those looking for enforcement of their right to equality before laws and equal protection of the laws from seeking redress and thereby negate the guarantee of equality before laws or equal protection of laws and reduce it to a mere teasing illusion. Article 21 of the Constitution apart, access to justice can be said to be part of the guarantee contained in Article 14 as well."

22.As such, in view of the subsequent stand taken by the State and in view of the material





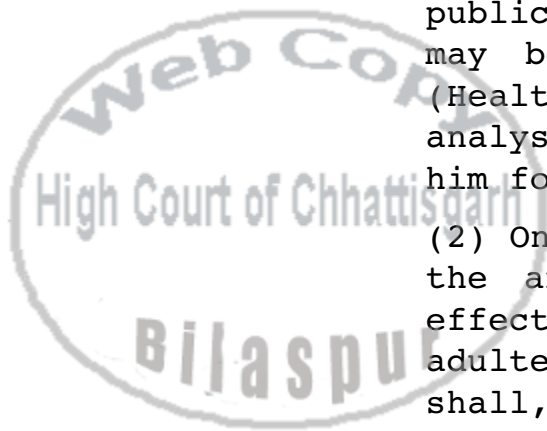
available on record and the above-stated legal position, I am of the considered opinion that the instant petition deserves to be heard on merits, and now I proceed to consider petitioner's case on merits.

23. In order to decide the plea raised at the Bar, it would be appropriate to notice the provisions contained in Section 13 (1), 13(2) and 13(3) of the Act of 1954 which states as under:-

"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.

(2A) When an application is made to the court under sub-section (2), the court shall require the Local (Health) Authority to forward the part or parts of the sample kept by the said Authority and upon such requisition being made, the said 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.

(3) The certificate issued by the Director of the Central Food Laboratory 54 [under sub-section (2B)] shall supersede the report given by the public analyst under sub-section (1)."

24. From a careful perusal of Section 13(2) of the Act of 1954, it would appear that right of reanalysis of the samples at the instance of accused as provided is an indefeasible right of the accused in the matters relating to food adulteration. Sub-section (3) of Section 13 of the Act of 1954 clearly provides that the certificate issued by the Director of the Central Food Laboratory under sub-section (2B) shall supersede the report given by the public analyst under sub-section (1). Sub-section (2A) of Section 13 of the Act of 1954 obliges the Court to refer the second sample to the Central Food Laboratory and report is submitted under sub-section (2B) of Section 13 of the Act of 1954.

25. The legal position on this point is very well settled. Way back, in the matter of Municipal Corporation of Delhi Vs. Ghisa Ram⁴, the Supreme Court has held that the right of accused is a valuable one, because the certificate of the

4 AIR 1967 SC 970





Director supersedes the report of the Public analyst and is treated as conclusive evidence of its contents. It was observed as under:-

"7. It appears to us that when a valuable right is conferred by S. 13 (2) of the Act on the vendor to have the sample given to him analysed by the Director of the Central Food Laboratory, it is to be expected that the prosecution will proceed in such a manner that that right will not be denied to him. The right is a valuable one, because the certificate of the Director supersedes the report of the Public Analyst and is treated as conclusive -evidence of its contents. Obviously, the right has been given to the vendor in order that, for his, satisfaction and proper defence, he should be able to have the sample kept in his charge analysed by a greater expert whose certificate is to be accepted by Court as conclusive evidence. In a case where there is denial of this right on account of the deliberate conduct of the prosecution, we think that the vendor, in his trial, is so seriously prejudiced that it would not be proper to uphold his conviction on the basis of the report of the Public Analyst, even though that report continues to be evidence in the case of the facts contained therein."

26. Similarly, in the matter of Girishbhai Dahyabhai

Shah Vs. C.C.Jani and another⁵ the Supreme Court

has held as under:-

"8. It will be apparent from the above, that only on receipt of report of the Public Analyst under sub-section (1) of the effect that the article of food is adulterated, can a prosecution be launched and a copy of the report could be supplied to the accused. Sub-section (2) also indicates that on receipt of the report the accused could, if he so desired, make an application to the court within a period of ten days from the date of the receipt of the copy of the report to get the sample of article of food kept by the Local (Health)



Authority analysed by the Central Food Laboratory.

9. In other words, in the instant case, the appellant was prevented from applying for analysis of the second sample before 17-7-1989, by which time the second sample of curd had deteriorated and was not capable of being analysed as was found in Ghisa Ram referred to above."

27. The principle of law laid-down in Girishbhai Dahyabhai Shah (supra) has been followed with approval by the Supreme Court in the matter of Hindustan Unilever Limited Vs. State of Rajasthan and another⁶ and it has held as under:-

"7. The aforesaid view is also warranted by the fact that in the prevailing situation it will be a sheer waste of time and an empty formality to get the third sample also declared as deteriorated, by CFL. There may also be cases like the present one where the number of accused is more than three. In such cases there is no possibility of complying with individual prayers of all the co-accused to send different samples for reanalysis by CFL because statute requires preparation of only three samples.

8. For the aforesaid reasons we of the considered opinion that the view taken by the High Court in this case was erroneous and contrary to law. The view taken by us in this case gets support from a judgment of this Court in Girishbhai Dahyabhai Shah v. C.C. Jain though rendered in a different factual matrix. The impugned order is, therefore, set aside. As a sequel, the payer of the appellant before the High Court for quashing the criminal complaint stands allowed. The criminal appeal is also, thus, allowed."

28. In the matter of Mahyco Vegetable Seeds Limited (Now known as Maharashtra Hybrid Seeds Company



Private Limited) and others v. State of Maharashtra and others⁷ the Supreme Court while considering pari-materia provisions contained in Section 16(2) of the Seeds Act, 1966, has held that vested right of accused/complainant to make an application to the court for sending a part of the sample to the Central Seed Laboratory is mandatory and since the sample has lost its shelf life, the accused is deprived of his valuable right of reanalysis and quashed the prosecution.

29. Similarly, in the matter of Laborate Pharmaceuticals India Limited and others v. State of Tamil Nadu⁸ considering Sections 25(3), 23(4) and 18-A of the Drugs and Cosmetics Act, 1940, while quashing the prosecution held as under:-

"7. The cognizance of the offence(s) alleged in the present case was taken on 4-3-2015 though it appears that the complaint itself was filed on 28-11-2012. According to the appellant the cough syrup had lost shelf life in the month of November 2012 itself. Even otherwise, it is reasonably certain that on the date when cognizance was taken, the shelf life of the drug in question had expired. The Magistrate, therefore, could not have sent the sample for reanalysis by the Central Laboratory.

8. All the aforesaid facts would go to show that the valuable right of the appellant to have the sample analysed in the Central

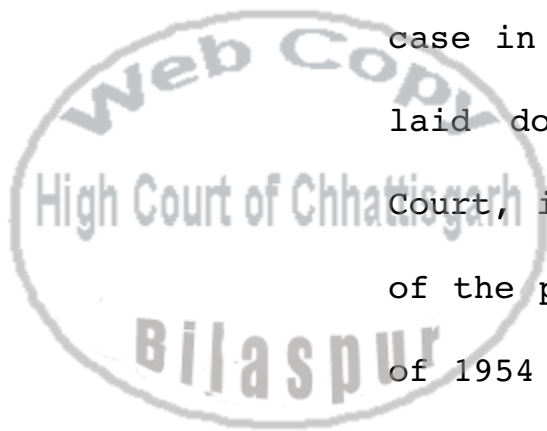
⁷ (2017) 13 SCC 367

⁸ (2018) 15 SCC 93



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 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 of prosecution, if allowed to continue, would be a lame prosecution."

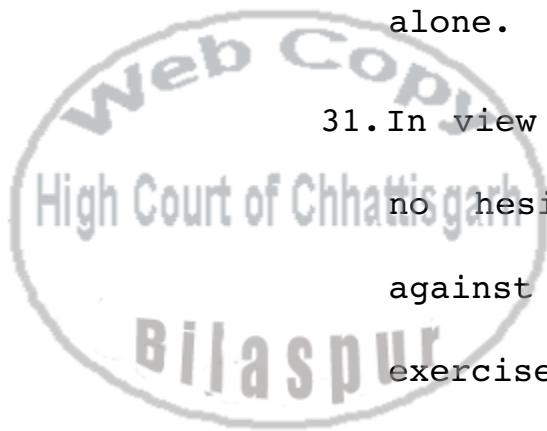
30. Finally, reverting to the facts of the present case in light of the aforesaid principles of law laid down by Their Lordships of the Supreme Court, it is quite vivid that the valuable right of the petitioner under Section 13(2) of the Act of 1954 to get the second sample analysed by the Central Food Laboratory is lost as the product in question 'Bru Instant Cofee 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.

31. In view of the aforesaid legal analysis, I have no hesitation to hold that the prosecution against the petitioner deserves to be quashed in exercise of jurisdiction conferred under Section 482 of CrPC. Consequently, the Criminal Case No. 171/2011 pending before the Court of Chief Judicial Magistrate, Dhamtari to the extent of the petitioner/accused Sandeep Tiwari is hereby quashed. However, it is made clear that this court has neither expressed any opinion about the case of co-accused Hindustan Unilever Ltd. nor about the judgment of this Court rendered against him.





32. Accordingly, the instant petition under Section 482 of Cr.P.C. is allowed to the extent indicated herein-above. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet





HIGH COURT OF CHHATTISGARH, BILASPUR
CRMP No. 1050 of 2019

Petitioner

Sandeep Tewari

Versus

Respondents

State of Chhattisgarh

(English)

1. Accused charged under Section 7 read with Section 16 of the Prevention of Food Adulteration Act, 1954 has an indefeasible right under Section 13(2) of the Act of 1954 to get the sample reanalysed from the Central Food Laboratory as the report from the Central Food Laboratory would prevail over the report of the Public Analyst by virtue of Section 13(3) of the Act of 1954.

2. Access to justice is a part and parcel of right to life covered by Article 21 of the Constitution of India.

(Hindi)

1. वह अभियुक्त जिसके ऊपर खाद्य अपमिश्रण निवारण अधिनियम, 1954 की धारा 7 सहपठित धारा 16 के तहत आरोप लगाया गया है, के पास यह अजेय अधिकार है की वह धारा 13(3) के अंतर्गत केंद्रीय खाद्य प्रयोगशाला से पुनः विश्लेषण करवा सके क्योंकि अधिनियम, 1954 की धारा 13(3) के प्रावधान के तहत लोक विश्लेषक के प्रतिवेदन की जगह केंद्रीय खाद्य प्रयोगशाला की प्रतिवेदन अधिभावी होगा।

2. भारतीय संविधान के अनुच्छेद 21 में अन्तर्निहित जीने के अधिकार में न्याय तक पहुँच भी सम्मिलित है।