

HINDUSTAN UNILEVER LTD.

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v.

STATE OF RAJASTHAN & ANR.

(Criminal Appeal No. 252 of 2016)

APRIL 12, 2016

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[DIPAK MISRA AND SHIVA KIRTI SINGH, JJ.]

Prevention of Food Adulteration Act, 1954 – ss. 16 and 13(2) – Prosecution u/s. 16 r/w. r. 50 (1) the Prevention of Food Adulteration Rules, 1955 – Of 6 accused – One of the accused exercised his right u/s. 13(2) – Second as well as third samples directed to be given to Central Food Laboratory (CFL) for re-analysis – Petition by appellant-accused u/s. 482 Cr.P.C. for quashing the proceedings – Dismissed by High Court – On appeal, held: In a case where there are many accused, once a right is exercised u/s. 13(2) by any of the accused leading to a certificate from Director of CFL, such report shall supersede the report of the Public Analyst – Such supersession shall enure to the benefit of all the accused and not alone to the accused who exercised the right u/s. 13(2) – The criminal proceedings are liable to be quashed – Code of Criminal Procedure, 1973 – s. 482 – Prevention of Food Adulteration Act, 1955 – r. 50(1).

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Allowing the appeal, the Court

HELD: In a case like the present, where there are many accused, once right is exercised under Section 13(2) of Prevention of Food Adulteration Act, 1954 by any of the accused leading to a certificate from the Director of the CFL, the consequence would be supersession of the report given earlier by the Public Analyst under sub-section (1) of Section 13 and such supersession must enure to the benefit of all the co-accused and not alone to the accused who exercised their right under Section 13(2) of the PFA Act. In cases where the number of accused is more than one, there is no possibility of complying with individual prayer of all the co-accused to send different samples for re-analysis by the CFL because Statute requires preparation of only 3 samples. [Paras 5 and 6] [403-G; 404-A, H; 405-A]

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- A *Girishbhai Dahyabhai Shah v. C.C. Jani & Anr. (2009) 15 SCC 64: 2009 (12) SCR 229 – relied on.*

Case Law Reference

2009 (12) SCR 229 relied on. Para 7

- B CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 252 of 2016

From the Judgment and Order dated 12.01.2015 of the High Court of Judicature at Rajasthan, Jaipur Bench, Jaipur in S. B. Criminal Miscellaneous Petition No. 444 of 2008

- C Sidharth Luthra, Sr. Adv., Ajay Aggarwal, Satish Solanki, Sidharth Banthia, Ms. Ruchika, Rajan Narain, Advs., with him for the Appellant.

S.S. Shamsbery, AAG, Amit Sharma, Ishu Prayas, Ms. S. Spandana Reddy, Advs., with him for the Respondents.

- D The Judgment of the Court was delivered by

- E **SHIVA KIRTI SINGH, J.** 1. By the impugned order under challenge dated 12.01.2015 a learned Single Judge of Jaipur Bench of the Rajasthan High Court chose to reject appellant's prayer to quash criminal case bearing CC No.2776/2000 under Section 16 of the Prevention of Food Adulteration Act, 1954 (PFA Act) pending on the file of Chief Judicial Magistrate, Jaipur City, Jaipur. As a consequence, appellant's application under Section 482 of the Code of Criminal Procedure bearing Criminal Miscellaneous Petition No.444 of 2008 stands dismissed by the High Court.

- F 2. A perusal of the complaint petition filed by Food Inspector in the office of the Chief Medical and Health Officer, Jaipur discloses that appellant along with five others has been arrayed as accused. As per allegations, a sample of *Kesar Pista* ice cream was taken by the Food Inspector from a dealer of the appellant's product on 05.04.1999. After taking the necessary steps samples in three empty bottles were prepared to which required quantity of formalin was also added in each bottle. One sample was sent for analysis to the Public Analyst as required by the provisions of the PFA Act. As per report of the Public Analyst dated 19.04.1999 the sample was found to be adulterated as it did not conform to the prescribed standards. According to the complainant all the required steps were taken as per law and complaint was filed on 23.11.2000
- H against all the accused persons including the appellant under Section 16

of the PFA Act and Rule 50(1) of the Prevention of Food Adulteration Rules, 1955 framed under the said Act. One co-accused exercised his right under Section 13(2) of the PFA Act and on his application said to be dated 03.01.2001, the learned Magistrate took a final decision to send the second sample for re-analysis by an order passed as late as on 05.02.2004. The Central Food Laboratory (CFL) gave its report dated 06.07.2004 to the effect that "sample received deteriorated and was not in a condition fit for analysis". In September 2004 learned Magistrate directed the prosecution to produce the third sample. Such direction was reiterated in November 2007. In March 2008 the appellant moved the High Court with the quashing petition but the same was ultimately dismissed by the impugned order dated 12.01.2015.

3. Mr. Sidharth Luthra, learned senior advocate appearing for the appellant highlighted before us the provisions of Section 13(2) of the PFA Act to submit that a valuable right has been conferred upon the accused that if he or they so desire, any of them can make an application to the court to get another sample of the article of food analysed by the CFL. He also highlighted that under sub-section (3) of Section 13 the certificate issued by the Director of the CFL in terms of sub-section (2B) supersedes the report of the Public Analyst under sub-section (1) of Section 13.

4. The impugned order of the High Court shows that all the relevant issues as well as case laws were placed and considered and thereafter prayer of the appellant was rejected on the ground that although the second sample sent for analysis was found to be deteriorated, the third sample was not made available to the court till the year 2007 and the appellant as a co-accused did not exercise its right under Section 13(2) of the PFA Act.

5. On hearing the parties we find ourselves in complete agreement with the submissions advanced on behalf of the appellant that in case like the present where there are many accused, once right is exercised under Section 13(2) of the PFA Act by any of the accused leading to a certificate from the Director of the CFL, the consequence would be supersession of the report given earlier by the Public Analyst under sub-section (1) of Section 13 and such supersession must enure to the benefit of all the co-accused. The submission advanced on behalf of the respondents by Mr. S.S. Shamsbery, learned Additional Advocate General for the State of Rajasthan that such supersession will be only to the

A benefit of the accused who exercised their right under Section 13(2) of the PFA Act does not merit acceptance. The first and foremost reason for the aforesaid view is plain and simple words of sub-sections (2) and (3) of Section 13. For sake of convenience sub-sections (1), (2) and (3) of Section 13 are extracted below :

B **“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.

C (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.

- E (2A)
- (2B)
- (2C)
- (2D)
- F (2E)

(3) 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).

- G (4)
- (5)”

(Emphasis supplied)

H 6. 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 the 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 prayer of all the co-accused to send different samples for re-analysis by the CFL because Statute requires preparation of only 3 samples. A

7. For the aforesaid reasons we are 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 the case of **Girishbhai Dahyabhai Shah v. C.C. Jani & Anr.**¹ though rendered in a different factual matrix. The impugned order is therefore set aside. As a sequel, the prayer of the appellant before the High Court for quashing the criminal complaint stands allowed. B
The Criminal Appeal is also thus allowed. C

Kalpana K. Tripathy

Appeal allowed.

¹ (2009) 15 SCC 64