

Birendra Kumar Modi. Vs. State of Bihar.

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Court : Patna

Decided On : Jan-13-2011

Judge : Rakesh Kumar, J.

Acts : Code of Criminal Procedure (CrPC) - Section 482; [Prevention of Food Adulteration Act, 1954](#) - Sections 13(2), 16(1), 10(a)

Appeal No. : CRIMINAL MISCELLANEOUS No.16701 OF 1999

Appellant : Birendra Kumar Modi.

Respondent : State of Bihar.

Advocate for Def. : Mrs.Indu Bala Pandey, Adv.

Advocate for Pet/Ap. : M/S N.K. Agrawal; D.N. Tewari, Adv.

Judgement :

1. The sole petitioner, while invoking inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, has prayed for quashing of an order dated 2.12.1998 passed by learned Chief Judicial Magistrate, Jamui in Chandramandih P.S. Case No.81 of 1998, whereby the learned Chief Judicial Magistrate has rejected the petition filed by the petitioner under Section 13(2) of the prevention of Food Adulteration Act, 1954 (hereinafter referred to as the "Act"), whereby he had prayed for directing the local authority to supply the analysis report and for forwarding the sample for re-testing by the Director, Central Food Laboratory.

2. Short fact of the case is that on the basis of a written report, an F.I.R. vides Chandramandih P.S. Case No.81 of 1998 was instituted for offence under Section 16(1) and 10(a) of the [Prevention of Food Adulteration Act, 1954](#) against the petitioner. Some sample of mustard oil was collected from the business premises of the petitioner and was sent for analysis report. During examination, the sample was found not standard as prescribed under the provision of the Act. After receipt of the report, on the prayer made by the Investigating Officer, warrant of arrest was issued. After coming to know regarding the report as well as issuance of warrant of arrest, a petition was filed on behalf of the petitioner in the court of Chief Judicial Magistrate, Jamui with a prayer to direct the local authority/informant to supply the alleged report of the analysis and also forward the part or parts of the sample enabling the petitioner to get it tested and examined by the Director, Central Food Laboratory for its test and report. It was further prayed that till the receipt of the report from the Director of the Central Food Laboratory, all the processes and proceeding for arrest of the petitioner in Chandramandih P.S. Case No.81 of 1998 may be stayed. The learned Magistrate, by its order dated 2.12.1998, has rejected the petition filed on behalf of the petitioner on the ground that there was no provision in law to stay the investigation of the case nor there was any provision to recall warrant of arrest without appearance of the accused persons. The learned Magistrate also noticed that even the prayer for anticipatory bail of the petitioner was rejected by the learned Sessions Judge, Munger.

3. Aggrieved with the order dated 2.12.1998 passed by the learned Chief Judicial Magistrate, Jamui, the petitioner approached this Court by filing the present petition. On 14.2.2000, this application was admitted and it was directed that meanwhile, further proceedings in Chandramandih P.S. Case No.81 of 1998 pending in the court of the Chief Judicial Magistrate, Jamui shall remain stayed and order of stay is still continuing.

4. Shri N.K. Agrawal, learned Senior Counsel appearing on behalf of the petitioner, while challenging the impugned order, submits that it was a statutory right available to the petitioner for getting the sample re-tested by the Central Laboratory. It was further submitted that for the purpose of filing a petition under Section 13(2) of the Act, there was no requirement for physical appearance of the

petitioner before the court below. On this very point, he has relied on an order passed by this Court in Cr. Misc. No.3035 of 1994. A photo copy of order has been brought on record as Annexure-3 to the petition. It was submitted by Shri Agrawal, learned counsel for the petitioner that on 18.3.1994, in the similar circumstances, this Court has held that "there is no provision under Section 13 of the Act, which requires that unless the accused appears in person, no application can be filed to get the sample of food analyzed by the Central Food Laboratory". Similarly, in a case i.e. Cr. Misc. No.6651 of 1998, same view was reiterated by this Court.

5. On aforesaid ground, it has been submitted that the order impugned is liable to be set aside.

6. Smt. Indu Bala Pandey, learned Additional Public Prosecutor appearing on behalf of the State, has opposed the prayer of the petitioner. However, she was not in a position to dispute that this Court in the similar situation, has already held that for the purpose of filing petition under Section 13(2) of the Prevention of Food Adulteration Act, there was no requirement for personal appearance of the accused.

7. Besides hearing learned counsel for the parties, I have also perused the materials available on record. For better appreciation, it would be appropriate to quote Section 13(2) of the Prevention of Food Adulteration Act, which is as follows:

"13(2) On receipt of the report of the result of the analysis under sub-section (3) 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 Sec.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 Laboratory".

8. From the aforesaid provision, it is evident that the petitioner was having a statutory right to make a prayer for re-testing of the sample in question by the Central Laboratory. Once by enactment, such right was conferred on the petitioner, he was legally entitled to file the petition for re-testing, which has been refused by the learned Magistrate. Moreover, on the ground of none appearance of an accused, the right for filing petition for re-testing under Section 13(2) of the Act, cannot be taken away. Moreover, this has already been clarified by different orders passed by this Court, which has been noticed above in this order.

9. In view of provisions contained under Section 13(2) of the Act as well as in the light of order passed by this Court in Cr. Misc. No.3035 of 1994 and Cr. Misc. No.6651 of 1998, which have been brought on record vide Annexures 3 & 3/1 to the petition, the court is of the opinion that it is a fit case for exercising inherent jurisdiction in favour of the petitioner and as such the impugned order i.e. order dated 2.12.1998 passed by the learned Chief Judicial Magistrate, Jamui in Chandramandih P.S. Case No.81 of 1998 is hereby set aside and petition stands allowed.

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