

**Shravan Kumar and ors Vs. State of A.P.**

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**Court :** Andhra Pradesh

**Decided On :** Jan-18-2012

**Judge :** N. Ravi Shankar, J.

**Acts :** [Code of Criminal Procedure \(CrPC\), 1973](#) - Section 482; [Prevention of Food Adulteration Act, 1954](#) - Section 2(ia)(m), 7(i), 16(1)(a)(i), 13(2), Prevention of Food Adulteration Rules, 1955 - Rules 32, 32(i)

**Appeal No. :** CRIMINAL PETITION No.7735 of 2009

**Appellant :** J. Shravan Kumar and ors

**Respondent :** State of A.P

**Advocate for Pet/Ap. :** Aadesh Varma, Adv.

**Judgement :**

**N. RAVI SHANKAR, J.**

## **ORDER**

1. In this petition under Section 482 of the Code of Criminal Procedure, 1973 (for short Code) the petitioners herein who are A-1, A-3, A-4 and A-5 in C.C.No.1021 of 2006 on the file of the Court of the XI Metropolitan Magistrate (Mobile Court), Ranga Reddy District (trial court), are seeking quashing of the said case against them.

2. The aforesaid case has been instituted by Food Inspector, Division-I, Ranga Reddy District, and the offence alleged against the petitioners is sale of adulterated groundnut oil punishable under Section 2(ia)(m) and Section 7(i) r/w Section 16(1)(a)(i) of the [Prevention of Food Adulteration Act, 1954](#) (for short Act). The 1st petitioner/A-1 is said to be the vendor of the groundnut oil. The complaint reads that the sample was lifted on 07.07.2004. The public analyst report of the State Food Laboratory (SFL) is dated 10.08.2004. That report shows that the sample did not conform to the standard of beliers test (turbidity temperature - acetic acid method) and is therefore adulterated. It is stated that the complaint was filed on 26.06.2006 in the trial court.

3. The plea of the petitioners is that there is a delay of more than about 1 year 10 months in filing a complaint or launching prosecution from the date of analyst report and nearly 2 years from the date of lifting samples and therefore the petitioners have lost their valuable right of getting the second sample of groundnut oil analysed by the Central Food Laboratory (CFL) and consequently the case should be quashed. It may be noted here that according to Section 13 of the Act the report of the CFL analyst supersedes the report of the SFL analyst and if the report of the former shows that there is no adulteration, the prosecution cannot be launched. In view of this legal position, Sri Adesh Varma the learned counsel for petitioners relying upon the above delay factor contended that because of the above delay in launching the prosecution the second sample has become unfit for analysis by the CFL and consequently the case should be quashed as the petitioners were denied the valuable opportunity of getting the second sample analysed by the CFL as contemplated under Section 13(2) of the Act.

4. On the other hand, the learned Additional Public Prosecutor pointed out that petitioners can raise all their contentions in the trial court including the plea for discharge and therefore this court should not interfere in the matter. He also pointed out that except the above contention of the petitioners counsel the petitioners could not place any material before the court or could not cite any circumstance to show that the second sample has become unfit for analysis and consequently this is sufficient to dismiss this petition.

5. Thus the point is whether the aforesaid criminal case is liable to be quashed on the ground of delay which is already mentioned in launching the prosecution.
6. Sri Adesh Varma relied upon Food Inspector vs. Narayana Umamaheswara<sup>1</sup>, The Food Inspector vs. N.V.Raghavan Nair<sup>2</sup>, B.Bhaskar and another vs. State of Andhra Pradesh<sup>3</sup>, Vinod Namviar vs. State of A.P.<sup>4</sup>, Naresh Kumar Kedia v. Director I.P.M.<sup>5</sup>, P.Sudhakar vs. State of A.P.<sup>6</sup>, Nebh Raj vs. The State (Delhi Admn.)<sup>7</sup>, Sri Shravan Kumar Agarwal vs. The State of A.P.<sup>8</sup> and Konda Suryanarayana vs. The State of A.P.<sup>9</sup> in support of his contention that delay of 1 year 10 months in his case in launching prosecution is a good ground for quashing the same.
7. Before the decisions cited by Sri Adesh Varma are considered, it must be noted that the record would admittedly show that in the present case the sample of groundnut oil was lifted on 07.07.2004 and the state public analyst report was obtained on 10.08.2004 but the prosecution was launched on 27.06.2006 i.e. with a delay of nearly two years from the date of lifting the sample. Undoubtedly there is this delay in launching the prosecution.
8. In the course of arguments Sri Adesh Varma at one stage pointed out that on the label of the groundnut oil packet in question the words "best before six months" were printed indicating that the said oil was to be used within six months from the date of its manufacture or extraction or whenever it is made ready for marketing. That label was not produced. However basing upon the said words "best before six months", Sri Adesh Varma argued that since the second sample could not be got analysed by the accused within six months from the date of lifting the sample by the CFL, the food inspector must be held to have denied to them the valuable right under Section 13(2) of the Act which they have and therefore the prosecution must be quashed on that ground as after six months the petitioners have not given any warranty or assurance that the oil in question would retain its quality.
9. The answer to the above contention lies in Rule 32 of the Prevention of Food Adulteration Rules, 1955 (for short Rules). Explanation-VIII given beneath Rule 32(i) of the rules says what is meant by the use of the words "best before".

Explanation VIII reads as follows:

"(i) "Best before" means the date which signifies the end of the period under any stated storage conditions during which the product will remain fully marketable and will retain any specific qualities for which tacit or express claims have been made. However, provided that beyond the date the food may still be perfectly satisfactory.

(ii) In addition to the date of best before, any special conditions for the storage of the food shall be declared on the label if the validity of the date depends on such storage."

10. From Explanation-VIII, it would be thus clear that the words "best before" do not signify that the product will become useless or unfit for analysis after the expiry of the said period, but the product may still be satisfactory which means that it may be fit for analysis even after the said date. Admittedly the storage conditions are not said to be declared on the label on the groundnut oil in question. Hence, the above contention of petitioners counsel based on the words "best before six months" even if they are printed on the label of the groundnut oil packet in question, cannot be a ground by itself to quash the case.

11. Then turning to the contention of the petitioners counsel that the mere delay of nearly 2 years in filing the complaint from the date of lifting of the sample, is sufficient to quash the prosecution it would be relevant to note what a division bench of this court have held in *Handi Instant Foods vs. State of A.P.*<sup>10</sup> (judgment dated 15.11.2006). Their Lordships were on a reference considering the question whether delay in launching prosecution or filing of complaint after the samples are lifted is by itself sufficient to quash the case under Section 482 of the Code.

12. The division bench considered the previous case law on the point including the decision of the Hon'ble Supreme Court in *Nebh Raj's case* (7 supra and cited by petitioners counsel) and held that the said delay by itself is not a ground for quashing the case. The division bench ultimately observed in paras-13 to 15 of the said judgment and they read as follows.

"13. The [Prevention of Food Adulteration Act, 1954](#) was enacted by the Parliament to prevent the adulteration of food. Pure, fresh and healthy food is essential for the health of the people. Adulteration of food stuffs was so rampant, widespread and persistent and as there was need to take a drastic remedy in the form of a legislation, which is the need of the hour, to check this kind of anti-social evil, this Act was enacted to correct and remedy the widespread evil of food adulteration to ensure the sale of wholesome food to the people. It is well settled that wherever possible, without unreasonable stressing and straining in all such statutes should be construed in a manner, which would suppress the mischief, advance the remedy, promote its object, prevent its subtle evasion and foil its artful circulation. As per the various judgments of the Supreme Court, the provisions of the Act are required to be observed in the strict adherence to safeguard the interest of the consumers of the article of food. Stringent laws will have no meaning if the offenders get away on some or the other technicalities.

14. Whenever there is a report of the Analyst that the food article is adulterated, by the date of filing of the complaint, there was prima facie material to show that the accused committed the offence. In order to prove his innocence, it is for the accused to make an application to send the second sample to the Central Laboratory for analysis by exercising his right provided under Section 13(2) of the Act and if the Central Food Laboratory differs with a view of the Public Analyst, the accused can be given the benefit of doubt. If there is a report from the Central Food Laboratory after sending the second sample for analysis that the food sample is not fit for analysis due to lapse of time, the accused is entitled for quashing the proceedings. But, without sending the sample to the Public Analyst either on the ground that there was time gap from the date of collecting the sample and filing the complaint or that the date fixed for using the food article has expired or that the period fixed for "best before" use has been crossed, the accused is not entitled for quashing the proceedings without showing that prejudice has been caused on account of delay caused in filing the complaint and serving the copy of the report of Public Analyst on the accused under Section 13(2) of the Act.

15. For the foregoing reasons, we hold that when a complaint is filed under the Prevention of Food Adulteration Act against the accused for adulteration of food

article, the prosecution is not liable to be quashed against him on the ground that he was denied a right under Section 13(2) of the Act for sending the second sample to the Central Food Laboratory for analysis on account of delay caused in filing the complaint and furnishing the Analyst Report to the accused without there being any prejudice caused to him is shown."

12. Thus it is clear from the above conclusions of the division bench that mere delay in launching the prosecution is not by itself a ground for quashing the case unless the accused shows that prejudice has been caused to him on account of that delay. In the present case it is true that there is delay of nearly 2 years in launching the prosecution from the date of lifting the sample. The petitioners however could not place any material before the court to show that the second sample of groundnut oil has become useless or unfit for analysis by the CFL. This court cannot assume the role of CFL i.e. an expert body/ food analyst and pronounce that the second sample has become unfit for analysis. The plea of the petitioners regarding the words "best before" is by itself is not a ground for quashing the case and the reasons for this conclusion of mine are already mentioned.

13. It may now be noted that in the various decisions cited by the petitioners counsel in support of his contention that delay by itself is a ground for quashing the case, the above division bench decision of this court was not taken to the notice of the learned Judges who decided those cases. It may be noted that the above division bench decision is binding on me and hence the decisions cited by the petitioners counsel which are all decisions of single Judges cannot help the petitioners.

14. Accordingly, in view of the reasons aforesaid and the law laid down in the aforesaid division bench decision of this court, it follows that this petition has to fail and the same is accordingly dismissed. It goes without saying that petitioners can pursue their remedies before the trial court.