

RESERVED JUDGMENT

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

**CRIMINAL REVISION NO.879 OF 2001
(Old No.782 of 1995)**

M/s Jindal Vanaspati Udyog Pvt. Ltd.

... Revisionist

Versus

The State **and another**

... Respondents

**Sri S.K. Aggarwal, Sr. Adv. assisted by Sri Jitendra Chaudhary, Adv. for the
revisionists
Sri M.A. Khan, learned Brief Holder for the State**

Dated: April 30, 2009

HON. DHARAM VEER, J.

This criminal revision, preferred by the revisionist under Sections 397/401 of The Code of Criminal Procedure, 1973 (*hereinafter to be referred as Cr.P.C.*), is directed against the judgment and order dated 10.05.1995 passed by Additional Sessions Judge, Dehradun in Criminal Appeal No.09 of 1995.

2. I have heard learned counsel for the parties and perused the entire material available on record.

3. In brief, the facts of the case are that Food Inspector U.S. Doongriyal (P.W.1) filed a complaint against (1) Firm Kundan Lal Pishori Lal, (2) accused Om Prakash (acquitted by the trial court) in the capacity of owner firm Kundan Lal Pishori Lal and (3) the Firm M/s Zindal Vansapati Udhyog Pvt. Ltd. in connection with adulteration of mustered oil and refined oil. On 4.12.1988, the Food Inspector U.S. Doongriyal (P.W.1) inspected the firm M/s Kundan Lal Pishori Lal where the accused Om Prakash was found exhibiting the Nilgiri mustered oil for sale. Om

Prakash was also found in the firm. On being suspicion of adulteration in the oil, the Food Inspector served a notice Form No.VI (Ex.Ka-1) to the accused Om Prakash and purchased the oil for sample against Rs.8.25 whose weight was 375 grams. Accused Om Prakash disclosed to the Food Inspector that the manufacturer and supplier of the oil is M/s Zindal Vanaspati Udhyog Pvt. Ltd. and he has purchased the said oil from M/s Zindal Vanaspati Udhyog Pvt. Ltd. Therefore, in accordance with law, letter form No.VI was issued to firm M/s Zindal Vanaspati Udhyog Ltd. along with notice (Ex.Ka-13). The inspection report is Ex.Ka-7. The receipt of the purchased oil is Ex.Ka-2. Copy of the bill (invoice) issued by M/s Zindal Vanaspati Udhyog Pvt. Ltd. is Ex.Ka-8. The purchased oil was divided in three parts and the slip on all the three phials were pasted and the same were sealed. The signatures of the accused Om Prakash was obtained upon the slip of all the three phials. The slips were also pasted and tied with the phials. During this proceeding, the Sanitary Supervisor Sri Ram Nath (P.W.2) remained present. None of the public witness became ready to stand as witness. The sample was sent to the Public Analyst, Lucknow for examination which is Ex.Ka-5. The receipts of post are Exs.Ka-3 and Ka-4. Label Form is Ex.Ka-6. The report was received from the Public Analyst according to which 0.99% acidity was found in the mustard oil which was more than the permissible limit. Accordingly, the Chief Medical Officer/District Health Authority, Dehradun accorded sanction to launch the prosecution against the accused, i.e. Ex.Ka-11. Thereafter, the P.W.1 U.S. Doongriyal, Chief Food Inspector submitted its complaint in the court of CJM (Economic Offences), Dehradun against the accused under Sections 7/16 of the Prevention of Food

Adulteration Act, 1954 (*hereinafter to be referred as the Act*), i.e. Ex.Ka-12.

4. Thereafter, learned CJM (Special Magistrate Economic Offences), Dehradun framed charge against the accused Om Prakash and also against Sri S.N. Pandey, representative of M/s Zindal Vanaspati Udhyog Pvt. Ltd. on 24.9.1990 under Sections 7/16 of the Act. The charges were read over and explained to the accused, who pleaded not guilty and claimed to be tried.

5. To prove its case, the prosecution got examined P.W.1 U.S. Doongriyal, Food Inspector, P.W.2 Ram Nath and P.W.3 V.K. Raturi.

6. After that the statements of the accused were recorded u/s 313 Cr.P.C. The oral and documentary evidence was put to each of them in question form. In oral evidence, they themselves were examined as D.W.1 S.N. Pandey and D.W.2 Om Prakash.

7. After hearing counsel for the parties and appreciating the material on record, learned Special Magistrate (Economic Offences)/ACJM-I, Dehradun vide judgment and order dated 13.1.1995 acquitted the accused Om Prakash as well as the firm M/s Kundan Lal Kishori Lal u/s 7(1) r/w Section 16(1)(a)(i) of the Act by giving benefit under Section 19(2) of the Act. However, the accused-S.N. Pandey, legal representative of firm M/s Zindal Vanaspati Udhyog Pvt. Ltd. was convicted u/s 7(1) r/w Section 16(1)(a)(i) of the Act and was sentenced to two years' R.I. with fine of Rs.2,000/- and in default of payment of fine, six months' further R.I. was awarded. The trial court also convicted the Firm M/s Zindal Vanaspati Udhyog Pvt. Ltd. u/s 7/16(1)(a)(i) of the Act. However, no sentence was passed against the firm. Being aggrieved with the aforesaid judgment and order dated

13.1.1995, accused S.N. Pandey and Firm M/s Zindal Vanaspati Udhyog Pvt. Ltd. preferred appeals. The aforesaid appeals were decided by Addl. Sessions Judge, Dehradun vide judgment and order dated 10.5.1995, whereby the conviction and sentence passed by the trial court against accused S.N. Pandey was set aside and he was not found guilty u/s 7/16 of the Act. However, the appeal preferred by the firm M/s Zindal Vanaspati Udhyog Pvt. Ltd. was dismissed and the case was remanded back to the court below with the direction that the court below shall pass sentence against the revisionist/ appellant-company after hearing the parties. Feeling aggrieved with the aforesaid judgment and order dated 10.5.1995, the present revision has been preferred.

8. Sri S.K. Aggarwal, learned senior counsel for the revisionist argued that as per the prosecution case, the letter (Ex.Ka-15) along with copy of report of Public Analyst, which is alleged to be sent by the prosecution, was neither sent nor served upon the revisionist. He further submitted that Section 13(2) of the Act is a mandatory provision and the letter along with the copy of report of Public Analyst is mandatory to be served upon the party concerned. I find force in this argument advanced by learned senior counsel for the revisionist. Before any further discussion, Sections 13(2) and 13(3) of the Act are relevant to mention which read as under: -

“13 (2) On receipt 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 the 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 take an application to the court within a period of ten days from the date 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.

13(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).)”

9. As per the above-said quoted section, after the report of Public Analyst to the effect that the article of food is adulterated, the Local (Health) Authority shall, after the institution of the 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 informing him that if it is so desired, he may take an application to the court within a period of ten days from the date 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. In the present case, as per the case of the prosecution, after the report of the Public Analyst (Ex.Ka-9) was given, the letter Ex.Ka-15 along with copy of the report of Public Analyst (Ex.Ka-9) is said to have been sent to the revisionist's Firm M/s Zindal Vanaspati Udhog Pvt. Ltd. for complying with the provision of Section 13(2) of the Act.

However, there is no evidence on record which could reveal that the said letter was served upon the revisionist. The revisionist in the statement recorded u/s 313 Cr.P.C. has specifically stated that no letter u/s 13(2) of the Act was served upon the firm. Even otherwise, there is no evidence in the file which could prove that the letter Ex.Ka-15 along with the copy of report of Public Analyst (Ex.Ka.9) was served upon the revisionist. As such, in view of the above-said discussion it is proved that no letter (Ex.Ka-15) along with copy of the report (Ex.Ka-9) of the result of the Public Analyst was served upon the revisionist which is a mandatory provision of the Act. Even, Sri M.A. Khan, learned Brief Holder for the State also conceded that the letter (Ex.Ka.15) along with the copy of the report of Public Analyst (Ex.Ka-9) was not served upon the revisionist. Therefore, non-compliance of this provision vitiates the entire proceedings and as such, the judgments and orders passed by the courts below are liable to be set-aside on this ground alone. Section 13(3), as quoted above, also provides that the certificate issued by the Director of Central Food Laboratory shall supersede the report given by the Public Analyst, however this benefit could not be extended to the revisionist. Since, the provision of Section 13(2) was not complied with, hence the revisionist is entitled to be acquitted on this ground alone.

10. For the reasons as stated above, the revision is allowed. The judgment and order dated 13.1.1995 passed by Special Magistrate (Economic Offences)/ACJM-I, Dehradun convicting the revisionist u/s 7(1) r/w Section 16(1)(a)(i) of the Act, which was confirmed by Additional Sessions Judge, Dehradun vide judgment and order

dated 10.5.1995, are hereby set aside. The revisionist is hereby acquitted of the charges leveled against him.

(Dharam Veer, J.)
April 30, 2009

Rajeev Dang