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**(2012) 07 OHC CK 0004**

**Orissa High Court**

**Case No:** CRLMC No. 2530 of 2007

Sanjay Kumar Parida

APPELLANT

Vs

State of Orissa

RESPONDENT

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**Date of Decision:** July 4, 2012

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Prevention of Food Adulteration Act, 1954 - Section 16(a)(i)

**Citation:** (2012) 114 CLT 952

**Hon'ble Judges:** Indrajit Mahanty, J

**Bench:** Single Bench

**Advocate:** Samir Kumar Mishra, M.R. Dash and A. Kejriwal, for the Appellant;

**Final Decision:** Allowed

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### **Judgement**

I. Mahanty, J.

In this petition u/s 482, Cr.P.C., the Petitioner Sanjay Kumar Parida has sought to challenge the Order Dated 27.8.2007 passed by the Learned S.D.J.M., Nayagarh in 2 @ C.C. No. 33 of 2007, by which cognizance of the offence u/s 16(a)(i) & (ii) of the Prevention of Food Adulteration Act & Rules was taken. Mr. S.K. Mishra, Learned Counsel for the Petitioner submitted that the report of the Public Analyst, in particular, report No. 12/07 (Dabur Honey) reveals that the article is adulterated vide result No. 6. The result No. 6 is quoted hereunder:

Analysis Report:

Sample Description/Physical Appearance: Honey Insect & fungus :-Nil. Odour & taste : Agreeable

Observation :- The article is adulterated vide result No. 6

It is asserted on behalf of the Petitioner that the Public Analyst erred in noting the criteria for conformity used & has noted "Not more than 65% by mass" whereas Clause A.07.03 of Appendix-B of the Prevention of Food Adulteration Rules, 1955, which deals with "Honey", is extracted hereunder:

A.07.03 "HONEY" means the natural sweet substance produced by honey bees from the nectar of blossoms or from secretions of plants which honey bees collect, transform store in honey combs for ripening. When visually inspected, the honey shall be free from any foreign matter such as mould, dirt, scum, pieces of bees wax, the fragrant of fees & other insects & from any other extraneous manner. The colour of honey vary from light to dark brown. Honey shall conform to the following standards, namely :-

(a) Specific gravity at 27°C : Not less than 1.35 per cent by mass

(b) Moisture : Not less than 25 per cent by mass

(c) Total reducing sugar : Not less than 65 per cent by mass

(i) For Carbia colossa & Honey dew : Not less than 60 per cent by mass

(d) Sucrose : Not more than 5.0 per cent by mass

(i) For Carbia colossa & Honey dew : Not more than 10 per cent by mass

(e) Fructose glucose ratio : Not more than 0.95 percent by mass

Placing reliance on the stipulations relating to Honey in Clause 07.03 of Appendix-B of the Prevention of Food Adulteration Rules, 1955, it is asserted by Mr. Mishra that the total reducing sugar in Honey is stipulated to be "not less than 65 per cent by mass", but the Public Analyst has recorded that the sample contained total reducing sugar of 76.3% & therefore, the sample confirmed to the said stipulation in Appendix-B of the Prevention of Food Adulteration Rules, 1955 & was not in violation of any criteria stipulated thereunder. Learned Counsel for the Petitioner, therefore, asserts on the basis of such argument that the prosecution of the Petitioner on the basis of the report of the Public Analyst & the allegation of allegedly possessing Honey (Dabur) not complying with the stipulations laid down in the Act or the Rules is wholly incorrect & prays for quashing of the same.

2. Mr. A.K. Mishra, Learned Addl. Government Advocate, on behalf of the State, on the other hand, submitted that on the raid conducted on the Petitioner's premises, three samples have been drawn in respect of Besan, Honey (Dabur) & Biscuits & all the three items were sent to Public Analyse for testing & the Public Analyst gave reports on 5.2.2007 bearing Report No. 11/2007 in respect of Besan, Report No. 12/2007 for Honey (Dabur) & Report No. 13/2007 for Biscuits.

3. Learned Counsel for the State submits that in so far as Report Nos. 11/2007 & 13/2007 are concerned, the Public Analyst has also certified that said two articles

were adulterated for the reasons contained in the said reports. Learned Counsel for the State further submits that even if the Court considers the prayer of the Petitioner vis-a-vis quashing of the proceeding arising out of Report No. 12/2007 relating to Dabur (Honey), yet the prosecution on the basis of other two articles, namely Besan (Report No. 11/2007) & Biscuits (Report No. 13/2007) ought not to be quashed & the prosecution may be permitted to continue.

4. Having heard Learned Counsel for the respective parties & having perused the stipulations contained in Clause 7.03 of Appendix-B of the Prevention of Food Adulteration Rules, 1955 in so far as the stipulation regarding total reducing sugar is concerned, it is clear from Appendix-B that Honey is required to conform to the extent stipulated in the said clause & in particular relating to total reducing sugar, the stipulation is to the following effect:

Not less than 65 per cent by mass.

However, the Public Analyst in his report No. 12/2007 in respect of Honey (Dabur) has recorded that the total reducing sugar is 76.3%. Therefore, the above mandatory requirement as stipulated in Appendix-B & the recording in the column "Criteria for conformity used" the note of the Public Analyst to the effect that "not more than 65% by mass" is definitely an error of record.

5. Therefore, this Court is of the considered opinion that such erroneous report, cannot form a lawful basis for prosecution of the Petitioner. Accordingly, the Public Analyst report No. 12/2007 to the aforesaid effect & the impugned Order Dated 27.8.2007 are set aside & the Petitioner will not be required to face trial/prosecution in so far as the aforesaid Public Analyst report No. 12/2007 is concerned. It is clarified that the proceedings basing on the Public Analyst report Nos. 11/2007 & 13/2007 are not subject matter of challenge in this petition & hence, the prosecution is at liberty to proceed with the matter in accordance with law. The CRLMC is allowed in terms of the directions noted above.