

(2018) 04 MP CK 0051

Madhya Pradesh High Court (Jabalpur Bench)

Case No: M.Cr.C.No.10083 OF 2018

Alkem Laboratories
Limited

APPELLANT

Vs

State Of Madhya
Pradesh

RESPONDENT

Date of Decision: April 11, 2018

Acts Referred:

- Constitution of India - Section 226
- Indian Penal Code, 1860 - Section 302
- Code Of Criminal Procedure, 1973 - Section 315, 482
- Prevention of Food Adulteration Act, 1954 - Section 2(ix)(g), 7, 7(ii), 10, 13(2), 14, 16(1)(a)(ii), 19, 20A

Hon'ble Judges: C.V. SIRPURKAR, J

Bench: Single Bench

Advocate: Akshay Sapre, Arun Siwach, Sharad Sharma

Final Decision: Dismissed

Judgement

1. This miscellaneous criminal case has been instituted on an application under Section 482 of the Cr.P.C. filed on behalf of petitioner/accused M/s.

Alkem Laboratories Limited for quashing the order dated 01.09.2015 passed by the Court of Special Magistrate (Prevention of Food Adulteration

Act), Bhopal in Criminal Case No.8208/2010, whereby the petitioner M/s. Alkem Laboratories Limited was directed to be arrayed as accused.

2. The facts giving rise to this miscellaneous criminal case may briefly be stated thus:
Adline E. Panna, Food Inspector, Food and Drugs

Administration, District-Bhopal inspected the establishment of Valecha enterprises, shop no.11, Patel Market, Bhopal (accused no.1) at about 03:00

p.m. on 03.10.2008. Packed food articles Orange Tammy Sugarless Jelly (hereinafter referred to in this order as "the Jelly") was found displayed

therein for sale. Since, the Food Inspector doubted the purity of the food article, she proposes to buy the same for the purpose of testing. The seller

accepted the proposal. Accordingly, she purchased three company packed jars of Jelly weighing 350 grams each. Following label was affixed at those

jars. "Batch No.-TMJO-8181B, dt. of manufacturing Mfd. By Cachet Pharmaceuticals Pvt. Ltd. C-582, Rico Industrial Area Bhilwadi-301019,

Rajasthan. Mkted. by -Alkem Health Foods (A Division of Alkem Labs Ltd.) Alkem House, Senapati Bapat Marg, Lower Parel, Mumbai-400013".

The seller failed to produce any receipt regarding the purchase of the articles by him from the marketer and stated that he would file the receipt later

in the Office of Food Inspector. Other formalities as per the provisions of the Food Adulteration Act and Rules were observed and the sample was

sent to the Public Analyst for examination. The Local Health Authority, by its letter dated 26.11.2008 informed that the sample of the Jelly was

misbranded. Consequently, the letter was sent to Seller Dinesh Valecha for producing food licence and receipt of the purchase of the jelly from any

marketer or manufacturer. Pursuant to aforesaid letter, accused Dinesh Valecha produced the food licence and receipt for purchase of Jelly from M/s

Alkem Laboratories Limited, 5 Indrapuri Colony, Laxmi Nagar, Indore, (M.P.). Subsequently, the Food Inspector sent a letter to the Local Health

Authority, Bhopal and to petitioner M/s Alkem Laboratories Limited, Indore for providing information regarding Manager/Director/Partner or nominee

of the laboratories. However, no response was received from either. Consequently, a reminder was sent but to no avail and the original letter was

received back in the office. Later, the Food Inspector sent a letter to the Office of the Deputy Director, Food and Drugs Administration, Indore for

obtaining information regarding petitioner M/s Alkem Laboratories Limited and for providing food licence of the establishment but no information was

received. She also tried to obtain information regarding petitioner M/s Alkem Laboratories Limited from, Commissioner, Nagar Nigam, Indore;

however, she failed to obtain any information. Consequently, a complaint was filed in the Court of JMFC (Municipal Corporation), Bhopal against co-

accused Dinesh Valecha for the offence punishable under Sections 2 (ix) (g), 7 (ii) read with section 16 (1) (a) (ii) of the Prevention of Food

Adulteration Act, 1954 (hereinafter referred to in this order as "the Act").

3. During the course of the trial, statement of Food Inspector, Adline E. Panna was recorded by the trial Court on 21.09.2011. The prosecution

evidence was closed on 18.08.2015 and the case was fixed for defence evidence.

Accused Dinesh Valecha examined himself under Section 315 of

the Cr.P.C. as a witness. On 26.08.2014, accused Dinesh Valecha moved an application under Section 20A of the Act praying that petitioner M/s.

Alkem Laboratories Limited be arrayed as accused in the case as they were manufacturer/distributor of the Jelly. Petitioner M/s. Alkem Laboratories

Limited appeared before the trial Court through its counsel and challenged the order dated 01.09.2015 by way of this petition under Section 482 of the

Cr.P.C. before the High Court.

4. The order dated 01.09.2015 and consequent arraignment of petitioner M/s. Alkem Laboratories Limited as accused has been challenged by the

learned counsel for the petitioner in this petition mainly on the following grounds:-

(i) It has been argued that the petitioner is not the manufacturer of the offending jelly. He was merely a marketer of the same; therefore, he was not

privy to the ingredients of the food items. Under these circumstances; therefore, for want of mens rea, he cannot be held liable for the sale of

misbranded food articles.

(ii) On account of negligence and deliberate omission on the part of the prosecution, the petitioner was denied his statutory right under Section 13 (2)

of the Act.

(iii) The impugned order was illegal and bad in law as the provisions of Section 20A of the Act were inapplicable to the facts of the case.

(iv) There was inordinate delay in arraignment the petitioner as an accused defeating the ends of justice; therefore, it has been prayed that the

impugned order be set aside and complaint, qua the petitioner M/s. Alkem Laboratories Limited, be quashed.

5. Learned Government Advocate for the respondent State has supported the impugned order and has contended that no case has been made for

setting aside the same and quashing the complaint qua the petitioner.

6. A perusal of the documents filed along with the petition and upon due consideration of the rival contentions, this Court is of the view that this

petition under Section 482 of the Cr.P.C. must fail for the reasons hereinafter stated:

7. It is settled position of law that the High Court may exercise its inherent powers under Section 226 of the Constitution of India or section 482 of the

Cr.P.C. and may interfere in the proceedings relating to the cognizable offences to prevent abuse of process of any Court or otherwise to secure the

ends of justice. However, the powers should be exercised sparingly and that too in rarest of the rare cases. (State of Haryana Vs. Bhajanlal, AIR

1992 SC 604). It is true that the Supreme Court clarified in the case of Som Mittal Vs. Government of Karnataka, AIR 2008 SC 1528, that words

“rarest of rare cases”, merely emphasize what is intended to be conveyed by words “sparingly and with circumspection”. Expression

“rarest of the rare cases” is not used in the sense in which it is used with reference to capital punishment for the offences punishable under

Section 302 of the IPC. However, it is manifest that power is not to be used in a routine manner but has to be used sparingly and with due care and

circumspection.

8. After a very broad elucidation of the scope of inherent powers reserved to the High Court by virtue of Section 482 of the Cr.P.C., the Court shall

proceed to examine arguments advanced by the learned counsel for the petitioner one by one.

9. The first argument that has been advanced by the learned counsel for the petitioner, (though, it does not find mention in the written arguments) is

that the petitioner was merely a marketer (distributor) of the offending jelly. It is clear from the complaint itself that the label upon the offending jelly

mentioned in clear terms that the food article was manufactured by Cachet Pharmaceuticals Pvt. Ltd., C-582 RICO Industrial Area, Bhilwadi-301019

(Rajasthan). It also explicitly mentioned that the food article was merely marketed by Alkem Health Foods (A Division of Alkem Labs Ltd.) Alkem

House, Senapati Bapat Marg, Lower Parel, Mumbai -400013. Thus, the offending food article was not manufactured by the petitioner M/s. Alkem

Laboratories Limited. It was merely distributed by the petitioner in a packed and sealed condition to the vendor Valecha Enterprises. As such, the

petitioner was not privy to ingredients of the food articles; therefore, for want of mens rea, he cannot be held responsible for any misbranding, for

which only the manufacturer can be held liable.

10. Section 7 of the Act prohibits manufacture for sale, storage, sale or distribution of misbranded food, which reads as hereunder:

7. Prohibition of manufacture, sale, etc. of certain articles of food.~"No person shall himself or by any person on his behalf manufacture for sale, or

store, sell or distribute~

(i) any adulterated food;

(ii) any misbranded food;

(iii) any article of food for the sale of which a licence is prescribed, except in accordance with the conditions of the licence;

(iv) any article of food the sale of which is for the time being prohibited by the Food (Health) Authority in the interest of public health;

(v) any article of food in contravention of any other provision of this Act or of any rule made thereunder; (vi) any adulterant.

Explanation. "For the purposes of this section, a person shall be deemed to store any adulterated food or misbranded food or any article of food

referred to in clause (iii) or clause (iv) or clause (v) if he stores such food for the manufacture therefrom of any article of food for sale.

11. Section 19 of the Act specifies the defenses, which may or may not be allowed in any prosecution under the Act. For ready reference, Section 19

is being reproduced herein below:

19. Defences which may or may not be allowed in prosecutions under this Act. (1) It shall be no defence in a prosecution for an offence pertaining

to the sale of any adulterated or misbranded article of food to allege merely that the vendor was ignorant of the nature, substance or quality of the

food sold by him or that the purchaser having purchased any article for analysis was not prejudiced by the sale.

(2) A vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves

(a) that he purchased the article of food

(i) in a case where a licence is prescribed for the sale thereof, from a duly licensed manufacturer, distributor or dealer;

(ii) in any other case, from any manufacturer, distributor or dealer, with a written warranty in the prescribed form; and

(b) that the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it.]

(3) Any person by whom a warranty as is referred to in Section 14 is alleged to have been given shall be entitled to appear at the hearing and give

evidence.

12. While examining and upholding the vires of Sections 7, 10 and 19 of the Act, a three judges Bench of Supreme Court in the case of Andhra

Pradesh Food and Grains Merchant Association etc. Vs. Union of India and others, AIR 1971 SC 2346 has held that: (a) The Act does not make

mens rea an ingredient of the offence. Ordinarily, for the protection of the liberty of a citizen, in the definition of offences, blame-worthy

mental condition is made an ingredient: but in Acts enacted to deal with a grave social evil or, for, ensuring, public welfare especially in

offences against health, it is, often found necessary in the larger public interest to provide for imposition of liability without proof of a guilty mind. If

from, the scheme of an Act, it appears that compliance with the regulatory provisions will be promoted by imposing such absolute liability, and,

that it, cannot, , otherwise be reasonably ensured, the court will be justified in, holding that, the restriction on the right of the trader is, in the

interest of the general public. Adulteration and misbranding of food is a rampant, evil, in our, country. The channels of supply and the

movement, of goods, from, trader, to trader, and, fertile sources of adulteration and misbranding, make it extremely difficult in a, large

majority of cases to establish affirmatively that storage or sale of adulterated or misbranded food-stuffs was with a guilty mind. Therefore, a,

statute, calculated, to control that evil is in the interest of the general, public and, merely because it makes a departure from the normal

structure, of statutes enunciating offences and prescribing punishments, the restrictions on traders will not be, deemed unreasonable. The

defenses set out in s. 19(2) are open, to the vendor and the act does not dispense with proof that the article of food is adulterated, misbranded or

that its sale is, prohibited:, it, only enacts that, a, vendor, selling adulterated, and misbranded articles of food cannot, merely plead that

he was ignorant of the nature and quality of the goods. (d) Under s. 19(2) if the vendor has obtained the article of food from a licensed manufacturer,

distributor or dealer or from a manufacturer, distributor or dealer with a warranty, he is protected, provided he has properly stored the article and sold

it in the same state as he purchased it, even if it turns out to be adulterated or misbranded. By merely opening the container the article of food does

not cease to be in the same state in which the vendor purchased it. Therefore, the vendor will not lose the protection of the sub-section merely

because he opens the container.

13. Likewise, a co-ordinate bench of Punjab and Haryana High Court in the case of Gujrat Cooperative milk Marketing Federation Ltd. Versus State

of Punjab and others (CRM M-12559 of 2011 (O&M) Dt. September 07, 2012), in similar factual back-drop has held that:

Now coming to the first contention of the learned counsel, it is appropriate at the outset to consider Section 14 of the Prevention of Food Adulteration

Act, 1954 (for short, 'the Act') and then Section 14-A of the Act, Section 20-A of the Act and the provisions of Section 2 of the Act. The expression

'misbranded' is defined under clause (ix) of Section 2 of the Act. Clause (ix) contains as many as 11 sub-clauses. As per the said provision, an article

of food shall be deemed to be misbranded, if it is sold in packages, which have been sealed or prepared by or at the instance of the manufacturer or

producer and which bear his name and address, the contents of each package are not conspicuously and correctly stated on the outside thereof within

the limits of variability prescribed under the Act and when a package containing it or the label on the package bears any statement, design or device

regarding the ingredients or the substances contained therein, which is false or misleading in any material particular or package is otherwise deceptive

with respect to its contents or if the package containing it or the label on the package bears the name of a fictitious individual or company as the

manufacturer or the producer of the article etc., If the necessary particulars, as enjoined under Rule 32 of the Rules, are lacking on the label affixed to

the package as per Section 2 (ix) of the Act, it is a misbranded food item. It may be reiterated that the allegation against the petitioners and others is

that label is conspicuously absent in the necessary particulars as enjoined under Rule 32 (e) of the Rules and is, therefore, misbranded as opined by the

public analyst.

Here in the instant case, the vendor, the marketeer and the manufacturer have been impleaded as accused simultaneously. Section 7 of the Act

prohibits expressly that no person shall manufacture for sale or store, sell or distribute any adulterated food or any misbranded food. It is obvious in the

said provision that the prohibitions equally apply to the manufacturer, seller, the person who stores or distributes any adulterated food or misbranded

food. Violation of Section 7 of the Act is punishable under Section 16 of the Act. Under Section 14 of the Act, the manufacturer, distributor or dealer

is obliged to give the vendor a warranty in writing in the prescribed form about the nature and quality of the article sold to the vendor. Under Section

14-A of the Act, every vendor is obliged to disclose to the Food Inspector, the name, address and other particulars of the person from whom he

purchased the article of food. While Section 14 of the Act is meant to protect the ultimate vendors before the food reaches a consumer, Section 14-A

of the Act mandates the vendor to furnish the particulars of the person from whom he purchased the article of food. Section 14 of the Act, which

protects the interest of the ultimate vendor, is obviously not in the nature of excluding the dealer or the manufacturer from the purview of the Act, nor

it is in the nature of carving out an exception in favour of the manufacturer or the dealer. In the case of Bhagwan Das Jagdish Chander V. Delhi

Administration, AIR 1975 SC 1309, it was held in paras 12 and 13 thus:

12. We are not impressed by the argument that a distributor could only be prosecuted for selling without giving a warranty to a vendor which is a

separate offence under Section 14 of the Act. It is clear from Section 14 itself that a manufacturer as well as a distributor can sell. The definition of

Sale, given in subsection (xiii) of the Act, is wide enough to include every kind of seller. Every seller can be prosecuted of an offence created by

Section 7 of the Act which prohibits a sale as well as distribution of an adulterated article of food. The mere fact that, for the purposes of Section 14,

the person who could be the last seller, in the sense that he sells to the actual consumer, is described as the vendor, could not affect a liability for an

offence under Section 7 of the Act of a sale of an article of food which is found to be adulterated. A sale of an article of food by a manufacturer,

distributor, or dealer is a distinct and separable offence. Section 14 was not meant to carve out an exemption in favour of a distributor or a

manufacturer who sells articles of food, found to be adulterated, irrespective of the question whether any warranty was given for them. It is true that

the manufacture of an adulterated article of food for sale is also an offence under Section 7 of the Act. But, neither Section 7 nor Section 14 of the

Act bars trial of several offences by the same accused person, be he a manufacturer, a distributor, or a last seller, referred to as the vendor in Section

14 of the Act.

13. We are also unable to accept as correct a line of reasoning found in *V.N. Chokra v. State*¹ and *Food Inspector, Palghat Municipality v. Seetharam*

Rice & Oil Mills; and in *P.B. Kurup v. Food Inspector, Malappuram Panchayat*, that, in every case under the Act, there has to be initially a

prosecution of a particular seller only, but those who may have passed on or sold the adulterated article of food to the vendor, who is being prosecuted,

could only be brought in subsequently after a warranty set up under Section 19(2) has been pleaded and shown to be substantiated. Support was

sought for such a view by referring to the special provisions of Section 20-A and Section 19(2) and Section 20 of the Act. A reason for Section 20-A

seems to be that the prosecution of a person impleaded as an accused under Section 20-A in the course of a trial does not require a separate sanction.

Section 20-A itself lays down that, where the Court trying the offence is itself satisfied that a manufacturer, distributor, or dealer is also concerned

with an offence, for which an accused is being tried, the necessary sanction to prosecute will be deemed to have been given.

Another reason seems to be that such a power enables speedy trial of the really guilty parties. We are in agreement with the view of the Delhi High

Court that these special provisions do not take away or derogate from the effect of the ordinary provisions of the law which enable separate as well

as joint trials of accused persons in accordance with the provisions of the old Sections 233 to 239 of Criminal Procedure Code. On the other hand,

there seems no logically sound reason why, if a distributor or a manufacturer can be subsequently impleaded, under Section 20-A of the Act, he

cannot be joined as a co-accused initially in a joint trial if the allegations made justify such a course.

Section 14 of the Act, therefore, shall have to be understood in proper perspective for which reference is necessary to Section 19 of the Act. Section

19 of the Act enumerates the defences that can be taken validly by an accused. No defence can be taken by the vendor about his ignorance of the

nature, substance or quality of the food sold by him. However, it also simultaneously takes care of the ultimate vendor, who innocently purchases the

food item from a dealer or manufacturer. Therefore, it is open to him to take the defence under a written warranty from the manufacturer, distributor

or a dealer in the prescribed form that the article of food while in his possession was properly stored and that he sold it in the same state as he

purchased it. Such a defence, if it is proved, would absolve him from the penal consequences of the Act. Thus, Sections 14 and 19 of the Act, if read

together, make it crystal clear that they are meant to protect the interests of the ultimate vendor, who in turn purchased innocently the article of food,

which eventually found to be adulterated or misbranded from any manufacturer, distributor or dealer. At the same time, the provisions tell us that they

are not in the nature of allowing the manufacturer, distributor or a dealer to escape from the liability with impunity. Section 14 A states that every

vendor of an article of food shall, if so required, disclose to the food inspector, the name, address and other particulars of the person from whom he

purchased the article of food. The form VII clearly indicates that on package details about the petitioners are mentioned as required under Rule 32 of

the Rules. Section 20-A of the Act is the provision which enables the Court to implead, during the course of the trial of any offences under the Act,

the alleged manufacturer, distributor or dealer of any article of food, which is eventually found to be adulterated or misbranded. The stage for such

impleading is laid down under the Act specifically, which is obviously the stage of evidence during the course of trial. That does not mean that always

and at all times the manufacturer, distributor or dealer shall be impleaded only at a later point of time, but not simultaneously along with the ultimate

vendor. Section 20-A of the Act can be invoked only when the manufacturer, distributor or dealer has not been impleaded initially and it has come to

light in the evidence during the course of trial, the details about such manufacturer, distributor or dealer of the food article, which is eventually found to

be adulterated or misbranded. An overview of these provisions and the scheme of the Act clearly tell us that the vendor, the manufacturer or the

distributor or the dealer can simultaneously be prosecuted. In view of clear legal position discernible from a combined reading of the provisions and the

scheme of the Act, it requires to be seen what is the material that warrants the inclusion of the manufacturer or distributor or dealer or all of them

together along with the vendor in a complaint filed by the Govt. Food Inspector alleging either adulteration or misbranding of the article in question. In

the absence of the warranty, which is obliged to be given by the manufacturer, distributor or dealer to the vendor, it does not mean that no such person

can be legitimately prosecuted. What is required is the evidence, which links or connects the manufacturer, distributor or dealer with the food article,

which has been eventually purchased by the Food Inspector from the vendor in his shop. In the instant case, as can be seen from its matrix, a label is

affixed on the packet containing ice cream. That label is obliged to be affixed on the packet in accordance with Rule 32 of the Rules. That label

contains the address particulars of the manufacturer and marketeer, other particulars as are required under Rule 32 (e) of the Rules. Prima facie

those particulars constitute the necessary material to connect the manufacturer and the marketeer i.e petitioners in this case, to the offence along with

the vendor. If there is any written warranty with the vendor and if he is able to show before the Court that he stored the food article purchased under

that warranty in a good condition and kept it in the same condition before it was purchased by the Food Inspector, he would be exonerated from the

liability. In the absence of any such warranty, he cannot take any such valid defence as is allowable under Section 19 of the Act. But, insofar as the

manufacturer or distributor or dealer is concerned, once the article of food is shown to be adulterated, they cannot escape the liability until they are

able to show before the Court that the food article which has been sold by them, or anyone of them has not been kept in the same condition when it

was sold to the vendor and therefore the adulteration or misbranding must be at the point of the vendor. Thus, the defences to be taken by the vendor,

the manufacturer, the distributor or dealer, as the case may be, would ultimately fix the liability on any one of them. This is obvious from the provisions

of the Act, as discussed herein above. Therefore, the contention that as much as Sarbjit Singh accused represented before the GFI that the product

was delivered at his doorstep and he had no purchase bill would not warrant any exoneration of petitioners on that premise. Till such time it is shown

before the Court that the container which contains the label and the particulars mentioned on the label are not accurate or false and that the food

article found therein is not the article manufactured, distributed or sold to the vendor, the manufacturer, distributor and dealer, cannot legitimately

contend before the Court that they cannot be prosecuted along with the vendor.

14. In the opinion of this Court, complete answer to the argument advanced on behalf of the petitioner is to be found in the judgment rendered by the

Supreme Court in the case of Andhra Pradesh Food and Grains Merchant (supra) and Punjab and Haryana High Court in the case of Gujrat

Cooperative milk Marketing Federation Ltd.Ã, Accordingly, regardless of whether the petitioner was privy to ingredients of the offending jelly,

whether he had any mens rea in selling that jelly or not, he shall be held liable for misbranding by virtue of Section 7 of the Act, validity whereof, has

been upheld by the Supreme Court; therefore, the first argument advanced by the learned counsel for the petitioner is not acceptable.

15. The next argument of the learned counsel for the petitioner is that the sample was taken on 03.10.2008 and the petitioner M/s Alkem Laboratories

Limited was arrayed as accused on 01.09.2015, i.e., almost 7 years later. After the receipt of report of the Public Analyst, the Local Health Authority

failed to forward the copy of the report of the result of the analysis to the petitioner; thus, the valuable right of the petitioner to get the sample of the

article of food kept by Local Health Authority analyzed by the Central Food Laboratory, was defeated. Inviting attention of this Court in this regard to

the judgments rendered by the Supreme Court in the cases of Municipal Corporation of Delhi Vs. Ghasi Ram, AIR 1967 SC 970, Medicamen Biotech

Limited and another Vs. Rubina Bose (2008) 7 SCC 196 and Rameshwar Dayal Vs. State of U.P, passed in Criminal Appeal No.231/1981 dated

30.04.1992, judgments rendered by coordinate benches of this Court in the cases of Prahlad Gattani and four others Vs. State of M.P., order dated

22.03.2012 passed in M.Cr.C.No.12665/2011 and M/s. R. Jagdish Tea Company Vs. State of M.P. and anr., 2015 Cr.L.J. 3400 and in the case of

Rohit Mull and Cadbury India Limited Vs. State of Goa, 2006 Vol. 108 (1) Bombay Law Reporter 0350, it has been argued that since the aforesaid

valuable right of the petitioner under Section 13 (2) of the Act has been defeated by the prosecution, proceedings against the petitioner are liable to be

quashed.

16. There can be no doubt with regard to the proposition of law that the right provided to an accused under Section 13 (2) of the Act is an extremely

valuable right; however, the question to be considered in the case at hand is whether that right is available in the case of misbranding of food articles

without there being any adulteration involved? It may be noted in this regard that the petitioner is proposed to be prosecuted only for misbranding of

the offending jelly. There is no allegation that the transgression involving adulteration as well.

17. Sections 13 (1) and (2) of the Act read as hereunder:

13. Report of Public Analyst.â€"1[(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.

(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 person 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 14-A, 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.

(emphasis supplied)

18. A bare reading of sub-section (2) of Section 13 reveals that aforesaid right of an accused to get the second sample of the article of food kept by

Local Health Authority, analyzed by the Central Food Laboratories is valuable only where a public analyst has found that the article of the food was

adulterated. This right is not available where the article was merely misbranded. Accordingly, in the opinion of this Court, the right provided under sub-

section (2) of Section 13 of the Act was not available to the petitioner M/s Alkem Laboratories Limited at all. This proposition of law is fortified by

views taken earlier by coordinate Benches of this Court in the cases of *Indrajeet Walia Vs. Food Inspector* (order dated 18.12.2014 passed in

M.Cr.C.No.993/2012) and *M/s. Sai Enterprises Vs. State of M.P.* (Order dated 24.10.2017 passed in M.Cr.C.No.2017/2015).

19. In the case of *Indrajeet Walia* (supra) a coordinate Bench of this Court has held as follows:

“However, the principles laid down in the judgments referred to above, are not applicable in this case, as the sample was only found misbranded

and not adulterated. Under Section 13 of the Act, only when the samples were found adulterated, the report of public analyst was sent to the accused

after filing of the complaint. The provision of Section 13 of the Act do not apply on the sample if found misbranded, and, therefore, no right given to

the accused under Section 13(2) of the Act is violated in the present case.

20. In the case of Sai Enterprises (supra), it has been held that:

However, with respect to the allegations of misbranding, the contentions advanced by the learned counsel for the applicant in terms of Section 13 (2)

of the Act of 1954 are not acceptable for the reason that the valuable right so provided under Section 13 (2) of the Act of 1954 is irrelevant with

respect to the charge of misbranding because in the instant case, there is a prima facie case made out against the applicant from the perusal of the

complaint that the complete name and address of the manufacturing or packaging Unit has not been provided on the cover of the seized article. In this

regard, perusal of Para 8 of Annexure P-2 would be relevant. At this stage, it would also be relevant to consider the decision taken by a Co-ordinate

Bench of this Court in the case of Indrajeet Walia v. Food Inspector, MCRC No. 993/2012 decided on 18.12.2014 (Indore Bench), wherein it was

categorically held that the provisions of Section 13 (2) of the Act of 1954, do not apply on the sample, if found misbranded, and, therefore, no right is

given to the Accused under section 13(2) of the Act of 1954.

21. In aforesaid view of the matter, it is clear that the right under Section 13 (2) of the Act, valuable or otherwise, was not available to the petitioner in

the present case. Thus, there is no question of violation of any such right; therefore, this argument is also not sustainable.

22. Another argument that has been advanced by the learned counsel for the petitioner is that there was inordinate delay in institution of the

prosecution because it was instituted qua the petitioner almost 7 years after the sample was taken. In this regard, he has invited attention of the Court

to the judgments rendered by the Supreme Court in the cases of State of M.P. Vs. Shiv Kumar, (2011 (1) FAC 41), Prahlaad Gattani (supra) and

M/s. R. Jagdish Tea Company (supra). It may be noted; however, that none of the aforesaid cases relate solely to misbranding of food articles, as the

present case is. In those cases, the adulteration of food articles was involved; therefore, the Courts held that the delay, in the facts and circumstances

of those cases, had defeated the valuable right of the accused under Section 13 (2) of the Act. However, as held in preceding paragraphs, in the

present case, no such right is available to the petitioner; therefore, the delay would not cause any prejudice to the petitioner, so far as his defence is

concerned. Therefore, this argument is also not acceptable.

23. Another argument that has been advanced is that the criminal proceedings cannot be set in motion as a matter of course. It has been contended

that in the complaint, the Food Inspector had elected to prosecute only the vendor Valecha Enterprises. No prosecution was sought against the present

petitioner; therefore, the impleadment of the petitioner 5 years after the filing of the complaint and that too at the instance of co-accused (Vendor) is

liable to be quashed.

24. A perusal of the complaint reveals that the complainant Food Inspector was convinced that the present petitioner M/s Alkem Laboratories Limited

must also be arrayed as accused; therefore, she tried her best to obtain the address of the present petitioner so that it could also be arrayed as

accused in the complaint. For this purpose, she had also written to the present petitioner on their registered address; however, her repeated attempts in

this regard addressed to the petitioner as well as to other authorities failed; therefore, probably because the filing of complaint was getting delayed, she

ultimately filed the complaint without impleading the petitioner as accused. In these circumstances, if the Court has taken cognizance of the offence

against the petitioner, it cannot be said that it is abuse of process of Court or any injustice has been caused to the petitioner.

25. The last argument that has been advanced is that the petitioner has been impleaded contrary to essential conditions prescribed under Section 20A

of the Act and is; therefore, bad in law. It has been submitted that the provisions of Section 20A of the Act can be invoked only where the evidence

adduced before the trial Court satisfactorily indicates that the manufacturer, distributor or dealer of the article of food is concerned with the offence

charged in the complaint. It has been contended that in the present case, it cannot be said that on the basis of testimony of vendor Dinesh Valecha any

case is made out. Moreover, the enabling power under Section 20A of the Act has not been exercised suo moto or at the instance of the prosecution

but at the instance of the co-accused. In this regard, learned counsel for the petitioner has invited attention of the Court to the judgment passed by this

Court in the case of Dammani Brothers Vs. State of M.P., (2016) SCC Online MP 4524; wherein, it has been held that as per section 20A of the Act,

the Court can implead a manufacturer, distributor or dealer only on the basis of evidence adduced before it during the trial. Since the accused no.1 has

adduced no evidence during the trial, the essential conditions prescribed under Section 20A of the Act have not been met.

26. Section 20A of the Act is herein below reproduced:

20-A. Power of court to implead manufacturer, etc.â€”Where at any time during the trial of any offence under this Act alleged to have been

committed by any person, not being the manufacturer, distributor or dealer of any article of food, the court is satisfied, on the evidence adduced before

it, that such manufacturer, distributor or dealer is also concerned with that offence, then, the court may, notwithstanding anything contained in sub-

section (3) of Section 319 of the Code of Criminal Procedure, 1973 (2 of 1974), or in Section 20 proceed against him as though a prosecution had been

instituted against him under Section 20.

27. Plain reading of Section 20A reveals that where the Court is satisfied, on the evidence adduced before it that the manufacturer, distributor or

dealer is also concerned with the offence being tried before it, it may proceed against any of them as though prosecution had been instituted against

such persons under Section 20. The enabling power under Section 20A of the Act is granted to the Court. The Court may exercise it suo moto.

However, there is no bar to exercise of such power at the instance either the prosecution or the co-accused. All that is required is that the conditions

as specified in the section must be fulfilled to the satisfaction of the Court. Again, there is no requirement that such satisfaction has to be reached only

on the basis of evidence adduced by the party making such application (in this case the co-accused). The Court may be satisfied on the basis of

material filed earlier along with the evidence adduced during the trial by either of the parties. Thus, the arguments that the satisfaction was not

reached on the basis of evidence adduced by the co-accused is fallacious. At any rate, this argument is factually incorrect because the copy of order

sheet dated 18.08.2015 (filed by the petitioner himself) reveals that co-accused Dinesh Valecha had examined himself under Section 315 of the

Cr.P.C. Thus, this argument is also not acceptable.

28. On the basis of foregoing discussions, the Court is of the view that the petitioner has failed to make out any ground on the basis of which it may be

assumed that inherent powers of the High Court under Section 482 of the Cr.P.C. must be exercised in this case either to prevent abuse of process of

Court or otherwise to secure ends of justice.

29. Consequently, this petition under Section 482 of the Cr.P.C. filed on behalf of petitioner M/s. Alkem Laboratories Limited deserves to be and is

accordingly dismissed.