

Ashok Kumar Ghosh Vs. State of Bihar

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Court : Jharkhand

Decided On : Mar-01-2017

Appellant : Ashok Kumar Ghosh

Respondent : State of Bihar

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI Cr. Rev. No. 294 of 1999 (R) --- 1. Ashok Kumar Ghosh S/o Late Kalipado resident of Bagdegi Colliery P.S. Jorapokhar and District Dhanbad 2. Rabindra Paswan S/o Late Sadanand Paswan resident of Lodna Khapra Dhowra P.S. Tisra and District Dhanbad Petitioners Versus The State of Bihar Opp. Party --- CORAM : HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY --- For the Petitioners : Mr. Yogesh Modi, Advocate For the Opp. Party : Mr. Pankaj Kumar, A.P.P. --- 07/01.03.2017 Heard Mr. Yogesh Modi, learned counsel appearing for the petitioners and Mr. Pankaj Kumar, learned A.P.P. for the State. This application is directed against the judgment dated 17.09.1999 passed by the learned 3rd Additional Sessions Judge, Dhanbad in Criminal Appeal No. 53 of 1991 whereby and whereunder the judgment dated 16.05.1991 passed by the learned Sub Divisional Judicial Magistrate, Dhanbad in P.F.A. Case No. 16 of 1990 convicting the petitioners for the offence punishable under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act (hereinafter referred to as the Act for sake of brevity) and sentencing them to undergo rigorous imprisonment for nine months and to pay a fine of Rs. 1500/- each has been affirmed. The prosecution report was submitted

in which it was alleged that the complainant along with two other persons had gone to Lodna Co-operative Society Limited, Bagdegi Colliery and found twenty two kilograms Suji kept in a gunny bag. The complainant purchased 600 grammes of Suji from the petitioner no. 2 and issued Form VI to the petitioner no.

2. The sample was divided into three parts and one part was sent to the Public Analyst and after receipt of the report of the Public Analyst sanction was obtained and prosecution was subsequently lodged on 14.06.1990. After cognizance was taken in P.F. A. Case No. 16 of 1990 trial proceeded and since the prosecution had proved its case beyond all reasonable doubt the petitioners were convicted for the offence -2- punishable under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act and were sentenced to undergo rigorous imprisonment for nine months as also to pay a fine of Rs. 1500/-. The petitioners preferred an appeal being Criminal Appeal No. 53 of 1991 which however was dismissed by the learned 3rd Additional Sessions Judge, Dhanbad on 17.09.1999. Assailing the impugned judgment and order of conviction and sentence and its affirmation in appeal learned counsel for the petitioners has submitted that the provisions of the Act has not been followed in view of the fact that no information was given to the petitioners that they can make an application before the court below by getting the sample analyzed by the Central Food Laboratory. Learned counsel submits that in absence of such information in terms of the mandatory provisions as envisaged in Section 13(2) of the Act, the entire prosecution case fails and, therefore, the petitioners deserves to be acquitted from the charge levelled against them. Mr. Pankaj Kumar, learned A.P.P., has supported the impugned judgment and stated that the sample of Suji which was taken from the store was found to be adulterated and after completing the necessary formalities including obtaining of sanction the prosecution was lodged. It has been stated that the petitioners were served with a copy of the report of the Public Analyst which has been mentioned as an exhibit but even then the petitioner had never challenged the authenticity of the report of the Public Analyst before the Central Food Laboratory and, therefore, the prosecution had sufficiently proved its case against the petitioners. In course of trial three witnesses were examined out of which P.W. 3 Baleshwar Prasad was tendered by the prosecution. Prosecution has tried to prove its case by examining the complainant P.W. 1 Abdul Hnan and P.W. 2 Sailendra Prasad Sharma. P.W. 1

has stated about the purchase of Suji and after serving a notice in Form VI the sample was divided in three parts and were sealed. This witness also stated that one sample was sent to the Public Analyst and the report of the Public Analyst opined that the Suji was -3- adulterated and subsequent to the report submitted by the Public Analyst a complaint petition was prepared and was filed which was marked as exhibit 5. P.W. 2 Sailendra Prasad Sharma is also one of the accompanying witness to P.W1 who more or less supported the prosecution case. The prosecution has also brought on record several documents which were marked as exhibit including the report of the Public Analyst (Exhibit - 4), prosecution report (Exhibit - 5), sanction order (Exhibit

6) receipt of Analyst report (Exhibit -

7) as well as some other documents relating to taking of sample and authorization of P.W.

1. Exhibit 7 appears to be a receipt given by the petitioner no. 1 regarding the report of the Public Analyst served to him. Now it is to be seen as to whether the service of the report of the Public Analyst on the petitioner no. 1 would amount to compliance of the provisions of Section 13 of the Act. Section 13 of the Act reads as under:- 13. Report of Public Analyst. - [(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 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 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. Sub-section 2 of section 13 reveals that the report of the

Public Analyst shall be forwarded to such person or persons informing him/them that if he/they so desire may make an application in the court below 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 -4- local health authority analyst by the Central Food Laboratory. Sub-section 2 of Section 13 is a mandatory provisions under the Act and the accused has to be appraised about his rights in getting the sample of food tested by the Central Food Laboratory. Mere handing over of the report of the public analyst to the accused concerned without informing him about the said fact would amount to violation of the mandatory provisions of the Act. The entire conviction of the petitioners is based on the report of the Public Analyst and the evidence of P.W. 1 and P.W.

2. The mechanism set in motion under the provisions of the Act cannot survive if the entire process starting from preparation of sample of the food taken to the right to be exercised by the accused is duly explained to him is not followed. The right of the accused to avail of his remedy in getting the sample of food tested by the Central Food Laboratory cannot be extinguished or annihilated as the basic object and purpose of such test is to cross check the report of the Public Analyst by a higher body which is the Central Food Laboratory. Exhibit 7 does not at all suggest that the petitioners have been afforded a reasonable opportunity to avail his remedy under Section 13(2) of the Act which fact has not been considered by either the learned trial court or by the learned appellate court. The entire prosecution case thus fails for not correctly appreciating the mandatory provisions as envisaged 13(2) of the Act. Consequent to what has been discussed above, the impugned judgment and order of conviction dated 17.09.1999 passed in Criminal Appeal No. 53 of 1991 by the learned 3rd Additional Sessions Judge, Dhanbad and its affirmation in appeal on 16.05.1991 passed by the learned Sub Divisional Judicial Magistrate, Dhanbad in P.F.A. Case No. 16 of 1990 both are, hereby, set aside. The petitioners are acquitted from the charges levelled against them. They are also discharged from the liabilities of their bail bonds. This application is allowed. (Rongon Mukhopadhyay, J.) Umesh/-