

**Mohan Chandra Deka Vs. State of Assam**

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**Court :** Guwahati

**Decided On :** Jan-20-2005

**Judge :** I.A. Ansari, J.

**Acts :** [Prevention of Food Adulteration Act, 1954](#) - Sections 7, 13(2) and 16(1); Code of Criminal Procedure (CrPC) - Sections 313; [Constitution of India](#) - Article 21; Prevention of Food Adulteration Rules

**Appeal No. :** Criminal Revision No. 164 of 1997

**Appellant :** Mohan Chandra Deka

**Respondent :** State of Assam

**Advocate for Def. :** F.H. Laskar, Adv.

**Advocate for Pet/Ap. :** Rajshekhar, Amicus CuriaeNone

**Prior history :** I.A. Ansari, J. 1. This revision has arisen out of the judgment and order, dated 17-2-1997, passed, in Criminal Appeal No. 54 of 1996, by the learned Sessions Judge, Kamrup, dismissing the appeal and upholding the judgment and order, dated 4-10-1996, passed, in CR Case No. 999/93, by the learned Chief Judicial Magistrate, Kamrup, Guwahati, convicting the accused-petitioner under Section 16(1)(a)(i) read with Section 7 of the Prevention of Food Adulteration Act (hereinafter referred to as the ' )

**Judgement :**

## **I.A. Ansari, J.**

1. This revision has arisen out of the judgment and order, dated 17-2-1997, passed, in Criminal Appeal No. 54 of 1996, by the learned Sessions Judge, Kamrup, dismissing the appeal and upholding the judgment and order, dated 4-10-1996, passed, in CR Case No. 999/93, by the learned Chief Judicial Magistrate, Kamrup, Guwahati, convicting the accused-petitioner under Section 16(1)(a)(i) read with Section 7 of the Prevention of Food Adulteration Act (hereinafter referred to as the 'PFA Act') and sentencing him to suffer rigorous imprisonment for three months and pay a fine of Rs. 1,000/-.

2. The case of the prosecution, as unfolded at the trial, may, in brief, be stated as follows : -

On 16-07-1993, on receipt of information, Sri RP Barua, Executive Magistrate, Guwahati, requisitioned the service of Sri Khagendra Nath Goswami, Food Inspector, whereupon the said Food Inspector (PW1), accompanied the said Executive Magistrate, visited the premises of M/s Mausumi Enterprise, situated at Fatasil Ambari, Guwahati. The accused-petitioner, who was present at the said premises, introduced himself as proprietor thereof. At the said premises, sweetened Carbonated Water, popularly known as cold drinks, were found being manufactured and also stored for sale for human consumption. It was also found there that in the said manufacturing process, glass bottles of beverages of established brand names, such as, Campa, Nova, Rush, Trip and Thrill were being used for bottling the said carbonated water. The said bottles were being filled up with the liquid manufactured at the said premises and the same were being stored for sale for human consumption under the said brand names. The Food Inspector collected samples of the said carbonated water and the samples, so taken, were sealed and packed, observing the formalities prescribed under the prevention of Food Adulteration Act (hereinafter referred to as 'the PFA Act') and the Prevention of Food Adulteration Rules (hereinafter referred to as the 'PFA Rules'). The entire stock of the filled bottles found at the said premises was seized and the zimma thereof was given to the accused. One of the samples of the cold drink, so taken, was sent for chemical analysis. In course of time, the Public (Analyst, who

examined a part of the sample, opined, vide his report (Ext. 10), that the same was 'misbranded'. After obtaining requisite sanction for prosecution, Sri A.C. Sarma, Food Inspector, lodged a complaint in the Court of Chief Judicial Magistrate, Kamrup, Guwahati.

3. During trial, the accused-petitioner pleaded not guilty to the charge framed against him under Section 16(1)(a)(i) read with Section 7 of the PFA Act. In support of their case, the prosecution examined two witnesses. The accused was, then, examined under Section 313 Cr.P.C. In his statement, so recorded, the accused-petitioner denied that he had committed the offences alleged to have been committed by him, the case of the defence being that of denial. In support of their case, the defence also adduced evidence by examining one witness.

4. On conclusion of the trial, the learned trial Court, on finding the accused-petitioner guilty of the charge framed against him, convicted him accordingly and passed sentence against him as hereinabove mentioned. As the appeal preferred by the accused-petitioner also failed to yield any favourable result, the accused-petitioner has, now, impugned the same in the present revision.

5. Since none appeared on behalf of the accused-petitioner, this Court appointed Sri A. Rajsekhar, learned counsel, as the Amicus Curiae and accordingly heard him. Also heard Mr. F.H. Laskar, learned Additional Public Prosecutor, Assam, for the opposite party.

6. There is no dispute before me that the only material grievance, which was taken by accused-petitioner, at the time Of his trial, was that no notice, in terms of Section 13(2) of the PFA Act, had been served on him. In short, the accused denied to have received the notice, which PW1 claimed to have been issued under Section 13(2). The learned trial Court, relying upon the decision in Ratanlal Agarwalla v. State of Assam, reported in (1993) 1 GLR 286, held that Ext. 16 is the notice, which was sent by registered post with AD, Ext. 17 is the postal receipt in this regard and that these two pieces of evidence, namely, Ext. 16 and Ext. 17 clearly showed that the notice was properly posted after being correctly addressed to the accused-petitioner and, hence, the notice, so issued, could be lawful presumed to have been served on the accused. The learned trial Court also

observed that there is nothing in the evidence on record to show that prejudice had been caused to the accused in his taking of any defence in the absence of service of notice under Section 13(2). The learned trial Court further held that since the offence alleged to have been committed by the accused-petitioner is of 'misbranding', no prejudice could be said to have been caused to the accused-petitioner on account of non-production of any evidence to show that the notice, sent under Section 13(2), had been received by the accused-petitioner. The learned appellate Court, while dismissing the appeal, merely observed to the effect that for rejecting the plea of the alleged contravention of Section 13(2), the learned Magistrate had assigned cogent reasons.

7. While considering the above aspect of the matter, what is of utmost importance to note is that in *State of Orissa v. Gauranga Sahu*, reported in (2003) Cr. L.J. 3077 (SC), the question raised was whether on finding that the mandate of Sub-section (2) of Section 13 of the PF Act had not been complied with, the High Court ought to have acquitted the accused holding that a statutory valuable right available to the accused had been taken away. Dealing with this aspect of the matter, the Apex Court observed and held as follows : -

'4 It is argued on behalf of the accused that mere dispatch of the report is not enough; and that the prosecution is further obliged to prove that the letter so dispatched had reached the addressee, i.e., the accused. We agree with this submission, as we believe that forwarding a copy of the report is not only a ritual, but also a statutory requirement to be mandatorily observed in all the cases. Despatch of such a report is intended to inform the accused of his valuable right to get the other sample analysed from the Central Food Laboratory.'

8. From what have been held by the Apex Court in *Gauranga Sahu* (supra), it is abundantly clear that the prosecution, besides proving that a copy of the public analyst's report had been forwarded to the accused in terms of Section 13(2) of the PF Act, must also prove that the notice/letter, dispatched in terms of Section 13(2), had reached the addressee i.e. the accused, for, this obligation is not a mere ritual, but a statutory mandate, which must be observed in all cases. The law, so clearly laid down by the Apex Court, leaves no room for doubt that

compliance of Section 13(2) will not be treated complete unless the prosecution discharges its additional obligation of proving, by adducing cogent evidence, that the notice issued under Section 13(2) has been served upon, and or received by, the accused. The object, as the decision in Gauranga Sahu (supra) reflects, is to 'inform' the accused about his valuable right to get the sample analysed from the Central Food Laboratory. Whether in the facts of a given case, the notice can be treated to have been served on an accused or not will, however, be a question of fact, which has to be determined on the basis of the facts of the given case. In the set of facts proved in Gauranga Sahu (supra), the Court held that the letter, issued in terms of Section 13(2), had been proved to have been received by the accused.

9. That Section 13(2) is mandatory, in nature, has been accepted by this Court in its decision, namely, Shyamal Nag v. State of Assam, reported in (2004) 1 GLT 667, wherein the Court has observed, on taking note of the decision in Gauranga Sahu (supra), thus, '..... it can be safely said that Section 13(2) is mandatory in nature and it confers valuable right on the accused, denial of which would constitute prejudice to the accused entitling him to acquittal.'

10. The question, which has been raised now, is as to whether non-compliance of Section 13(2) will per se vitiate the trial or the accused is required to prove that prejudice has been caused to him by non-service of the report. While dealing with this aspect of the matter, it is of immense importance to note that to receive fair trial is the constitutional right of every accused and the State carries the corresponding duty, in terms of Article 21 of the Constitution, to provide 'fair trial' to the accused. The right to have fair trial by an accused means that the trial has to be fair at its every stage. When the Supreme Court has held that the forwarding of a letter/notice alongwith the report to the accused, in terms of Section 13(2), constituted a valuable right of the accused to get the sample analysed from the Central Food Laboratory, it logically follows that the compliance of Section 13(2) becomes mandatory, for, this compliance becomes a condition precedent for a fair trial. If it is not followed, then, the provisions of Section 13(2) being mandatory, the non-compliance thereof will per se vitiate the trial.

11. It was sought to be raised, on behalf of the prosecution, that even if there is no direct or cogent evidence to prove that the notice under Section 13(2) had been received by the accused, the accused can very well, while appearing in the Court in pursuance of the summons issued for trial, apply for sending one part of the sample to the Central Food Laboratory (hereinafter referred to as 'the CFL'). While considering this facet of the prosecution's argument, it is imperative to note that the object of Section 13(2), as the decision in Gauranga Sahu (supra), shows and as has been pointed out herein above, that the accused be informed of his right to get the sample analysed from the CFL.

12. In view of the fact that the object of giving of a notice under Section 13(2) is really to 'inform' the accused of his valuable right to get the sample analysed from the CFL, it is not enough for the prosecution to say, in the light of the decision in Gauranga Sahu (supra), that the accused ought to have known the law that he has the right to get the sample analysed from the CFL. The obligation of the prosecution is really to 'inform' the accused of his right to get the sample analysed from the CFL. If the accused is not informed that he has a right to send the sample for analysis, the mere fact that the report had been received by the accused will be of no material consequence.

13. Considered thus, the object under Section 13(2) is not to merely ensure that the accused gets, if he so opts, analysed a part of the sample from the CFL, but the purpose is also to 'inform' the accused that he has such a right vested in him. Giving of the 'information' is, thus, an essential ingredient of the Section 13(2) and this cannot be said to have been achieved unless cogent evidence is adduced to show that such an 'information' had, indeed, been made available to the accused.

14. In a prosecution under the PFA Act, it is essentially the report of the Public Analyst, which forms the basis for conviction of the accused ; hence, it is quite logical that the legislature, in their wisdom, deemed it mandatory for the State to not only serve a copy of the Public Analyst's report on the accused, but also to inform the accused of his right to get the sample analysed from the CFL. It further logically follows that if merely a copy of the report of the Public Analyst is served on the accused, this, in itself, will not constitute compliance of Section 13(2). Far

from this, the prosecution has also the obligation to prove convincingly and beyond doubt that the accused had been informed that he had a right to get analysed the sample by the CFL. If this information is not given to the accused, serving of the report of the Public Analyst to the accused will be a mere ritual and will not satisfy the rigour of Section 13(2).

15. A microscopic reading of the provisions of Section 13(2) shows, if I may reiterate, that the object behind Section 13(2) is not merely to make a report of the Public Analyst reach the accused, but also to 'inform' him that he has right to get the sample examined from the CFL. The underlying emphasis in Section 13(2) is on the word 'information'. The dictionary meaning of the word 'information' is the knowledge communicated or received concerning a particular fact or circumstance, that is to say, let the accused know that he has a right to get the sample analysed from the CFL. Thus, Section 13(2) is an exception to the general philosophy that ignorance of law is no excuse and it can be no argument that irrespective of the fact whether the accused had received the notice under Section 13(2) or not, he could have, on his appearance in the Court, prayed for sending a part of the sample to the CFL for analysis.

16. In *Ratanlal Agarwalla (supra)*, the Full Bench construed that the word 'forward', used in Section 13(2), indicates that the obligation of the prosecution is merely to send notice to the place or destination and does not mean serve or deliver. Having so construed, the Full Bench concluded that Section 13(2) is directory and its non-compliance would not per se vitiate the trial. In view, however, of the fact that the Supreme Court has, now, held in *Gauranga Sahu (supra)*, that the prosecution's burden is not discharged merely by sending the notice under Section 13(2), but it must also ensure that the notice is received by the accused, for, the purpose of dispatch of the report is to inform the accused of his valuable right to get the sample analysed from the CFL, there can be no escape from the conclusion that Section 13(2) is mandatory and non-compliance thereof per se vitiates the trial. Since the object of Section 13(2) is really to 'inform' the accused that he has the option to get the sample analysed from the CFL, it is clear that for achievement of this object, the condition precedent is that the notice under Section 13(2) be received by, and/or served upon, the addressee. Hence, if the report of the Public

Analysit is merely sent with a forwarding letter and even if the same is received by the addressee, the provisions of Section 13(2) will not be complied with, for, mere receipt of the report by the addressee does not fulfill the object of Section 13(2) until the information is also given to the addressee that he has the option to get the sample analysed from the CFL.

17. Since the object of Section 13(2) is to inform the accused of his right to get the sample analysed from the CFL, its non-compliance will per se vitiate the trial inasmuch as prejudice will be implicit in such non-compliance, for, the accused would not be knowing that he has the right to get sample analysed and the report, which the Public Analyst, has given can be superseded by the result, which the analysis from the CFL will render. The lack of 'information', on the part of the accused, is, in itself, a cause of prejudice and the same is sufficient to vitiate the trial.

18. Since the object of the PFA Act is to prevent adulteration of food, this Act embodies very stringent provisions for penalty by making minimum imprisonment of three months mandatory. Since the scheme of this Act shows that the conviction of the accused, eventually, rests on the Public Analyst's report and when the Legislature, in its wisdom, has used the word 'information' under Section 13(2), the provisions of Section 13(2) have to be strictly construed. Construed, thus, it becomes clear that it is imperative for the prosecution to prove that the accused knew that he had a right to get sample analysed from the CFL and that this knowledge has been derived by the accused from the notice issued under Section 13(2). If the prosecution fails to prove such knowledge on the part of the accused, it will but be necessary for the Court to treat that prejudice had been caused to the accused by non-compliance of this mandatory requirement.

19. Bearing in the mind the position of law indicated hereinabove, let me, now, turn to the present case. In the case at hand, Ext. 16 is the notice under Section 13(2) of the PFA Act and this is shown to have been sent by postal receipt, which is Ext. 17. The accused had, however, while cross-examining the PW1, elicited from him that he (PW1) had not produced the acknowledgement receipt in respect of Ext. 16 nor had he mentioned in Ext. 16 that the complaint had been lodged against

the accused-petitioner after serving notice on the accused under Section 13(2). While the accused-petitioner was examined under Section 313 Cr.P.C., he denied to have received the notice issued under Section 13(2). There is absolutely no evidence on record to show that the notice issued under Section 13(2) was, in fact, received by the accused-petitioner. A close scrutiny of the evidence of PW1 shows that he, nowhere, claimed that the notice under Section 13(2) had been received by the accused-petitioner. What PW1 had claimed was that he had sent a notice, which is Ext. 16, and perusal of Ext. 16 shows that it is a notice under Section 13(2). When there was no assertion on the part of PW1 that the notice under Section 13(2) had been served on the accused, the question of the accused denying the receipt of the notice, while cross-examining PW1, did not arise at all. However, during the course of recording of the statement under Section 313 Cr.P.C., when the learned trial Court enquired from the accused as to whether the notice under Section 13(2) of the PFA Act had been served on him by the Local (Health) Authority, the accused denied by saying that he had not received any such notice. There is, thus, not even an iota of evidence on record to show or even claim made that the notice under Section 13(2) had been received by, and/or served upon, the accused-petitioner.

20. Because of what have been pointed out above, I find that the conviction of the accused petitioner suffers from serious and incurable infirmity of law and cannot, therefore, be sustained.

21. In the result and for the foregoing reasons, this revision succeeds. The conviction of the accused-petitioner and the sentence passed against him is hereby set aside. The accused-petitioner is held not guilty of the charge framed against him and he is acquitted of the same.

22. Bail bond of the accused-petitioner is cancelled and his surety is discharged.

23. With the above observations and directions, this revision shall stand disposed of.

24. Let the LCRs be sent back forthwith.