

Shymal Nag Vs. State of Assam

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Court : Guwahati

Decided On : Mar-26-2004

Judge : A.H. Saikia, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 13(2)

Appeal No. : Criminal Revision No. 169 of 1996

Appellant : Shymal Nag

Respondent : State of Assam

Advocate for Def. : P. Bora, Adv.

Advocate for Pet/Ap. : J.M. Choudhury and B.M. Choudhury, Adv.

Disposition : Revision allowed

Judgement :

A.H. Saikia, J.

1. Heard Mr. J.M. Choudhary, learned senior counsel assisted by Mr. B.M. Chaudhary, learned counsel for the petitioner, and also heard Mr. P. Bora, learned P.P. Assam.

2. The only point involved in this criminal revision preferred by the petitioner against his impugned conviction under Section 16(1)(a) read with Section 7(1) of

the [Prevention of Food Adulteration Act, 1954](#) (for short the Act) and sentence to suffer rigorous imprisonment for six months and to pay fine of Rs. 1,000 in default further imprisonment for one month, is that the legal requirement as envisaged under Section 13(2) of the Act has not been complied with in the instant case.

3. Mr. Choudhary, learned counsel for the petitioner referring to the findings of the learned Sessions Judge, Nagaon recorded in his judgment dated 8.3.96 passed in CrI. Appeal No. 51(N)/95. Mr. Chaudhary, learned counsel has contended that when Food Inspector himself did not depose about the serving of notice on the petitioner in terms of Section 13(2) of the Act, the learned Sessions Judge ought to have declared that the prosecution against the petitioner was vitiated for non-compliance of the said statutory provision.

4. I have carefully perused the impugned judgment. It appears that the Appellate Court observed that though, there was no evidence as regards the service of notice on the petitioner, the said copy of the notice was produced before the Court and the trial Court took judicial notice of the said notice under Section 13(2) of the Act having marked the same as Exhibit-X. Accordingly the learned Sessions Judge found that there was sufficient compliance of notice under Section 13(2) of the Act and since he did not choose to send the sample to the Central Food Laboratory, no prejudice was caused to the petitioner. This Court does not agree with the said view expressed by the learned Judge.

5. In a recent decision of the Apex Court in a case of *State of Orissa v. Gauranga Sahu* reported in 2003 Cr. LJ 3077, it was held that the forwarding of the report of Public Analyst to the accused is not only a ritual but a statutory requirement to be mandatorily observed. It was further held that not only dispatch of the report but even its receipt by the accused has to be proved by the prosecution. In view of such settled legal position, 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.

6. In view of the legal position, laid in *Gauranga Sahu* (supra), this Court is of the view that since in the case at hand, the provision of Section 13(2) of the Act, being a mandatory one, has not been complied with, the same has greatly prejudiced the

petitioner and the entire prosecution is hereby vitiated for which the petitioner is entitled to acquittal.

7. For the foregoing reasons and observations, the impugned conviction and sentence of the petitioner is hereby set aside. Bail bond furnished is discharged.

8. In the result, the criminal revision succeeds and stands allowed.

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