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Court : Guwahati

Decided On : Oct-31-1990

Judge : S.N. Phukan, J.

Acts : Prevention of Food Adulteration Act, 1954 - Sections 3(2), 7(1), 11, 11(1) and 16; Prevention of Food Adulteration Rules, 1955 - Rules 7(3), 9A and 12

Appeal No. : Govt. Crl. Appeal No. 68 of 1983

Appellant : The State of Assam

Respondent : Shri Shiew Kumar JaIn and Shiv Kumar

Advocate for Def. : K.K. Bhatra, Adv.

Advocate for Pet/Ap. : U. Baruah, Public Prosecutor

Disposition : Appeal dismissed

Judgement :

S.N. Phukan, J.

1. This appeal is by the State against the judgment and order of acquittal dated 27-4-1983 passed by the learned Chief Judicial Magistrate, Darrang at Tezpur in C.R. Case No. 412 of 1981.

2. The prosecution case in brief is that on 15-12-1980 the Area Food Inspector, Tezpur visited the grocery shop of the accused respondent and collected one sample of tea, an article of food for human consumption after observing all the formalities under the provisions of the Prevention of Food Adulteration Act, 1954 and rules framed thereunder. On the next day a part of the sample was sent to the Public Analyst along with necessary memorandum in a sealed packet by registered post. Another copy of the memorandum with specimen impression of the seal was separately sent. Thereafter on receipt of the report of the Public Analyst dated 21-8-1981, the present prosecution was started. According to Public Analyst the sample did not conform to the standard.

3. Learned trial court found the accused not guilty of any offence punishable under Section 7(1) read with Section 16 of the Act.

4. The acquittal was mainly on the ground of non-compliance of the provisions of Rule 7(3) of the Rules as the Public Analyst instead of sending the report within a period of 45 days sent the report after expiry of 63 days. The learned court also found that the provision of Rule 9 A of the rules was also not followed and that notice in form VI (copy marked Ex. 1) as required under Clause (a) of Sub-section (1) of Section 11 of the Act read with Rule 12 of the rules was delivered to the accused before taking of the sample. I did not record the other reasons of acquittal.

5. In this appeal the only question that has to be decided is whether Rule 7(3) of the rules framed under the above Act is mandatory or not.

6. Miss Baruah, learned Public Prosecutor has placed reliance on a number of decisions of various High Courts to put forward the point that the above rule is only directory in nature. On the other hand Mr. Bhatra has also placed reliance on the decisions of various other High Courts in support of his contention that this rule is mandatory in nature.

7. In Food and Sanitory Inspector, Giddalur v. K. Subbaratnam 1983 Cri LJ 1801 Andhra Pradesh High Court held that this Rule 7(3) as amended in 1977 is directory in nature and non-compliance does not by itself vitiate the proceedings

and as such accused has to prove that prejudice was caused to him for non-compliance of the said rule. It was held that the object of the legislature is to eradicate the adulteration of articles of food which injuriously affect the health of the consumer public and public mischief may ensue if the said rule is held mandatory. Though the learned single bench observed that the object of this provision seems to be that the analysis should be done within the permissible period so that the sample may not be decomposed or unfit for analysis, the rule was held to be directory. The court took note of the fact that delay may be due to the fact that the Public Analyst may not have control over his subordinate or there may be delay in postal or communication transit.

8. The Himachal Pradesh High Court in State of Himachal Pradesh v. Punnu Ram 1985 Cr LJ 1270 also took the view that this rule is only directory. It is observed that if the Public Analyst neglects to perform the statutory duty, he can certainly be liable by way of departmental action. But such breach of rule would not create a vested right in the accused entitling him to be discharged or acquitted. Though in Rule 7(3) the word 'shall' has been used, court took the view that this rule has to be taken as a directory to achieve the object of the Act.

9. The Andhra Pradesh High Court again in B. Deva Mohana Rao v. State of Andhra Pradesh 1986 Cr LJ 495 held that the time limit prescribed in Rule 7(3) for despatch of analysis report is only directory and not mandatory. It was observed that when there was no time limit prescribed for instituting the prosecution from the date of receipt of the report, there was no reason for holding that the said period of 45 days laid down in Rule 7(3) as mandatory. It was observed that the legislative history of this rule, no doubt, indicates that the concern of the rule making authority is that the Public Analyst should conduct the analysis and communicate his report with reasonable expedition; but that does not necessarily mean that the report sent a day or two, or a few days later than 45 days should be treated as void and as of no effect.

10. In support of her contention that this Rule 7(3) is not mandatory, the learned Public Prosecutor has adopted the test laid down by the apex court in Dal Chand v. Municipal Corporation, Bhopal : 1983 CriLJ448 . In that case their Lordships

held as follows at pages 448 and 449; of Cri LJ :

There are no ready tests or invariable formulae to determine whether a provision is mandatory or directory. The broad purpose of the statute is important. The object of particular provision must be considered. The link between the two is most important. The weighing of the consequence of holding a provision to be mandatory or directory is vital and, more often than not determinative of the very question whether the provision is mandatory or directory. Where the design of the statute is the avoidance or prevention of public mischief, but the enforcement of a particular provision literally to its letter will tend to defeat that design, the provision must be held to be directory, so that proof of prejudice in addition to non-compliance of the provision is necessary to invalidate the act complained of. It is well to remember that quite often many rules though chouched in language which appear to be imperative are not more than mere instructions to those entrusted with the task of discharging statutory duties for public benefit.

11. The first case on which Mr. Bhatra has placed reliance is State Public Prosecutor v. Meenakshi Achi 1972 Cr LJ 1684 (Madras High Court). In this case it was held that the outer limit prescribed by Rule 7(3) is mandatory and not directory and in no event and under no circumstances the full rigours of the rule should be relaxed so as to result in effective deprivation of the right of the accused under Section 3(2) to get the sample in his possession analysed.

12. The Kerala High Court in Food Inspector v. Moosa 1982 Cr LJ 168 it was held that Rule 7(3) is mandatory. In coming to the above conclusion the court took into account the reduction of the period prescribed under the rules from 60 days to 45 days by amendment in the year 1974 as according to the learned court the framers of the rule were keen that the Public Analyst should discharge his duties within the period prescribed.

13. Again Kerala High Court in P.P. Azeez v. Food Inspector 1982 Cr LJ 1125 held that Rule 7(3) is mandatory.

14. Again the Kerala High Court in Food Inspector v. P.V. Pillai 1988 Cr LJ 323 held that time limit as provided in Rule 7(3) is mandatory. The learned court took

into account that certain food items are likely to get deteriorated even if some preservatives are added to it and by the passage of time the organism may multiply and cause the food item defective for analysis and as such from the very nature, the rule is mandatory and even delay of few days will cause prejudice to the accused.

15. In a latest decision of Patna High Court in Jagat Narayan Sah v. State of Bihar 1989 Cri LJ 2419 it was held that the said rule is mandatory.

16. Sub-rule (3) of Rule 7 as amended in the year 1984 runs as follows:

(3) The Public Analyst shall within a period of 40 days from the date of receipt of any sample for analysis, deliver to the Local (Health) Authority a report of the result of such analysis in form III:

Provided ....

Provided further ....

17. From the legislative history we find that this period was 60 days in the year 1974 was reduced to 45 days and thereafter it was further reduced to 40 days by amendment in 1984. Thus, I find that the rule making authority was anxious that minimum possible time should be given to the Public Analyst for analysis of the sample. I was further of the opinion that due to passage of time articles of food may deteriorate and as such the rule maker was keen to find out the actual state of the food articles on the date it was seized. With respect I am unable to accept the view expressed by the High Courts of Andhra Pradesh and Himachal Pradesh as in these decisions the court has taken the view that the rule maker wanted to cast a duty on the Public Analyst to have the sample analysed quickly. In my opinion the intention of the rule makers was to find out whether the sample seized was adulterated on the date of the seizure or nearabout that period. Otherwise, there would not have been any justification to reduce the period from 60 days to 40 days. It is true that the Prevention of Food Adulteration Act, 1954 was to remove the social evil of adulteration of the food. But in enacting the law and also making the rules the legislature as well as rule making authority also kept in view

the principle of our criminal jurisprudence that prosecution must prove the offence, and adequate protection should be provided to the accused. If we go through the provisions of the Act and the rules I find that adequate safeguard has been made for the accused so that innocent persons are not victimised.

18. I, therefore, with respect accepted the views expressed by the High Courts of Madras, Kerala and Patna that Rule 7(3) is mandatory and non-compliance would vitiate the report of the Public Analyst and benefit would go to the accused. While coming to the above conclusion I have also followed the ratio laid down by the apex court in Dal Chand (supra) wherein it was held that for this purpose the object of the particular provision must be considered.

19. As in the case in hand the mandatory provision of Rule 7(3) of Prevention of Food Adulteration Rules, 1955 has not been complied with the accused person was rightly acquitted by the learned trial court.

In the result, appeal is dismissed.

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