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Court : Andhra Pradesh

Decided On : Feb-09-1979

Reported in : 1979CriLJ1228

Judge : Madhusudanrao and ;Jayachandra Reddy, JJ.

Appellant : Puvvada Pullarao and anr.

Respondent : The Court of Second Additional District Munsif Magistrate and anr.

Judgement :

Madhusudanrao, J.

1. This is a petition under Articles 228 and 228-A of the Constitution of India for the withdrawal of C. C. No. 189 of 1977 on the file of the Court of Second Additional District Munsif-Magistrate, Guntur. The petitioners, who are the two accused in the case, seek withdrawal of the case to the High Court for disposal after determining the constitutionality of the proviso to Sub-section (5) of Section 13 of the Prevention of Food Adulteration Act (hereinafter referred to as 'the Act').

2. The Food Inspector, Guntur filed a case against the two petitioners, who are father and son, under Section 16(1-A) and Section 7 read with Section 2(i)(a)(c) of the Act alleging that they were in possession of adulterated groundnut oil for sale

and sold a sample to the Food Inspector, Guntur, on 24-1-1977. The sample of groundnut oil purchased from the petitioners was sent to the Public Analyst at Hyderabad for analysis. He reported that the sample was adulterated in so far as it contained 2% castor oil. On receipt of a copy of the Analyst's report, the petitioner submitted an application for sending the sample for analysis by the Central Food Laboratory. The sample was thereupon sent to the Central Food Laboratory, Calcutta. The Director of the Central Food Laboratory issued a certificate to the effect that the sample of groundnut oil was adulterated as it contained castor oil. The proviso to Sub-section (5) of Section 13 of the Act provides that 'any document purporting to be a certificate signed by the Director of the Central Food Laboratory shall be final and conclusive evidence of the facts stated therein.' The petitioners challenge the vires of the proviso on the ground that it offends Articles 19(1)(g) and 21 of the Constitution of India.

3. The fundamental right guaranteed under Article 19(1)(g) is the right to practise any profession or to carry on any occupation, trade or business. Every citizen has, no doubt, a right to carry on any trade or business, but he has certainly no right to carry on any trade or business in adulterated food-stuffs. The fundamental rights guaranteed under the Constitution are not absolute rights, but are qualified by the restrictions that may be imposed under the subsequent clauses of Article 19.

4. In Andhra Pradesh Grain & Seed Merchants Association v. Union of India : 1971 CriLJ1556 , their Lordships of the Supreme Court have clearly held that the Act was enacted by the Parliament in the interest of public health and that the provisions in the Act cannot be held to be unreasonable restrictions on the right to carry on trade. The object of the Act is to prevent malpractices amongst a class of traders and the classification is founded on an intelligible differentia having a rational relation to the object sought to be achieved. Moreover, the proviso in question lays down a rule of evidence and we fail to see how it places a restriction on the carrying on of a trade or business. The proviso does not even touch the fringes of the right guaranteed under Article 19(1)(g). It merely prescribes the probative value that should be given to the facts stated in the certificate of a particular authority. The object of the proviso is merely to prevent the prolonging of a dispute with regard to the components of a food suspected to be adulterated and

does not in any way affect the right of anyone to carry on any business or trade honestly. We do not, therefore, find any substance in the contention that the proviso offends Article 19(1)(g).

5. The contention that the proviso violates Article 21 of the Constitution is equally unsubstantial. What is provided under Article 21 is that 'no person shall be deprived of his life or personal liberty except according to procedure established by law'. 'Adulteration of foodstuffs and other goods' is included in the Concurrent List (HI) in the Constitution of India and the Central Government is, therefore, entitled to enact an all India legislation on the subject. The Act and the provisions therein are all valid law enacted by the Parliament which is competent to make the law.

6. Sri G. R. Subbrayan, the learned Counsel for the petitioners, contends that the proviso to Sub-section (5) of Section 13 impinges upon the principle of natural justice by depriving the accused of his right to defend himself by proving his innocence. It is argued that the provision creates a fiction of law making the opinion of the Director of the Central Food Laboratory conclusive and thus rendering the accused unable to defend himself in a trial for an alleged offence under the Act. We are unable to find any merit in this submission. The proviso does not affect the fair trial of the accused nor does it prevent him in any way from defending himself against a charge of adulteration. What all is incorporated in the impugned provision is that any document purporting to be a certificate signed by the Director of the Central Food Laboratory shall be final and conclusive evidence of the facts stated therein. The expression of an opinion by the Director in the certificate in regard to the nature of the food article shall not be misconstrued as a statement of fact in the certificate. Expression of an opinion is not the same as statement of fact. The certificate of the Director should be in the prescribed Form No. II, as provided in Sub-rule (5) of Rule 4 of the Prevention of Food Adulteration Rules, 1955. It is a clear misapprehension to construe the provision as laying down any presumption of conclusiveness and finality to the opinion of the Director. It may be noticed that the prescribed Form No. II, under which the Director issues the certificate, does not provide for the expression of any opinion by the Director, while Form No. III under which the Public Analyst gives his report, contains a

provision for the expression of the opinion. The proviso lays down a presumption of conclusive-ness and finality only in regard to the facts stated in the certificate signed by the Director and not with regard to the opinion expressed by the Director in the certificate. The decision of the question whether any particular food is adulterated or not and the other question whether any accused person is guilty or not, solely and wholly rests with the Court and the opinion of the Director cannot be binding on the Court, though the Court does not accept any evidence in rebuttal of the facts stated in the certificate of the Director. From the facts stated in the certificate, which are made conclusive under the proviso, and from the other evidence that would be available on record, the same having been adduced either by the prosecution or by the defence or by both the Courts would be arriving at a conclusion in regard to the guilt or otherwise of the accused. The certificate of the Director comes into existence only on a second analysis of the suspected food, the first analysis having already been done by the Public Analyst. If certain facts with regard to the composition of the food are stated by the Director, who is highly responsible officer, on a second analysis, it is but reasonable and proper that no further attempts are allowed to be made for analysing the suspected food for an ascertainment of its constituents or components. The provision, under the circumstances, is perfectly justified and is indeed expedient in the interests of proper criminal trials.

Moreover, as pointed out by their Lordships of the Supreme Court in Municipal Corporation of Delhi v. Ghisa Ram : 1967 CriLJ939 , Section 13(2) of the Act providing for the sample being got analysed by the Director of Central Food Laboratory after the sample has been examined by the Public Analyst, is a very valuable right conferred on the vendor and when the vendor exercises that right and gets the food analysed by the Director, the Legislature is perfectly justified in enacting a provision under which the vendor is estopped from disputing the correctness of the facts stated by the Director in his certificate. Even in cases where the facts stated by the Director of the Central Food Laboratory give rise to an inference that the food analysed by him is adulterated, the accused person would still be at liberty to defend himself by proving that he was not the seller of the adulterated food or that he was not in possession of the same for sale. The presumption of finality and conclusiveness in regard to the facts stated in the

certificate of the Director prevents attempted rebuttal of those facts only and does not prevent the accused person from showing that the adulteration, if any, disclosed from the facts stated in the certificate is due to factors for which he is not responsible.

The impugned proviso is purely a rule of evidence and such rules of evidence are not uncommon to the law. Section 41 of the Indian Evidence Act provides that judgments of certain Courts are conclusive proof of the matters stated therein. Similar provision of conclusiveness of proof is made in Section 35 of the Companies Act, Section 381 of the Indian Succession Act and Section 61 of the Indian Christian Marriage Act. For the advancement of justice and as measures of expediency and public policy, an artificial probative effect has to be sometimes given by the law to certain facts and it would not be correct to contend that such provisions of law are opposed to the principles of natural justice. The proviso in question, as pointed out already, was enacted by the Parliament to prevent evidence being produced with a view to combating the facts stated in the certificate of the Director. The Central Food Laboratory is constituted under Section 4 of the Act. It is governed by statutory rules of procedure in analysing a sample sent to it. Sub-rule (7) of Rule 4 of the Prevention of Food Adulteration Rules, 1955, makes it imperative on the Director to sign the certificate. Sub-rule (5) provides that the certificate of test or analysis shall be sent by the Director only under the pro forma given in Form II. Under these circumstances we do not find anything improper or unjust in the proviso to Section 13(5) of the Act.

7. For the reasons recorded, we do not find any merit in this petition, which is accordingly dismissed.

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