

Lallan Vs. the State

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Court : Allahabad

Decided On : Apr-20-1984

Reported in : 1985CriLJ267

Judge : I.P. Singh, J.

Appellant : Lallan

Respondent : The State

Judgement :

I.P. Singh, J.

1. Lallan, convict-appellant, has preferred this appeal against the judgment and order of Shri Bhagwant Prasad, IVth Additional Sessions Judge, Azamgarh dated 2-12-1978 convicting and sentencing the appellant in Sessions Trial No. 295 of 1976 (State v. Lallan) Under Section 16(i)(a-i) read with Section 7 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the Act) to six months rigorous imprisonment and a fine of Rs. 1000/-. In default of payment of fine to further three months regorous imprisonment.

2. The prosecution case is that on 6-12-1975 at 3.45 P.M. Pyare Lal, Sanitary Supervisor P.W.1, Shri Nath Sahai, Food Inspector P.W. 2, of Lalganj area checked the shop of Lallan appellant He ran a grocery shop and dealt in oil, spices, rice, pulses biscuits, lemon-choos and other such materials. Sri Nath

Sahai, Food Inspector P.W.2 purchased from the appellant samples of various articles including lemon-choos, which is the subject matter of the present case. This he had done after formally introducing himself to the appellant and expressing his desire to purchase the necessary samples for submitting for analysis to the public Analyst. Sample of 600 grams of lemon-choos was purchased on payment of Rs. 3-60, about which receipt Ext Ka I was prepared. The notice in Form No. VI, Ext Ka- II was served on the appellant. Both these documents were signed by the appellant. All this was done in the presence of a number of persons who had assembled there at that time. However, none had agreed to sign the documents as a witness. The sample of the lemon-choos was divided in three equal parts and sealed in three phials. One of the said phials was handed over to the appellants. All this was evidenced in the memo Ext Ka-III which was signed by the appellant. One of the samples was sent to the public Analyst, who submitted his report dt 5-1-1976 which was received by the District Medical Officer, (Health) Azamgarh on 15-1-1976 per endorsement on the said report whereby he directed the Food Inspector, Lalganj to launch prosecution at once. According to his report the sample of lemon-choos in question was coloured with three unpermitted coal tar dyes, namely, Auramine, Rhodamine B and Malachita Green (C.I. No. 41000, 45170 and 42000 respectively of 1956). In this way the sample was adulterated.

3. The Food Inspector P.W.2 received the said report of the Public Analyst on 28-1-1976. He sent its copy to the appellant under registered cover on 31-1-1976, vide its postal receipt Ext Ka-7. It was sent with a covering letter Ext Ka-8.

4. The Food Inspector obtained the sanction for prosecuting the complainant from D.M.O. (H), Azamgarh on 7-3-1976. Thereafter he filed the complaint in the court on 8-3-1976.

5. The appellant pleaded that he never sold the lemon-choos at his shop and he did not sell the alleged sample of lemon-choos to the Food Inspector, as alleged by the prosecution. He denied his signatures on all the documents produced by the prosecution. Of course he admitted that the said Food Inspector had taken the samples of Mirch and oil on that day from his shop and had obtained his

signatures on many blank un-written papers, He examined Ram Sukh D. W. 1 in his defence. He deposed that the appellant never sold lemon-choos at his shop. In cross-examination he stated that at the alleged time the shop of the appellant was surrounded by a few officers and a number of public persons. A sort of panic spread in the Bazar and shop-keepers started running away after closing their shops. However, the appellant was detained at his shop by the said officers and public men. He then stated that the public officers under threat had made the appellant to sign a number of blank papers. He also admitted that samples of Mirch and oil were taken from the appellant's shop.

6. The prosecution in order to establish their case examined Pyare Lal, Sanitary Supervisor P.W.1, Sri Nath Sahai, Food Inspector P.W.2, Chandra Ram P.W.3, a clerk of C.M.O. Office and Gabbu Lal P.W.4, Ahelmad of the court of C.J.M, Azamgarh.

7. The learned Sessions Judge after appreciating the evidence of the parties, convicted and sentenced the appellant as already mentioned above.

8. In this appeal learned Counsel for the appellant did not take up many of the points which were discussed by the learned Sessions Judge in detail and decided them against the appellant such as the compliance by the Food Inspector of Section 10(7) of the Act, granting of sanction, to prosecute the appellant by the D.M.O. (H) and the date on which the complaint was filed in the court He of course dealt upon the subject of non-compliance of the provisions of Section 13(2) of the Act and Rule 9(j) of the Rules under the Act.

9. Rule 9(j) of the Rules made under the Act runs as follows :

Rule 9(j) : It shall be the duty of the Food Inspector to send by registered post, a copy of the report received in Form III from the public Analyst to the person from whom the sample was taken within ten days of the receipt of the said report. However, in case the sample conforms to the provisions of the Act or Rules made thereunder then the person may be informed of the same and report need not be sent.

This rule existed till 4-1-1977 when it was deleted

Section 13(2) of the Act runs as follows :

On receipt of the report of the result of the analysis under Sub-section (1) to the effect that the articles of food is adulterated ; the Local (Health) Authority shall, after the institution of prosecution against the person 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 14A, forward, in such manner as may be prescribed, 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 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.

10. This section was substituted by Act No. 34 of 1976 with effect from 1-4-1976.

11. The complaint was filed on 8-3-1976. On that date the above Rule 9(j) was in force.

12. As seen above, the report of the Public Analyst was received by D.M.O. (H), Azamgarh on 15-1-1976. It was endorsed to the Food Inspector, Lalganj, to launch the prosecution The Food Inspector received that report on 28-1-1976. He sent the copy of the said report to the appellant under registered cover on 31-1-1976.

13. The argument of the learned Counsel for the appellant is that Rule 9(j) is mandatory, so the copy of the report of the Public Analyst ought to have been sent to the appellant within ten days of the receipt of the said report It is argued that as the said report was received in the office of D.M.O. (H) on 13-1-1976 and was despatched to the appellant on 31-1-1976, after more than ten days of its receipt, so the mandatory provision of Rule 9(j) was violated with the result that the prosecution of the appellant stands vitiated

14. In support of his contention that Rule 9(j) is mandatory, reliance has been placed by the learned Counsel for the appellant on the case of Kesar Singh v.

State of UP. 1979 All W.C, 591 : 1979 All LJ 1059 in which J. M L Sinha, J. had the occasion to refer to Rule 9(j) of the Rules framed under the Act At that time said Rule 9(j) was in the following terms, as quoted in para 7 of the said decision :

It shall be the duty of the Food Inspector to send by hand or registered post a copy of the report received in Form III from the Public Analyst to the person from whom the sample was taken, in case it is found to be not conforming to the Act or the Rules made thereunder, as soon as the case is filed in the Court.

15. In paragraph 8 of the decision, reference was made to another decision of this Court in the case of Puttu Lal v. State Criminal Revn. No. 565 of 1978 dated 24-7-1979 Reported in ILR(1980) 1 All 33 in which it was held that the provisions contained in Rule 9(j) are mandatory. It was further observed that similar view was taken by the High Courts of Calcutta, Andhra Pradesh and Bombay in quoted decisions of those High Courts.

16. Learned Counsel for the appellant has, therefore, argued that since Rule 9(j) is mandatory, strict observation of the provisions contained therein is called for and any deviation from the same or omission in its compliance would be fatal to the prosecution.

17. In the case of Dalchand v. Municipal Corporation Bhopal : 1983 CriLJ448 following observations are made :

There are no ready tests or invariable formulae to determine whether a particular provision in a statute is mandatory or directory. The broad purpose of the statute is important The object of the 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.

Rule 9(j) of Prevention of Food Adulteration Rules (1955) which required the Food Inspector to supply a copy of the report of Public Analyst to the person from whom the sample was taken within a period of 10 days of the receipt of the report was directory and not mandatory. 1977 Cri LJ 1634 (Andh Pra) and 1977 Cri LJ 154(Cal), Overruled (Para 1).

Every prescription of a period within which an act must be done is not the prescription of a period of limitation with painful consequences if the act is not done within that period Rule 9(j) of the Prevention of Food Adulteration Rules, as it stood prior to 4-1-1977 merely instructed the Food Inspector to send by Registered Post copy of the Public Analyst's Report to the person from whom the sample was taken, within 10 days of the receipt of the report Quite obviously the period of 10 days was not a period of limitation within which an action was to be initiated or on the expiry of which a vested right accrued The period of 10 days was prescribed with a view to expedition and with the object of giving sufficient time to the person from whom the sample was taken to make such arrangements as he might like to challenge the report of the Public Analyst Where the effect of non-compliance with the rule was such as to wholly deprive the right of the person to challenge the Public Analyst's Report by obtaining the report of the Director of the Central Food Laboratory, there might be just cause for complaint as prejudice would then be writ large. Where no prejudice was caused there could be no cause for complaint.

18. It is, therefore, clear that Rule 9(j) (since omitted from 4-1-1977) was directory and not mandatory. Obviously then the mere fact that there was a delay of a few days in sending the copy of the report of the Public Analyst to the appellant would be of no consequence. Moreover, it is obvious that the Food Inspector had received the said copy on 28-1-1976 and he desptched the same to the appellant on 31-1-1976, within three days of the receipt thereof by him. He could have acted in the matter only when the copy of the report of the Public Analyst was received by him, Rule 9(j) relates to the duties of the Food Inspector and in the circumstances he cannot be found amiss in the performance of his duty as required by Rule 9(j), In any view of the matter Rule 9(j) was substantially complied with and there was no prejudice to the appellant and it can have no

adverse effect on the prosecution.

19. Section 13(2) of the Act in its present form came into force on 1-4-1976. Its compliance, therefore, could be enforced after that date. Had the present complaint been filed on or after 1-4-1976, Section 13(2) in its present form became applicable and the Local (Health) Authority would be required to forward the copy of the report of the Public Analyst to the appellant after the filing of the complaint. But in the present case the complaint had been filed on 8-3-1976 prior to the date when the above requirement of law became applicable. It is argued by the learned Counsel for the appellant that the copy of the report of the Public Analyst could very well be sent to the appellant at any time after 1-4-1976 and its non-compliance is bound to be fatal to the prosecution case because the provisions of Section 13(2) are also mandatory in character. Reliance is placed on 1979 All WC 591 : (1979 AH LJ1059) (supra) in which it was held that if the provision contained in Rule 9(j) was of mandatory character, there is no reason why the rule contained in (corresponding provision) Sub-sections (2) and (2-A) of Section 13 be not held mandatory.

20. It is obvious that Section 13(2) was held mandatory on the analogy that its previous corresponding provision Rule 9(j) was mandatory. But as seen above, the Supreme Court has held that the said Rule 9(j) was only directory and not mandatory. So the reasoning for holding Section 13(2) as mandatory would no longer be available. But in my view that would not ipso facto make Section 13(2) directory. Applying the principles laid down in AIR 1983 SC 303 : 1983 Cri LJ 448 (supra) the provisions of Section 13(2) of the Act would be mandatory inasmuch as it confers a right on a person facing trial in the complaint to make an application to the court within a period of ten days from the date of the 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. To that extent Section 13(2) certainly became mandatory because its non-compliance may prejudice the person standing trial. But Section 13(2) does not prescribe any time limit for forwarding the said copy of the report of the Public Analyst to the accused after the institution of the prosecution against him. Thus it would be on the facts of each case that the courts will have to decide whether any prejudice has been caused to

the accused or not by any omission on the part of the Local (Health) Authority. To my mind, the entire purpose and purport of the present provision of Section 13(2) of the Act is that the person from whom sample of article of food had been taken, he should be served with the copy of the report of the Public Analyst so that he may exercise his right conferred upon him by that section. In the present case, as seen above, the copy of the report of the Public Analyst had already been forwarded to the appellant prior to the filing of the complaint. The appellant was thus placed in a position to exercise his rights under Section 13(2) of the Act the moment the prosecution was instituted against him by filing the complaint on 8-3-1976. I am further of the opinion that in the circumstances of the present case whether the copy of the report of the Public Analyst was served upon the appellant prior to or after the filing of the complaint would not have been of much consequence. I am fortified in this view by an observation made by J. M. L. Sinha, J. in 1979 All WC 591 : (1979 All LJ 1059) (supra), that is :

The mere fact that the notice (In compliance of Section 13(2) of the Act) was sent to the appellant before the institution of the complaint and not thereafter does not appear to be of much consequence. Of course the facts of that decision revealed that there was no evidence worth the name to show that the said notice was at all despatched to the appellant.

21. At any rate looking to the facts and circumstances of the present case there had been a substantial compliance of the provisions of Section 13(2) of the Act as well and no prejudice has been caused to the appellant in any way.

22. Here I may also add that the appellant though at one time had moved application before the Chief Judicial Magistrate to forward the sample kept with the Local (Health) Authority to the Central Food Laboratory for analysis yet later on he failed to deposit the prescribed fees of Rs. 40/- in that connection, with the result that the IVth Additional Sessions Judge rejected the subsequent application before him in that regard on 23-5-1977.

23. As a result of the above discussion I see no force in this appeal. The appeal is dismissed. The conviction and sentence awarded by the learned IVth Addl Sessions Judge to the appellant are confirmed. The appellant is on bail. He shall

surrender to his bail bonds to serve out his sentence. He shall be taken into custody forthwith. He is, however, granted two months time from today to deposit the fine. The order of this Court dt. 8-12-1978 staying the realization of fine meanwhile is vacated.

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