

Hirday Narain Vs. State

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Court : Allahabad

Decided On : Aug-23-1979

Reported in : 1980CriLJ240

Judge : P.N. Bakshi, J.

Appellant : Hirday Narain

Respondent : State

Judgement :

ORDER

P.N. Bakshi, J.

1. The applicant has been convicted under Section 7/16 of the P. F. A. Act and sentenced to six months R. I. and a fine of Rs. 1,000/- by the Additional Chief Metropolitan Magistrate, Kanpur. His conviction and sentence have been maintained in appeal by the Sessions Judge, Kanpur. Hence this revision.

2. According to the prosecution case, R.C. Gupta, Food Inspector found the applicant Hirday Narain selling and exposing milk for sale at about 11.35 a.m. on 25-5-1976 near Vijai Nagar Crossing, Kanpur. After disclosing his identity he purchased 660 Mls. of milk. The usual formalities were observed and the necessary documents were prepared and executed. Out of the three phials of sample of cow's milk bottled by the Food Inspector, one was sent to the Public

Analyst, Lucknow. His report indicated that the fat contents in the sample were 4.3% and non-fatty contents were 6.7%. The sample of milk was thus adulterated. After obtaining sanction from the authority concerned, prosecution was launched against the applicant.

3. It appears that during the trial an application was filed by the accused on 9-2-1977 in which it was mentioned that he desired to have the sample of milk sent for analysis to the Director, Central Food Laboratory Calcutta. It was prayed that the sample be sent for from the Local (Health) Authority and the Court be pleased to order the same to be analysed by the aforesaid Director. This application was not opposed by the Nagar Mahapalika Prosecutor. On the same day an order was passed by the Magistrate directing that the sample phial retained in the office of the N.S.A. (Nagar Swastha Adhikari) be sent to the Director, Central Food Laboratory Calcutta provided the applicant deposits the prescribed fee by 21-2-1977. Compliance of this order having been made, the sample was sent to the Director, Central Food Laboratory, Calcutta, who submitted his analysis report dated 29th July 1977. This report indicated that in sample of milk, fat content was 3.9%, while non fatty solid contents were 7.4%. In the opinion of the Director the sample did not conform to the standard prescribed under the P. F, A. Rules.

4. The defence of the applicant was that the Food Inspector took the sample of milk, but did not pay him the price. The milk, as a matter of fact, was not meant for sale. He was taking it to one of his relations. Two witnesses were examined in support of his case.

5. As already observed, the trial Court believed the prosecution evidence and convicted the accused, It rejected the defence version. The Court of appeal also endorsed the findings of the Magistrate. So far as the extent of adulteration is concerned, the Public Analyst had reported that the fat contents were 4.3% and non-fatty solid contents were 6.7%. The Director, Central Food Laboratory, Calcutta had also reported that the sample in question contained 3.9% fat contents and 7.4% non-fatty solids. Under Section 13(3) of the P.F. Act the certificate issued by the Director, Central Food Laboratory, Calcutta supersedes the report given by the Public Analyst. As such, the Director's report alone is to be taken into

consideration. The standard prescribed for cow's milk is 3.5% fat solids and 8.5% non-fatty contents. It is thus obvious -that there was no deficiency in the sample of cow's milk so far as fat contents are concerned. But in non-fatty solids there was a deficiency of 13%.

6. Prevention of Food Adulteration Act has laid down an exhaustive procedure as to the manner in which the sample of food intended for analysis is to be taken by the Food Inspector. Under Section 11 of the P. F. Act, when the Food Inspector takes a sample of food for analysis, he has to give a notice in writing of his intention to do so to the person from whom the sample is to be taken. He has to pay the price. He has then to divide , the sample into three phials, mark it and seal it according to the manner prescribed in Rules. Thereafter under Section 11(c)(i) he has to send one of the parts for analysis to the Public Analyst under intimation to the Local (Health) Authority. Rule 14 lays down the manner in which the samples are to be taken in clean, dry bottles or jars etc. closed sufficiently tight to prevent leakage, evaporation, or entrance of moisture in the receptacle. These bottles have to be carefully sealed. Rule 15 directs that the bottles have to be properly labelled and addressed. The details concerning the sample are to be written on the labels affixed thereto. Rule 16 provides the manner of packing and sealing of the samples. Rule 17 relates to the mode of despatch of the containers of samples. It may be mentioned here that Rule 17, as it stood prior to the amendment of 4-1-1977, required the sample for analysis to be sent to the Public Analyst by Registered post or by hand in a sealed packet together with a memorandum in Form VII addressed to him. By Government Notification No. GSR 4 (E), dated 4-1-1977 this rule was amended and it was laid down that the sample shall be despatched in the following manner:

17 (a) The sealed container of one part of the sample for analysis and a memorandum in Form VII shall be sent in a sealed packet to the public analyst immediately but not later than the succeeding working day by any suitable means.

(b) The sealed containers of the remaining two parts of the sample and two copies of the memoranda in Form VII shall be sent in a sealed packet to the local (Health); Authority immediately but not later than the Succeeding working day by

any suitable means.

Under Rule 18 a copy of the memorandum and specimen impressions of the seal used to seal the packet shall be sent to the Public Analyst separately by registered post or delivered to him or to any other person authorised by him.

7. On receipt of the packet containing the sample for analysis from the Food Inspector a duty has been cast upon the Public Analyst under Rule 7 of the P. F. A. Rules, to compare the seals on the container and the outer cover with the specimen impression received separately by him. He has to note the condition of the seals thereon. Thereafter he proceeds to get the sample of food analysed. In Rule 4 of the P. F. Rules, a similar procedure has been provided when the sample of food is sent for analysis to the Director, Central Food Laboratory. Under that rule also a sample is sent either through a messenger or by registered post in a sealed packet with an enclosed memorandum addressed to the Director. Rule 4 sub-clause (3) also requires that a copy of the memorandum and a specimen impression of the seal used to seal the container shall be sent separately by registered post to the Director. On receipt of this packet the Director, or any other officer authorised in this behalf to open the same, has to record the condition of the seals of the container. After analysis he sends the certificate to the sender. It is thus clear that a double check has been placed by the Legislature on the despatch of the containers of the samples. A corresponding duty has been placed upon the Public Analyst as well as the Director, Central Food Laboratory to check up the seals of the sample bottles along with the specimen impression of the seal despatched separately to him. This safeguard has been provided with the object of eliminating the chances of tampering of the sample during the course of transit. Such a course appears to be extremely necessary, because the report of the Public Analyst and, or, of the Director, Central Food Laboratory can be used in evidence of the facts stated therein in any proceedings taken against the accused under the Act and he can be convicted thereon. If Rule 18 of the P. F. A. Rules is not strictly complied with, there would be no safeguard provided to the accused against tampering of the sample taken from him during the course of its transmission to the Public Analyst or the Director Central Food Laboratory, The comparison contemplated by Rule 7 and by Rule 4 of the P. F. Rules, becomes

meaningful only when a copy of the memorandum and the specimen signature of the seal used for sealing the packet is separately despatched to the analysing authority.

8. For the reasons given above, I am of the opinion that it has been rightly contended by the applicant's counsel that Rule 18 of the P. F, Rules is mandatory and it must be complied with, in. order to ensure a fair and impartial trial.

9. I am supported in my view by two decisions of other Courts. In 1977 FAJ 197 'State of Maharashtra v. Laxman N. Khamkar, a single Judge of the Bombay High Court had acquitted the accused on the ground that the mandatory provisions of Rule 18 of the P. F. A, Rules had not been complied with. A similar view have been expressed in 1977 FAJ 399 (Guj) Mohanlal Maganlal Sindhi v. State of Gujarat, where again a single Judge of that Court wag of the opinion that R. 18 of the P. F, A. Rules is mandatory and if violated, the accused is entitled to an acquittal. Examination of the Public Analyst does not make any difference so far as the mandatory requirement of Rule 18 is concerned.

10. Having come to that conclusion a question arises : Whether the aforesaid Rule 18 has been infringed or not in the instant case? This question has been considered by the court below. I have perused the observations of the Sessions Judge and have also scrutinised the statements of the Food Inspector Sri R. C. Gupta, and the Food Clerk K. D. Tewari. The Food Clerk in the office of the Nagar Swastha Adhikari Nagar Mahapalika, Kanpur has deposed that the parcel containing a bundle of sample was sent to the Public Analyst by Rail on 28th May 1976 vide R. R. No. C 758194; and copy of the memorandum in Form VII along with the specimen impressions of the seal was sent to the Public Analyst by registered post under registered cover No. 175 dated 1-S-1976. His evidence has been challenged on the ground that the despatch clerk has not been produced. But it is noteworthy that Sri Tewari has vouched that the aforesaid statement has been made by him after seeing the relevant office records brought by him. Correctness of these records was not challenged on behalf of the applicant. On the basis of this statement the Sessions Judge has rightly accepted the prosecution case that there has been full compliance with the provisions of Rule

18 of the P. F. A. Rules. I find no reason to upset these findings of fact. In this view of the matter the conviction of the applicant cannot be set aside on this ground.

11. It has been next contended by the applicant's counsel that the trial of the applicant is Vitiated in law because Rule 9 (e) of the P. F. A. Rules has not been complied with. Section 9 of the P. F. A. Act relates to the appointment of Food Inspectors, having the prescribed qualifications, by the Central Government or the State Government. Section 10 of the Act lays down the powers of the Food Inspectors in taking samples of articles of food. It authorises the Food Inspectors to enter and inspect the place where any article of food is manufactured or stored for sale etc. It also authorises the Food Inspectors to seize articles of food which are adulterated or mis-branded. This Section also authorises the Food Inspectors, subject to the permission of higher authority, to whom he is subordinate, to seize books of account and documents found in the possession of the- manufacturer, distributor, dealer etc. of any adulterant. Rule 9 lays down the duties of the Food Inspector in carrying out his functions. The duties enumerated in Rule 9 (a) to Rule 9 (i) are instructive and administrative in their nature. He is to carry out the inspections of the establishments. He is to satisfy himself that the conditions of the licence are being observed. He has to procure and send samples of articles of food for analysis. He has to investigate into any complaint which may be made in writing to him concerning any contravention of the provisions of the Act. He has to maintain under Clause (e) of Rule 9, a record of all inspections made and action taken by him, in performance of the duties, including the taking of the samples and the seizure of the stocks, and to submit copies of such records to the Health Officer or the Food (Health) Authority as directed in this behalf. He has to make enquiries and inspection as may be necessary to detect the manufacture, storage, or sale of articles of food in contravention of the Act. He has to stop and check any vehicle suspected to contain any food intended for sale for human consumption. He has to detain imported packages which he has reason to suspect contain food, that is prohibited. He has to perform such other duties as may be entrusted to him by the Health Officer of his jurisdiction. To my mind, these duties are administrative and directory. They are not mandatory. Their violation would not vitiate the trial of the accused. If the Food Inspector fails to discharge these duties

in accordance with the directions as laid down therein he may incur the wrath of his superior officers. He may even be subjected to departmental or disciplinary action, duties. But their for neglect of his breach would not result in setting aside the conviction of the accused. Under Rule 9 (e) if he fails to maintain a record of the inspections made by him his testimony may be challenged on the ground that his failure to maintain such a record makes him an unreliable witness. But it is always open to the court to accept his testimony, despite this default on his part. Omission to carry out these duties will not invalidate the trial, which is held in accordance with law. In my opinion, therefore, the provisions Rule 9 including Rule 9 (e) of the P.F.A. Rules are merely directory and not mandatory.

12. On the merits I find from the statement of the Food Inspector that he has made a note of the spot inspections. It has been filed in the instant case as Ext. Ka. 3 (sample book). Merely because he has not submitted a copy of the same to the Health Officer would not, in my opinion, be a sufficient ground for discarding his reliable testimony.

13. It has also been argued that the mandotory provisions of Section 11(1)(c)(ii) of the Act have not been complied with in the instant case, and, therefore, the whole trial of the accused is vitiated in law. The first question to determine in this case is whether the aforesaid section is mandatory or directory? For this purpose it would be necessary to refer to the relevant provisions of the Prevention of Food Adulteration Act as they existed prior to the Amendment Act 34 of 1976. Under Section 11 of the unamended Act when a Food Inspector took a sample of food for analysis after giving due notice of his intention to do so, he was required to divide it in three parts and to seal it and fasten each part according to the manner prescribed under the Rules. Thereafter Section 11(1)(c)(i) enjoined upon him the duty to deliver one of these parts to the person from whom the sample had been taken, Under Section 11(1)(c)(ii) the Food Inspector had to send another part for analysis to the Public Analyst and under Section 11(1)(c)i(iii) he was to retain the third part for production in case any legal proceedings were undertaken or for analysis by the Director, Central Food Laboratory. Thus, it is clear that out of the three parts of the sample one remained with the accused, one was despatched to the Public Analyst and one remained with the Food Inspector.

14. Now under the Prevention of Food Adulteration Act, as amended by Act 34 of 1976, the Food Inspector after taking the sample of food for analysis and dividing it into three parts and sealing the same in separate containers, according to the manner prescribed, has under Section 11(1)(c)(i) to send one of the parts for analysis to the public analyst under intimation to the Local (Health) Authority, and under Section 11(1)(c)(ii) to send the remaining two parts to the Local (Health) Authority for the purposes of Sub-section (2) of this section and Sub-sections (2-A) and (2-B) of Section 13. It is clear that under the amended section no sample phial is now given to the accused. One phial is sent to the Public Analyst and the other two are retained with the Local (Health) Authority. Thus, now the accused has no specimen of the sample in his possession which he could utilise under the unamended Act for a further analysis in case he was dissatisfied with the report of the Public Analyst. He has now to depend entirely upon the samples that have been retained in the custody of the local Health Authority. Under the old Act experience had shown that the third sample phial, which was left in the possession of the Food Inspector, became a toy for manipulation, with the result that very often the interests of justice were sacrificed by the improper activities of the Food Inspector, who was possessed of the sample phial and his seal and could deal with it in any manner that he desired. It is to remedy this mischief that the present amendment has been introduced by Act 34 of 1976. Under Section 11(3) of the Amended Act when a sample of an article of food is taken, a duty is cast upon the Food Inspector to send the sample to the Public Analyst by the immediately succeeding working day and he is further required to send the remaining two parts to the Local (Health) Authority, for the purpose of being utilised under Sub-section (2) of Section 11 or under Sub-section (2-A) or (2-E) of Section 13, also not later than the succeeding working day under Rule 17(b) added in January 1977. Under Section 11(2) if a sample sent to the Public Analyst is lost or damaged it is the Local (Health) Authority which has been empowered on a requisition made by the Public Analyst or Food Inspector to despatch one of those two parts which have been deposited with him. Similarly when under Section 13(2-A) an application is made by the accused, who is dissatisfied with the report of the Public Analyst, for sending a sample for examination by the Director, Central Food Laboratory, a mandatory duty is cast upon the Court to require the Local (Health) Authority to

forward the part kept by such authority to the Director. Central Food Laboratory within five days of the receipt of such a requisition. Further under Section 13(2-E) if the Local (Health) Authority is dissatisfied with the report of the Public Analyst, he has been authorised to forward one of the parts in his custody to any other Public Analyst for analysis and report in accordance with the provisions of Sub-sections (2) to (2-D) of Section 13 of the Act. It is thus abundantly clear that the Food Inspector has now been completely divested of his powers to retain custody of any of the sample phials, which could be meddled with by him, according to his desires and whims. He must now despatch one part to the Public Analyst under intimation to the Local (Health) Authority and the other two parts must be deposited by him with the Local (Health) Authority not later than the succeeding working day.

15. Having regard to the aforesaid provisions of the Food Adulteration Act, I am of the opinion that Section 11(1)(c)(ii) is a mandatory provision which must be complied with by the Food Inspector strictly failing which the fairness of the trial cannot be ensured and the liberty of the citizens 'would be thrown to the winds.

16. The question which now arises is : Whether there has been a compliance of these provisions in the instant case? It is argued that the Food Inspector R.C. Gupta, has stated that the two phials of the sample were not sent to the Local (Health) Authority, who is also the Chief Medical Officer, but were kept in the office of the Nagar Swastha Adhikari, as was the procedure prior to the amendment of the Act. I have perused the statement of the Food Inspector very carefully. His statement was initially recorded on 13th November 1976. He has stated that the three phials were deposited in the office of the Nagar Swastha Adhikari, out of which one was despatched that very day along with the memorandum to the Public Analyst. Shri R.C. Gupta was cross-examined on 30th August 1977. On that date the statement that he gave was that after the new Act came into force, the two sample phials should have been deposited with the Local Health Authority but the old procedure was being followed. He also mentioned that the Local (Health) Authority was Dr. Radhey Shyam Sharma. He is also designated as the C.M.O. This later part of the statement obviously implies that Dr. Radhey Shyam Sharma was the Local (Health) Authority and the C. M. O., Kanpur when he gave

the statement viz. on 30th August 1977.

17. Amendment Act 34 of 1976 came into force on the 1st April 1976. The offence in question is alleged to have been committed on 25-5-1976. Under the Amended Act, Section 2(viii-a) 'Local (Health) Authority' in relation to a local area, means the officer appointed by the Central Government or the State Government, by notification in the Official Gazette, to be in charge of Health administration in such area with such designation as may be specified therein.' In pursuance thereto Government Notification No. 6000/-XVI-10-722-65 dated 18th September 1976 was issued by which all Chief Medical Officers were appointed Local (Health) Authority in charge of health administration under the Act for the whole of the Uttar Pradesh. Thus it is evident that from 18th September 1976 onwards the sample of food which is taken by the Food Inspector must compulsorily be deposited with the Chief Medical Officer, who have been appointed Local (Health) Authority, but prior to such date the deposit of these...sample phials could only be made with the Nagar Swastha Adhikari, for there was no other authority in existence competent to accept the deposit of the sample phials. Therefore,' the action of R.C. Gupta, Food Inspector, in depositing the phials in question in the office of the Nagar Swastha Adhikari under Section 11(1)(c)(ii) of the Act was perfectly in accordance with law. The statement of R.C. Gupta given on 30th August 1977 was also correct because by that date Chief Medical Officers had already been appointed as Local (Health) Authorities and thereafter under the procedure prescribed the sample phials were to be deposited with the C. M, O. under Section 11(1)(c)(ii) of the Amended Act. In my opinion, therefore, no illegality had been committed by the Food Inspector in depositing the sample phials in the office of the Nagar Swastha Adhikari on the date when he took these samples, viz. 25-5-1976.

18. No other point has been argued before me in this revision.

19. The question of reduction in sentence does not arise because after the enforcement of Act 34 of 1976 the minimum sentence which can be inflicted for an offence under Section 7/16 of the P. F. A. Act is imprisonment for a term which shall not be less than six months and a fine which shall not be less than Rs. 1000/-

20. For the reasons given above, this revision application is hereby dismissed. The applicant is on bail. He shall be taken into custody forthwith to serve out the unexpired portion of the sentence of imprisonment. The interim order dated 14-3-1978 staying realisation of fine is hereby vacated.

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