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Court : Allahabad

Decided On : Aug-17-1973

Reported in : 1974CriLJ128

Judge : M.N. Shukla and ;Chandra Prakash, JJ.

Appellant : The Nagar Mahapalika

Respondent : Gopal

Judgement :

1. This is an appeal on behalf of Nagar Mahapalika, Ghaziabad against an order dated 15-9-1969 of Sri S. C. Misra, Additional Sessions Judge, Meerut acquitting the respondent under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act.

2. The prosecution story was that on 26-11-67 at about 4-45 p.m. the Food Inspector Sri J. C. Verma intercepted the respondent Gopal at Kaila Road, Ghaziabad, while the latter was carrying a can of milk over his head and another can in his hand for sale. On being questioned, the respondent replied that he was going to sell she-buffalo milk. Thereupon the Food Inspector aforesaid purchased a sample thereof in the presence of the witnesses, and divided the same in three separate phials. The Food Inspector also served a notice upon the appellant intimating that one phial of the sample would be sent to the Public Analyst. A receipt of its purchase was issued by the Food Inspector, which was signed by the

witnesses. To each phial of the sample milk, 16 drops of formalin was added for the purposes of preservation, and each phial was sealed, labelled and signed by the Food Inspector. One of these phials was handed over to the respondent, one was retained by the Food Inspector and one was forwarded to the Public Analyst for analysis. A report dated 11-1-68 was received from the Public Analyst, in which it was disclosed that the sealed sample of milk sent to him for analysis was deficient in fat contents by about 57 per cent, and in non-fatty solid contents it was deficient by about 8 per cent. On the basis of the said report, the Municipal Medical Officer of Health, Ghaziabad, submitted a complaint against the respondent in the court of the Subdivisional Magistrate, Ghaziabad on 29-2-68, and the learned S.D.M. took cognizance of the offence under Section 16 of the Prevention of Food Adulteration Act read with Section 7(1) of Act No. XXXVII of 1954 on 26-3-68 and summoned the respondent for 22-4-68. The respondent eventually appeared in court on 15-5-68.

3. The respondent denied that any sample of milk was purchased by the Food Inspector on payment of its price. He, however, admitted his thumb mark on the notice (Ext. Ka-2) served upon him by the Food Inspector, and alleged that it was obtained under compulsion. According to him, he had a row with the Food Inspector and on that account he was falsely implicated.

4. The prosecution examined three witnesses in support of its case. The respondent produced two witnesses in his defence. After considering the entire evidence on record the learned Magistrate came to the conclusion that the respondent really sold she-buffalo milk, for which a sample was purchased by the Food Inspector and it was later found adulterated by the Public Analyst. Accordingly, the respondent was found guilty under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act and was sentenced to six months rigorous imprisonment and to pay a fine of Rs. 1,000/- or in default to undergo further rigorous imprisonment for six months.

5. The respondent filed an appeal in the Court below. The Court below after hearing the arguments and after a perusal of the record came to the conclusion that the prosecution story was true and the respondent had exposed she buffalo

milk for sale, from which a sample was purchased by the Food Inspector and it was later found adulterated by the Public Analyst. The Court below, however, came to the conclusion that the respondent had been denied a valuable right prescribed under Section 13(2) of the Prevention of Food Adulteration Act and that vitiated his conviction. Accordingly he allowed the appeal and acquitted the respondent. The Nagar Mahapalika has come up in appeal against the order of acquittal before this Court.

6. We have heard the learned Counsel for the parties. We have also gone through the evidence on record. After giving our thoughtful consideration we have come to the conclusion that the order of acquittal passed by the Court below cannot be allowed to stand.

7. As already noted above, the Court below has accepted the prosecution story on merits after disbelieving the defence theory, and this conclusion was not challenged even on behalf of the respondent. The only question that arises for consideration in this appeal is whether the Court below was right in holding that the respondent had lost his valuable right prescribed under Section 13(2) of the Prevention of Food Adulteration Act on account of the delay in his trial.

8. The sample was taken from the respondent on 26-11-1967 and the complaint was made against him on 29-2-1968, The respondent was summoned for 22-4-1968 and he put his appearance on 15-5-1968. In between the time and date of taking the sample and the appearance of the respondent, and during the trial, the respondent could have made payment of the prescribed fee and moved an application to the Court for sending the part of the sample for analysis to the Director of the Central Food Laboratory, but this was not done.

9. Section 13(2) of the Prevention of Food Adulteration Act reads as follows:

After the institution of a prosecution under this Act the accused vendor or the complainant may, on payment of the prescribed fee, make an application to the Court for sending the part of the sample mentioned in Sub-clause (i) or Sub-clause (iii) of clause (c) of Sub-section (1) of Section 11 to the Director of the Central Food Laboratory for certificate; and on receipt of the application the Court shall

first ascertain that the mark and seal or fastening as provided in clause (b) of Sub-section (1) of Section 11 are intact and may then despatch the part of the sample under its own seal to the Director of Central Food Laboratory who shall thereupon send a certificate to the Court in the prescribed form within one month from the date of receipt of the sample, specifying the result of the analysis.

This Section has been interpreted by the Supreme Court in the case of *Ajitprasad Ramkrishan Singh v. State of Maharashtra* : 1972 CriLJ1026 as follows:

It is clear from the sub-section that the appellant should have made an application after paying the prescribed fee if he wanted the part of the sample available with him to be sent to the Director for analysis. If he had made the application after paying the prescribed fee, the Magistrate should, have had no option but to send the part of the sample for analysis by the Director. If in pursuance of the application the part of the sample was sent to the Director and he had reported that the part of the sample was incapable of analysis for the reason that it was decomposed, the appellant could perhaps, have contended that he was deprived of his right to have the sample analysed by the Director on account of laches of the complainant and that he should be acquitted. But, since the appellant never applied under Section 13(2) of the Act, he cannot complain that he has been deprived of any right. In *Babulal Hargovindas v. State of Gujarat* : 1971 CriLJ1075 Jaganmohan Reddy, J. speaking for the Court, said that unless an application to send the sample to the Director is made, the vendor cannot complain that he was deprived of his right to have the sample analysed by the Director..The appellant could have summoned the Public Analyst and examined him if he was serious in his present contention that since the prescribed quantity of formalin was not added, the part of the sample would have become decomposed by the time the summon was served, and no useful purpose would have been served by sending the sample for analysis by the Director. There was, therefore, no evidence that the part of the sample available with the appellant had so deteriorated at the time the summon was served as to be incapable of being analysed. In *Sukhmal Gupta v. Corporation of Calcutta*, Cri. Appeal No. 161 of 1965 D/- 3-5-1968 (SC) Sikri, J. as he then was, speaking for the Court, said:...it was held by this Court in *Municipal Corporation of Delhi v. Ghisa Ram* : 1967 CriLJ939 that Section 13(2) of the Act

confers a valuable right to have the sample given to him analysed by the Director of the Central Food Laboratory but 'the reason why the conviction cannot be sustained is that the accused is prejudiced in his defence and is denied a valuable right of defending himself solely due to the deliberate acts of the prosecution.' In this case no prejudice of the defence has been shown. It has not been established on the record that the sample of tea (milk) which was available with the appellant had deteriorated by the time the summon was received. He never utilised the right under Section 13(2) of the Act of sending the sample to the Director of Central Food Laboratory.

It, therefore, follows that mere delay and laches on the part of the complainant in getting the summons served was not, in the absence of evidence to show that the sample had deteriorated when the summons was served, sufficient to hold that the accused was prejudiced by reason of deprivation of the right under Section 13(2).

10. In the present case also the respondent did not claim the benefit of Section 13(2) at the time of the trial. He claimed it for the first time in the Court below. As already held above, in view of the interpretation given by the Supreme Court, in the absence of the respondent's claim for the benefit of Section 13(2) of the Act during the trial, this should not have been considered by the Court below in the appeal, where this plea was raised for the first time.

11. The learned Sessions Judge has based his conclusion on the cases of *Net Ram v. State* 1968 All LJ 916 and *Om Prakash v. State* 1969 All LJ 133. These authorities, in view of the ruling of the Supreme Court cited above, cannot be regarded as good law.

12. It was contended on behalf of the respondent, on the basis of the judgment of the trial Court, that the Food Inspector added 48 drops of formalin to the three Phials containing 650 gms. of milk and according to Rule 20, two drops of formalin should have been added in 25 gms. of milk. The record shows that the Food Inspector mixed 48 drops of formalin with 550 gms. of milk. This shows that enough formalin was mixed with the sample of milk taken by the Food Inspector in order to prevent it from decomposition. As a matter of fact, after seeing the correct position on the record, the learned Counsel for the respondent was unable to

advance any argument on this point.

13. In the result, the appeal is allowed and the order of the Court below is set aside, whereas the order of the trial Court is restored. The respondent is convicted under Section 16(1)(a)(i) read with Section 7(1) of the Act and he is sentenced to undergo rigorous imprisonment for six months and also to pay a fine of Rs. 1,000/- or in default of payment of fine to undergo further rigorous imprisonment for six months. The respondent Gopal shall be taken into custody to serve out the sentence awarded by this Court.

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