

Sabir Khan Vs. State of U. P.

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Court : Allahabad

Decided On : Feb-12-1988

Reported in : 1988CriLJ1245

Judge : V.P. Mathur, J.

Appellant : Sabir Khan

Respondent : State of U. P.

Judgement :

ORDER

V.P. Mathur, J.

1. The lower court's record has been received. The case was taken up after the revision of the list and no one appears for the revisionist. Today is the date fixed for admission.

2. I have gone through the record of the court below and the two judgments of the lower courts with the help of the learned Counsel for the State. The points raised in the present revision are:

(i) That the applicant was not heard;

(ii) That there is no compliance of the provisions of Section 13(2) of the Prevention of Food Adulteration Act.

(iii) That Section 10(7) of the Prevention of Food Adulteration Act has not been complied with.

(iv) That there is no proper sanction in the case.

3. On the first point, it is clear that repeated opportunities were given to the revisionist to appear before the learned lower appellate court and to have his appeal properly argued and he failed to avail of the same. Therefore, the Court below was perfectly justified in proceeding with the matter and in disposing of it on merits in the light of the evidence that was brought on the record of the court below.

4. So far as the infraction of Sections 13(2) and 10(7) of the Prevention of Food Adulteration Act is concerned, the clerk from the office of the Chief Medical Officer satisfactorily proved the sending of the Analyst's Report by registered post to the correct address of the petitioner. There would be a presumption of effective service and this has not been rebutted in this case at all. Moreover since the applicant at no stage of the proceedings moved the Court for sending of the sample to the Director, Central Food Laboratory, he will not be heard to say that there has been breach of the provisions of Section 13(2) of the Act.

5. The documents mentioned two witnesses Motilal and Jeb Lal as those who were present when the sample was taken and the papers prepared. The fact of the taking of the sample is not disputed and the only allegation is that the applicant was taking the milk for his personal use and he was forced to hand over the sample of the milk to the Food Inspector. It is not necessary that the witnesses cited in the papers should be examined. Section 10(7) only makes it necessary that the Food Inspector should call independent witnesses when taking of the sample and this has been done in this case.

6. Lastly so far as the sanction is concerned, there has been application of mind in the grant of it because if any wrong fact has been cut out and re-written by the Sanctioning Authority in his own hand, this could not be said that the sanctioning Authority was not conscious of what he was doing, or was not applying his mind.

7. Under these circumstances the revision has no force on merits and is hereby dismissed at admission stage.

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