

Sughar Singh Vs. State of U.P.

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Court : Allahabad

Decided On : Apr-07-2000

Reported in : 2001CriLJ316

Judge : S.K. Agarwal, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Rules 9B and 28; [Prevention of Food Adulteration Act, 1954](#) - Sections 13 and 13(2)

Appeal No. : Cri. Revn. No. 869 of 1984

Appellant : Sughar Singh

Respondent : State of U.P.

Advocate for Def. : A.G. Adv.

Advocate for Pet/Ap. : Keshav Sahai, Adv.

Disposition : Petition allowed

Judgement :

ORDER

U.S. Tripathi, J.

1. In this case the service of the notice to engage another counsel in place of his earlier counsel Sri Keshav Sahai was served upon the application in pursuance to

the order dated 15-10-1999 on 10-11- 1999. This fact is available from the report of Chief Metro-politan Magistrate, Kanpur Nagar, dated 18-11-1999. The applicant has not engaged any other counsel. In this view of the matter, the hearing of this revision is taken up with the help of learned state counsel.

2. I have examined both the judgments of the conviction. In the present case, the conviction has been based solely on the ground that Gajar Ka Haluwa, sample of which was taken by the Food Inspector from the applicant's shop, was coloured with a prohibited coal-tar dye. Use of some coaltar dye is permitted by Rule 28 of the Prevention of Food Adulteration Act. Any dye other than one referred to in Rule 28 cannot be used. In the circumstances, the applicant was convicted by the trial Court and his appeal also was dismissed by the lower appellate Court. There is no controversy with regard to the fact that the sample was coloured with a prohibited coaltar dye as aforesaid.

3. Only one contention appears available from the judgment specially from the appellate Court's judgment i.e. with regards to the compliance of Section 13(2) of the Prevention of Food Adulteration Act (to be hereinafter called 'the said Act'). Section 13(2) of the said Act envisages that immediately on the launching of the prosecution an intimation along with report of the public analyst shall be sent to the accused by local health authority to enable such person, if he so desires, to make an application to the concerned Court within a period of 10 days from the date of receipt of a copy of the report to get his sample retained by the local health authority analysed by the Central Food Laboratory. Sub-section (2) of Section 13 clearly indicates that such an application is to be moved by the applicant within a period of 10 days from the date of receipt of the copy of such report. The prosecution evidence shows that in all likelihood report is received by the accused. It does not stand to reason that the prosecution has no liability to see that the report is received by the accused. No doubt, it is generally the endeavour of an accused to either refuse such a notice or some how to avoid its service upon him but even then the prosecution cannot be absolved of such an obligation.

4. Rule 9(B) of the above Act, further impose an obligation on the prosecution i.e. the local health authority, to send the analyst report to appropriate person within

10 days after the institution of prosecution in Form-3 by registered post or by any other mode of service as may be found appropriate, to the accused person from whom the sample of the articles was taken by the Food Inspector. The provision of sending such report after the institution of the prosecution within 10 days either by registered post or by any other mode as may be appropriate connotes in a clear tone the real intention behind the provision. We cannot lose sight of the fact that this provision has been introduced in the Act, especially setting of a time frame of both sides, to avoid any undue benefit to an accused on account of any deterioration of the article due to passage of time and secondly facilitate an expeditious disposal of his trial. The words 'by registered post or any other mode as may be appropriate' clearly point towards this end. As has earlier been observed that the prosecution is to establish the factum of service upon the accused. We are coming across cases where notices so sent were received back unserved, bearing no endorsement about its refusal, in the office of local health authority. In case if no fresh attempt to serve the same is made by the prosecution can it be treated as sufficient compliance of the provisions of Section 13(2) of the Act. My response to this query firmly is in the negative. Similarly if the vendor is out of the town with his family and if the registered letter of local health authority is returned by area's postman with an endorsement that house is locked from outside. Neighbours reported addressee to be out of station likely to return within 2 weeks or one week can it be claimed sufficient compliance of this mandatory provision. My reply again is in the negative.

5. This period of 10 days was not there earlier in Rule 9-B or Section 13 for compliance by the prosecution. It had been introduced in Rule 9-B by notification dated 9-7-1984 with effect from that very day. Thus the Legislature also intended strict compliance of this provision by the local authority concerned. No doubt the above said amendment is not applicable in the present case in as much as the sample in this case was taken on 15-12-1980 but the spirit behind this amendment cannot be kept aside by a court of law.

6. In this case, the complaint was filed in the Court on 28-5-1981. The compliance of Section 13(2) and Rule 9-B was made by the health authority as is available from the testimony of P.W. 2, Nisha Srivastava, on 26-6- 1981. Thus, in the

present case, the notice along with Public Analyst's report was sent to the applicant nearly after 28 days. In this case, Public Analyst was also summoned at the behest of the applicant on the ground that the Public Analyst's report does not give the procedure adhered to by him in coming to the conclusion that his sample was adulterated with a prohibited coaltar dye. The judgment of the lower appellate Court shows that the evidence of the prosecution was commenced on 27-4-1982. Thereafter some adjournments were taken by the applicant. He applied for summoning the Public Analyst on 20-11-1982 and after the examination of Public Analyst an application was moved for sending the second phial to the Central Food Laboratory for analysis. The finding returned by the Sessions Judge is that since opportunity was not availed by applicant within the prescribed time this application is intended to delay the proceedings.

7. In my opinion, in every case a delayed application ought not to be rejected. In the present case the conviction was for addition of prohibited coaltar dye. If the result of analysis by Central Food Laboratory also corroborated presence of prohibited coaltar dye no benefit would have accrued to the applicant. The deterioration in quality must not have introduced any change in coaltar dye. His application ought not to have been rejected mechanically. This delay in making an application for sending the impugned sample to the Central Food Laboratory by an accused has to be examined in the light of the fact of each and every case. It must not be rejected in a mechanical manner simply on the ground that it had not been moved within the prescribed time. The intention behind this fixation of time limit is not to be used or applied negatively. It must be used pragmatically and progressively. It appears to have been introduced only to overcome any use of this beneficial provision for dilatory purposes so that the sample may deteriorate beyond analysis and there by frustrate the purpose of the enactment.

8. No finding has been recorded by the learned Sessions Judge with regard to the fact whether there was any service of the notice along with the copy of Public Analyst's report sent to the applicant by the health authority. The evidence of Km. Nisha Srivastava only established that such a notice was sent through registered post. It does not show that any A.D. was also sent to the applicant along with this registered post and was received back in the office which could have indicated the

service of the report upon the applicant. In the circumstances, the result of the above analysis is that in the present case definitely the applicant had been made to suffer for no proper compliance of Section 13(2) and refusal by the Court to send his sample to the Central Food Laboratory on the sole ground that it will delay the proceedings has resulted into serious prejudice to the applicant. As earlier observed that this aspect of delay or dilation in making the application on account of a tendency to dilate the trial should be examined in the light of the facts available on record. Such applications must not be rejected by the Courts below on the sole ground that it had been made with an ulterior motive to considerably delay the trial. It is also the duty of these Courts to safeguard the 'interest of justice'. The trial Courts are to allow the analysis of sample if the article of food is such that there can be no effect of this delay in making the application for analysis by Central Food Laboratory.

9. As a matter of fact if the report of Director comes that the sample is not fit for analysis the accused is not entitled to any benefit nor any such claim, he is entitled to make in view of fixation of this time limit for making an application by the law.

10. In the result, this revision is allowed. The conviction and sentence of the applicant is set aside. He is on bail. He need not surrender. His bail bond is cancelled and surety bonds are discharged.