Rajesh Kumar Vs. State of U.P.

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Court : Allahabad

Decided On : Nov-23-2000

Reported in : 2001CriLJ2093

Judge : S.K. Agarwal, J.

Acts : Prevention of Food Adulteration Act, 1954 - Sections 2, 7, 8, 13(2), 13(2A) to 13(2D) and 16

Appeal No. : Criminal Revn. No. 1314 of 1986

Appellant : Rajesh Kumar

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : D.N. Wali, Adv.

Disposition : Petition allowed

Judgement :
ORDER

S.K. Agarwal, J.

1. Heard learned counsel of the applicant and learned A.G.A.

2. This revision arises, from an order of conviction passed by Judicial Magistrate. Hapur, Sri R.A. Kaushik, in Crl. Case No. 1073 of 1985 Under Section 7/16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the 'Act') and an imposition of sentence of six months and of fine of Rs. 1,000/-. The judgment and order dated 5-8-1986 passed by the Addl. Sessions Judge, Ghaziabad. Sri N.C. Jain, in Crl. Appeal No. 8 of 1986 in afirmation of the above mentioned conviction and sentence both have been challenged in this revision by the applicant.

3. Brief facts of the case are that the Food Inspector, P.C. Gautam took a sample of Asafoetida (Heeng), 30 gms. from the applicant, on payment of Rs. 9/- as its price. The inspector after completion of all the formalities, i.e. preparation of Form VI, sealing of the sample, signatures of the applicant over the slips pasted on the seal etc. sent one of the sample phial ot Public Analyst for its analysis. The Public Analyst's report indicated the sample to be not adulterated. Suspecting the report of the Public Analyst of the local area to which the applicant belonged, the Chief Medical Officer (hereinafter referred to as CMO) had sent the second sample phial, kept by him, to the Public Analyst. Punjab and Haryana at Chandigarh. The above Public Analysts reported that the sample, so sent did not conform to the standard prescribed under the rules. It futher stated that the sample contained 27 pieces of hair and , therefore, the ultimate result of his analysis was that the sample is not fit for human consumption and is sub-standard. Receiving this report against the applicant after complying with the formalities to be adhered to under the provisions of Section 13(2) of the Act the prosecution was launched in a Court of law, as stated above. That prosecution, after evidence was analysed by the Court, resulted into conviction of the applicant as stated above.

4. Learned counsel for the applicant in this case has raised the following questions before this Court. His first contention is that, there is no provision in the Act for sending the sample to a Public Analyst of another State. Special emphasis has been laid on the provision of Section 8 of the Act. It is further contended that the two sections, viz. Section 13(2-E) and Section 8 when read together, completely bar such a course to be adhered to by C MO concerned. The second contention is that the applicant had at the very outset endorsed on Form VI that the food article

(Heeng) given by him to the Food Inspector was meant for animal consumption. The price charged by him, it is further urged, is not commensurate with the price of Heeng (Asafoetida meant for human consumption. The difference between the two price range is exorbitant. Heeng sold to the Food Inspector by the applicant was charged at the rate of Rs. 30/- per kilogram, whereas the price of Heeng prevalent in the market for human consumption is Rupees 800/- pe kilogram. This is available from the statement of DW 1 Mohan Lal, a stockist of Heeng. It is futher contended that on these last two issues the learned Additional Sessions Judge has misdirected himself completely in refusing the benefit of the same to the applicant.

5. The judgment of the Apex Court in Shah Ashu Jaiwant v. State of Maharashtra reported in (1976) 2 SCC 991 : (AIR 1975 SC 2178) as relied upon by the learned Addl. Sessions Judge has no application to the facts of this case, it is further submitted.

6. So far as the first contention raised by the applicant is concerned, in my opinion, it requires a through examination and scrutiny. It raises purely a question of law. A perusal of Section 8 of the Act, which occurs under the caption 'Analysis of Food' and deals with the appointment of public analysts, apart from their qualifications, the appointment according to the language of this section, is to be made for such local areas as may be assigned to such public analyst by the Central Government or the State Government. It very clearly indicates that every State where the provisions of this Act are in vogue may have number of public analyst for separate area or areas. For better appreciaiton, the language of Section 8 is quoted as under:

8. Public analysts. -- The Central Government or the State Government may, by notification in the Official Gazette, appoint such persons as it things fit, having the prescribed qualification to be public analysts for such local areas as may be assigned to them by the Central Government or the State Government, as the case may be.

Rest of the provisos are not quoted as they are not of any help in Interpreting the Section

7. Section 13(2E) of the Act is a substitution made in the Act by amending Act No. 34 of 1976. It is an enabling provision, as is apparent form its language.

13. Report of public analyst. -- (1)....

(2-E) If, after considering the report if any, of the food inspector or otherwise , the Local (Health) Authority is of the opinion that the report delivered by the public analyst Under Sub-Section (1) is erroneous, the said Authority shall forward one of the parts of the sample kept by it to any other public analyst for analysis and if the report of the result of the analysts of that part of the sample by that other public analyst is to the effect that the article of food is adulterated, the provisions of Sub-Sections (2-A) to (2-D) shall so far as may be, apply.

8. An examination of the language of this Section clearly provides that a CMO of a particular area is entitled to differ with the report of public analyst of his own area about any sample sent to him for analysis in that event he si entitled to seek a report form another public analyst by sending the second phial of the sample kept at its office. It further speaks of two other riders before this power could be exercised by any CMO, i.e. it can be done placing reliance upon the report of the Food Inspector or (2) otherwise on his own. These two things further require the CMO to analys the report of the Food Inspector or otherwise if he had for other reasons comes to such a conclusion then he can send the sample for analysis to another public analyst. Thus particular section, therefore, imposes upon the CMO a duty to record his reasons for such an action. This is an inference flowing emphatically from the language of the Section It further requires that these reports or the reasons recorded by CMO under the caption 'otherwise' should be brought on record along with the doubtful (first) public analyst report because accused has a right to prove that first report is just and correct . This right follows from the language of this Section

9. So far as the sending of the second phial of the sample to public analyst belonging to another State is concerned, I do not find anything in the language of Section 13(2) of the Act that may enable the CMO concerned to do that or to adhere to such a course. The provision of Section 13(2-E) together with the provisions of Section 8 clearly lay an embargo upon such a course to be adhered

to by any CMO. These two sections, if read together, entitled to the second sample phial of the disputed sample to be sent to another public analyst appointed by the Government of the State or the Central Government by notification in the State itself. Section 8 of the Act very clear and admits no ambiguity.

10. I do not find any reason why the framers of law, the Legislature, has not introduced these words 'another State' in this section, if they had any such intention. The learned Addl. Sessions Judge has gone completely away when he had introduced himself the words 'another State' while quoting the language of Section 13(2-E) of the Act. A close scrutiny of the language of Section 13(2-E) clearly proves that those words are purposely not added. The courts are precluded from introducing on their own anything or intepreting the language of the section in a way to create confusion. The language , if it is not premissive of two interpretations, no such intepretations the courts are authorised to induct. The law on intepretation of statute is very clear. If the language is so clear and free from ambiguity, the intepretation of the same should also be straight and not impulsive. Examining the language I do not find any ambiguity either in Section 13(2-E) or in Section 8. They are very clear in parting a imparticular meaning and no deviation to that meaning is affordable in the circumstances.

11. So far as Section 8 of the Act is concerned, it permits appointment of public analyst inside a particular State where the provisions of the Act are enforced for such local areas as the two Governments find it fit and proper. The meaning of the 'local areas' cannot be extended byeond the boundaries of a particular State. Section 8 of the Act is in consonance with the definition of local area' very clearly leads to this inference. Section 13(2-E) of the Act cannot be read beyond the realm of the definition of 'local areas'. When a State has different public analysts for different areas, no other intepretation is permissible from the language of this Section, when it says 'delivered by the public analyst Under Subsection (1) is erroneous, the said authority shall forward one of the parts of the sample kept by it to any other public analyst for analysis.' There is no confusion perceptible in the language of this Section The language unerriningly lead to the one and the lone conclusion that the second report could be obtained only from a public analyst who is functioning for a local area other than the one whose report is in suspicion inside

the State.

12. In the circumstances, I find force in the first contention raised before me by the learned counsel for the applicant that the CMO was not competent to send to the second phial to public analyst belonging to another State.

13. So far as the second contention is concerned, there, is some force in it also. The Food Inspector has admitted that the price charged for 300 gms. of Heeng was too low. The Courts cannot shut their eyes to this huge difference in the price of Heeng meant for human consumption and Heeng meant for animals. At the very out set the applicant had informed the Food Inspector in writing that the Heeng sold by him to the Food Inspector is meant for animal consumption only. It is unbelievable that the Food Inspector is so ignorant of the difference in the price range of the two types of Heeng, one ment for human consumption and the other for animals. The applicant, in the circumstances, cannot be denied the benefit of this fact. From the very beginning the applicant had come up with a case that the article sold by thim is not an article of food as required by the provisions of Section 2 of the Act. As a matter of fact the Food Inspector has to prove that the sample taken from the applicant was an article of food as demanded by the provisions of this Act before any prosecution of the applicant could have been launched. From the report of the public analyst of Punjab and Haryana this inference is over flowing. The report of the second public analyst showing that this Heeng does not conform to the standard prescribed for the Heeng meant for human consumption and it had also 27 pieces of hair in it. This in itself was sufficient to establish in case of the applicant. Coupled with this fact huge difference in the price index of the two articles is another fact which should not have been ignored as was done by the learned Addl. Sessions Judge while deciding the appeal of the applicant.

14. In the result this revision is allowed. The conviction Under Section 7/16 of the Act and consequent sentence of six months imprisonment and a fine of Rs. 1.000/- imposed upon the applicant is hereby set aside. He is acquitted of the abovesaid offence. He is on bail. He need not surrendere. His bail bonds are cancelled and sureties are discharged.