

Gulab Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Apr-28-2008

Reported in : 2008(3)MPHT131

Judge : Sushma Shrivastava, J.

Appellant : Gulab

Respondent : State of M.P.

Disposition : Petition dismissed

Judgement :

ORDER

Sushma Shrivastava, J.

1. Applicant has preferred this revision against the appellate judgment dated 26-2-98 passed by IInd Additional Sessions Judge, Teekamgarh in Criminal Appeal No. 28/95, whereby the conviction of the applicant under Section 7(i)/16(1)(a)(i) of Prevention of Food Adulteration Act, 1954 (hereinafter to be referred as 'Act') recorded by Chief Judicial Magistrate, Teekamgarh and sentence passed on him are upheld.

2. Applicant was tried for the offence under Section 7(i)/16(1)(a)(i) of the Act before the Chief Judicial Magistrate, Teekamgarh on the basis of complaint

instituted by Food Inspector Nazar Mohd. It is alleged that on 25-5-89 at about 11 O'clock in the morning at Motor-stand Teekamgarh, during checking by Food Inspector Nazar Mohd. applicant was found carrying 12 litres of cow-milk in two cans for sale, which appeared to be adulterated. Food Inspector Nazar Mohd. Then purchased a sample of 750 ml of cow-milk from the applicant for analysis in presence of panch witnesses and gave him a notice in writing in Form No. VI to have it analyzed. The Food Inspector then divided the sample of cow-milk collected from the applicant into three equal parts and filled each part in three clean and dried bottles, added prescribed quantity of Formalin in each bottle and duly packed and sealed them, sent one of its parts to the Public Analyst for analysis and the remaining two parts to the Local Health Authority. Upon analysis, the sample of milk taken from the applicant was found to be adulterated. After obtaining necessary sanction, applicant was prosecuted under Section 7(i)/16(1)(a)(i) of the Act. After institution of the prosecution, notice under Section 13(2) of the Act alongwith the report of the Public Analyst was sent to the applicant by registered post.

3. After trial Chief Judicial Magistrate, Teekamgarh found the applicant guilty for selling adulterated cow-milk and convicted him under Section 7(i)/16(1)(a)(i) of the Act and sentenced him to six months' Rigorous Imprisonment and fine of Rs. 1,000/- by judgment dated 8-8-95 passed in Criminal Case No. 907/89.

4. In criminal appeal preferred by the applicant against the aforesaid order of his conviction and sentence, the Appellate Court, after considering the evidence on record and other legal aspects of the case, affirmed the conviction and sentence passed on the applicant under Section 7(i)/16(1)(a)(i) of the Act by the impugned judgment which has been assailed in this revision.

5. Learned Counsel for the applicant submitted that the two Courts below gravely erred in law and facts in convicting and sentencing the applicant and failed to consider that the notice under Section 13(2) of the Act was not served on the applicant and there was inordinate delay in launching the prosecution and the applicant was thus deprived of the right under Section 13(2) of the Act.

6. Learned Counsel for the State, on the other hand, justified and supported the impugned judgment.

7. Impugned judgment and records of the Lower Courts perused.

8. There is a concurrent finding of the fact of two Courts below that the applicant was carrying cow-milk for sale and Food Inspector Nazar Mohd. had duly purchased a sample of 750 ml of cow-milk from the applicant for analysis, which was found to be adulterated after analysis. The aforesaid finding of fact does not suffer from any infirmity in view of the evidence of Food Inspector Nazar Mohd. (P.W. 1), corroborative evidence of S.C. Upadhyaya (P.W. 3) and the documents (Exh. P-4 to Exh. P-10) placed on record.

The evidence of Food Inspector Nazar Mohd. (P.W. 1) and documents prepared by him on the spot clearly indicate that the Food Inspector had purchased the sample of cow-milk from the applicant in prescribed quantity in presence of panch witnesses and gave him a notice in writing to have it analyzed and divided the sample then-and-there into three equal parts; added necessary Formalin into each part, duly sealed them and sent one of its parts to the Public Analyst for analysis and the remaining two parts to Local Health Authority and had followed the procedure prescribed under the Act for taking sample of article of food. As per report of Public Analyst (Exh. P-10), the sample of cow-milk taken from the applicant was found to be adulterated, as it did not conform to the standard prescribed for cow-milk under the Act. No infirmity in the procedure in collecting the sample of milk from the applicant was urged or pointed out.

9. Learned Counsel for the applicant, however, submitted that as per dictum laid down by the Apex Court in the case of State of Orissa v. Gauranga Sahu reported in AIR 2004 Supreme Court Page 1233, forwarding of the copy of the report of the Public Analyst under the Act is not only a ritual, but a statutory requirement to be mandatorily observed in all cases and the despatch of such report is intended to inform the accused of his valuable right to get the sample analyzed from the Central Food Laboratory, but the service of notice under Section 13(2) of the Act alongwith report of Public Analyst on the applicant was not established in the instant case by placing on record any A/D receipt or certificate from the Post

Office.

10. Again, there is a concurrent finding of fact of the two Courts below that the notice under Section 13(2) of the Act (Exh. P-14) alongwith the report of the Public Analyst was sent to the applicant by registered post and service of notice sent by registered post, which did not return back, could be legally presumed. Evidence of Smt. Prabha Verma (P.W. 4) employed in the Office of Local Health Authority, Teekamgarh also indicated that the notice under Section 13(2) of the Act alongwith the report of Public Analyst (Exh. P-10) was sent to the applicant by registered post vide postal receipt (Exh. P-15) on the address mentioned in her evidence. There was no suggestion in her cross-examination that the address described by her in the evidence on which the notice (Exh. P-14) alongwith the copy of the report of Public Analyst was sent to the applicant was not his correct address. Rather the same address was also mentioned by the applicant in his examination under Section 313 of Cr.PC.

11. Thus, there would be a presumption of service of notice sent by registered post on the correct address of the applicant in view of provisions of Section 27 of General Clauses Act as well as Section 114 (Illustration e and f) of the Indian Evidence Act. The mere fact that A/D receipt was not received back was not sufficient to rebut or dislodge the presumption of service of notice sent by registered post in absence of any evidence to the contrary. It is a known fact that A/D receipt is sent back by ordinary post and could also be misplaced. Therefore, it could not be held that notice under Section 13(2) of the Act alongwith the report of the Public Analyst was not served on the applicant.

12. The citations referred to by learned Counsel for the applicant reported in 2000 Cr.LJ Page 1249 (Himachal Pradesh H.C.) State of H.P v. Prem Singh 1998 Cr.LJ 4354 (Pimpri Chinchwad Nagarpalika v. Giriraj Chiranjilal Sharma and Anr.) and 2003 Cr.LJ 2797 (Andhra Pradesh H.C.) (Devarkonda Ramesh v. The State of A.P.) turned on different set of facts and are of no avail to the applicant in the instant case.

13. Learned Counsel for the applicant also submitted that the sample of milk was taken from the applicant on 25-5-89 and complaint against him under Section

7(i)/16(1)(a)(i) of the Act was filed before the Court on 18-12-89 with inordinate delay. According to learned Counsel for the applicant, as per statement of Smt. Prabha Verma (P.W. 4), the copy of the report of Public Analyst alongwith the notice under Section 13(2) of the Act was sent to the applicant on 25-1-90, i.e., after a period of nearly one month and seven days, whereas Rule 9-B of Prevention of Food Adulteration Rules, 1955 requires that the copy of the report of the Public Analyst should be sent within a period of ten days after the institution of the prosecution. Thus, there has been noncompliance of Rule 9-B of P.F.A. Rules, 1955 on the one hand and inordinate delay of seven months in launching the prosecution on the other, which deprived the applicant of his valuable right under Section 13(2) of the Act to have the other part of the sample analyzed by the Central Food Laboratory because the milk does not remain fit for analysis after six months. Reliance was placed in this behalf on the decision of the Apex Court rendered in the case of Municipal Corporation of Delhi v. Ghisa Ram : 1967 CriLJ939 and Single Bench decision of this Court reported in 2005 (3) MPLJ Page 458 (Ram Singh v. State of M.P.).

14. As stated earlier, there is clear finding of fact recorded by two Courts below that the notice under Section 13(2) of the Act was sent to the applicant alongwith report of Public Analyst by registered post and was served on him. It is manifest from the record that the applicant did not apply to the Court under Section 13(2) of the Act to send the other part of the sample to the Director Central Food Laboratory for analysis; nor did he summon the Public Analyst in evidence to establish that the sample of milk had deteriorated by that time and become unfit for analysis. The Apex Court in its three Judges Bench decision rendered in the case of Babulal Hargovinddas v. State of Gujarat : 1971 CriLJ1075 , distinguishing facts of the case of Municipal Corporation of Delhi v. Ghisa Ram (supra), observed that unless an application to send the sample to the Director Central Food Laboratory is made under Section 13(2) of the Act by the accused, he cannot complain that the sample had deteriorated and could not be analyzed.

15. It was again reiterated by the Apex Court in a later decision rendered by three Judges' Bench in the case Ajitprasad Ramkishan Singh v. The State of Maharashtra reported in : 1972 CriLJ1026 , that without making an application

under Section 13(2) of the Act, the vendor cannot complain that he has been deprived of any such right.

16. A Division Bench of this Court in the case of Govind Prasad v. State of M.P. and Anr. reported in 1996 Cr.LJ Page 1238 (MP), after going through the various decisions of Apex Court including the case of Municipal Corporation of Delhi v. Ghisa Ram (supra), cited by learned Counsel for the applicant observed as under:

The principle of law declared in Ghisaram's case in : 1967 CriLJ939 (supra) has been explained by Larger Benches of the Supreme Court in later cases and we are bound to follow the law declared in the later cases. Since the revision petitioner did not invoke his right under Section 13(2) of the Act and did not examine the Public Analyst to show that part of the sample of milk in the case would necessarily have become unfit for analysis by the time summons was served on him and did not adduce other evidence to that effect, it cannot be said that the part of a sample would have become decomposed and that it was futile for him to invoke his right under Section 13(2) or that it could be presumed or assumed under these circumstances that he has been prejudiced in his defence.

In the aforesaid case of Govind Prasad v. State of M.P. and Anr. (supra), the Division Bench also considered the various other Single Bench decisions of this Court and came to hold that particular sample will necessarily decompose within a particular period cannot be a matter of assumption and presumption. In absence of application under Section 13(2) of the Act and the evidence to the contrary, it cannot be said that on account of delay in launching the prosecution the sample must have decomposed and become unfit for analysis.

17. In another case of Prabhu v. State of Rajasthan 1994 Supp (2) Supreme Court Cases 177, where the applicant after the service of notice under Section 13(2) of the Act did not make an application under Section 13(2) for sending the sample to the Director Central Food Laboratory, their Lordships held as under:..Following the consistent law laid by this Court we are of the considered view that since admittedly the applicant had not availed of the remedy under Section 13(2) to send the sample of article of food for analysis by the Central Food Laboratory, it cannot be held that the applicant suffered prejudice on account of delay in launching the

prosecution.

18. In the instant case also the applicant made no application under Section 13(2) of the Act to send the other part of sample to the Director Central Food Laboratory for analysis and there was no evidence on record to hold that the other part of sample of milk had decomposed or deteriorated and become incapable for analysis. Thus, in view of the legal position discussed above, it cannot be said that the applicant was deprived of the right under Section 13(2) of the Act or he was prejudiced in his defence due to delay in launching the prosecution or delay in despatch of notice under Section 13(2) of the Act.

19. The Apex Court in the case of Rajendra v. State of M.P. reported in AIR 1991 SC Page 1757, has reiterated that non-compliance with Rule 9-A (which has been substituted by amended Rule 9-B) is not fatal and it is a question of prejudice.

20. In view of the foregoing discussion, the conviction the applicant under Section 16(1)(a)(i) of the Act does not suffer from any legal or factual infirmity so as to call for any interference in revision.

21. As regards the sentence, applicant has been awarded the minimum prescribed sentence of six months imprisonment with fine of Rs. 1,000/-. As held by the Apex Court in the case of Mahendrakumar G. Patel and Anr. v. State of Gujarat and Anr. reported in (2004) SCC 13 Page 78, in view of mandatory provisions of Section 16(1) of the Act, no sentence lesser than the minimum prescribed by the statute could be awarded for the offence under Section 16(1)(a)(i) of the Act. The minimum sentence imposed on the applicant, therefore, requires no further reduction in the facts and circumstances of the case.

22. Revision fails and is dismissed. Applicant is on bail. He shall surrender to his bail bonds to serve out remaining part of his sentence.