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SooperKanoon Citation : sooperkanoon.com/506422

Court : Madhya Pradesh

Decided On : Apr-20-1987

Reported in : 1987CriLJ1967

Judge : K.L. Shrivastava, J.

Appellant : Revta

Respondent : The State

Judgement :
ORDER

K.L. Shrivastava, J.

1. This revision petition is directed against the judgment dt. 17-8-83 passed by the Additional Sessions Judge, Mandsaur at Garoth in Criminal Appeal 'No. J83 of 1982 whereby the petitioner's conviction under Section 7(1) read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (for short 'the Act') and the sentence of rigorous imprisonment for six months and a fine of Rs. 1000/- passed thereunder have been maintained.

2. Circumstances giving rise to the petition are these. On 21-7-79 at about 9 p.m. Food Inspector Atul Bihari obtained sample of cow milk which the petitioner was carrying in three containers. The sample was taken after observing due formalities. It was sent to the Public Analyst, Indore. On receipt of his report that the milk was

adulterated, the petitioner was prosecuted with the result already stated.

3. A copy of the report of the analysis was sent to the petitioner by registered post and in the absence of any challenge to it at the trial and in the absence of any report from the Director, Central Food Laboratory the report of the Public Analyst is final.

4. The contention of the petitioner's learned Counsel is that it is not the report of the Public Analyst that the milk was unfit for human consumption. It is also contended that R. 9(j) of the Prevention of Food Adulteration Rules, 1955 (for short 'the Rules') and Section 13(2) of the Act too have been contravened and further that the material on record does not prove that the R. 7(1) of the Rules regarding comparison of seal by the Public Analyst was complied with. It is contended that for the foregoing reasons the revision petition deserves to be allowed.

5. The point for consideration is whether the revision petition deserves to be allowed.

6. The first contention of the learned Counsel for the petitioner that in the report of the Public Analyst it has not been stated that the milk was unfit for human consumption and, therefore, it cannot be held that it was adulterated, is little to purpose. The standard of quality of cow milk is separately prescribed by law and according to the definition of the term 'adulterated' given in Section 2(i-a)(a), an article of food which is not of the quality which it purports or is represented to be is adulterated and this is irrespective of the article of food being unfit for human consumption- or injurious to health. The contention being without merit is repelled.

7. As rightly pointed out by the learned Additional Sessions Judge, the prosecution evidence, regarding a copy of the report of the Public Analyst having been sent to the petitioner by registered post has not been seriously challenged the trial and the presumption under Section 27 of the General Clauses Act, 1897 is also available to the prosecution.

8. Apart from what has been stated above, the prosecution against the petitioner was launched in the Court on 20-9-79 and in obedience to the summons, the petitioner put in appearance on 27-10-79. He took no steps to get the other part of the sample analysed by the Director, Central Food Laboratory. In the circumstances the petitioner cannot complain of any prejudice to him and in view of this Court's Full Bench decision in Nagar Palika, Mandsaur v. Devilal 1985 Jab LJ 195 : 1985 Cri LJ 726 it is clear that the provision in Section 13(2) and Rules 9-A and 9(j) of the Rules are only directory and not mandatory and in the absence of any prejudice mere non-compliance therewith is not fatal to the prosecution. The decisions in State of Kerala v. Alassery Mohd : 1978 CriLJ925 and Prem Bellab v. State (Delhi Admn.) : 1977 CriLJ12 may also be usefully perused.-

9. This brings us to the last limb of the argument of the petitioner's learned Counsel. According to him the law required that the prosecution proves that the seals affixed on the contaijier and the outer cover of the sample tallied with the specimen impression of the seal separately sent by the Food Inspector to the Public Analyst and that mere recital in the printed form of the report as to the comparison of seals does not constitute proof of such comparison without the oral evidence of the Public Analyst or any officer authorised by him to comply with the rule. Reliance was placed on the decision of this Court in State of M.P. v. Jagdishchand (Cr. Appeal No;. 533/83 decided on 22-1-87 : (reported in 1987 EFR 237). This decision follows the one rendered in Cri. Revision No. 386/82 : (reported in 1986 EFR 410) (Madh Pra) (Motilal v. State) wherein it has been held that the compliance of R. 7(1) which requires comparison of the seals on the container and the outer cover with specimen impression received separately and noting the condition of the seals thereon by the Public Analyst or any officer authorised by him, can be proved only by examining the Public Analyst or the officer authorised by him to compare and note the condition of the seals.

10. In the Supreme Court decision in Mangaldas's case 1966 MPLJ 513 : (1966 Cri LJ 106) it has been held that failure to call the Public Analyst in evidence is not fatal and his report is admissible in evidence and it is for the Court of fact to decide what value is to be attached to such report. In the Full Bench Decision in State of M.P. v. Chhote Khan : AIR 1970 MP29 the aforesaid decision of the Supreme

Court has been noted and observing that the distinction between relevancy or admissibility of a piece of evidence and the value to be attached to it is obvious, it has been pointed out that there is nothing in Section 13(5) of the Act which provides for use of report of the Public Analyst as evidence, to indicate that the report would be admissible only if it is obtained in the manner prescribed by the rules made under the Act.

11. In the decision in Chhote Khan's case (1970 Cri LJ 238) (Madh Pra) (FB) (supra) answering the reference, it was held that the view taken in Cri- A. No. 180/1966 dt. 25-8-66 : (reported in 1967 Cri LJ 1723) (Madh Pra) in which reliance was placed upon State Of Gujarat v. Shantaben : AIR1964 Guj136 was not correct and it was stated as under:

In our opinion, the presumption under Section 114 of the Evidence Act and Illustration (e) thereunder in relation to regular performance of official acts applies to the report of a Public Analyst. It is, however, a rebuttable presumption. That being so, such a report is not inadmissible only because it has not been specifically established by evidence aliunde that the requirements of Rules 7 and 18 of the Prevention of Food Adulteration Rules, 1955 were duly complied with.

12. The decision in Chhote Khan's case (supra) also refers to the Supreme Court decision in K. K. Ramakrishna Pillai, Cri. Appeal No. 29 of 1968 dt. 2-12-1968 - (1976) 2 FAC 68 (69) and a portion of the extract reproduced from that Supreme Court decision may usefully be reproduced.

It reads thus:

The High Court was not at all impressed with the contention based on R. 18. It relied on the report of the Public Analyst Exh.P-9 which was in Form HI as prescribed by the Rules in which it was stated, inter alia that the Public Analyst had received from the Food Inspector a sample of compounded misky asafoetida marked No.C. 2/65 for analysis, properly sealed and packed and that he had found the seal intact and unbroken. The contention which was pressed and which has been reiterated before us is that it was nowhere stated in Exh. P/9 that the Public Analyst had compared the specimen impression of the seal with the seal of the

packet of the sample. The High Court relied on the principle that official acts must be presumed to have been regularly performed. Under R. 7, the Public Analyst has to compare the seal on the container and the outer cover with the specimen impression received separately on receipt of the packet containing the sample for the analysis. The High Court conceded that it must be presumed that the Public Analyst acted in accordance with the Rules and he must have compared the specimen impression received by him with the seal of the container.

We do not find any error in the decision of the High Court on the above point.

13. Regarding the presumption under Section 114 illustration (e) Evidence Act, it has been observed thus in para 8 of the decision in Chhote Khan case (1970 Cri LJ 238) (Madh Pra) (FB) (supra) :

The principle embodied in illustration (e> under Section 114 of the Evidence Act is that when any judicial or official act is shown to have been done in a manner substantially regular, it is presumed that the formal requisites for its validity have been complied with. As we have indicated elsewhere, if the statute itself had provided that certain regulations and formalities must be complied with before the report of the public Analyst could be admitted in evidence, the position would have been different for in that case it would be necessary to specifically establish that those regulations and formalities were duly observed. In the absence of such a provision what purports to be report signed by a Public Analyst is, without any other proof, admissible in evidence and the presumption arising under Section 114 of the Evidence Act to the regular performance of official acts also applies to it. The accused is not thereby prejudiced. He may rebut the presumption by cross-examining prosecution witnesses or leading other evidence. He has also been given under Sub-section (2) of Section 13 of the Act the right to show, if possible, that the report is incorrect.

14. On a careful consideration, I am of the view that in the light of the Full Bench decision in Chhote Khan's case (1970 Cri LJ 238) (Madh Pra) and the observations of the Supreme Court in the decision in Pookunju's case (1976-2 FAC 68) it has to be held that the presumption as to due comparison of seals by the public Analyst is available to the prosecution and in the circumstances of the

case it is not open to the petitioner to make any grievance on the ground of non-examination of the Public Analyst.

15. In the result, I find that there is no merit in the revision petition and it is consequently dismissed. The petitioner is on bail. He shall surpwder to his bail bonds to serve out the sentence.