

Gopal Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : May-06-1991

Reported in : 1992CriLJ259

Judge : R.D. Shukla, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 7, 2(1), 13(2), 16(1) and 20(1); ;Prevention of Food Adulteration Rules, 1955 - Rule 9A

Appeal No. : Cri. Revn. No. 662 of 1985

Appellant : Gopal

Respondent : State of Madhya Pradesh

Advocate for Def. : G.C. Jain, Adv.

Advocate for Pet/Ap. : S.C. Datt, Adv.

Judgement :

ORDER

R.D. Shukla, J.

1. This revision is directed against the judgment and order dated 28-11-1985 of Second Additional Sessions Judge, Ambikapur, passed in Criminal Appeal No. 5 of 1985 (arising out of the judgment and order dated 13-12-1984 of Chief Judicial

Magistrate, Ambikapur, passed in Criminal Case No. 1567 of 1979), whereby the conviction of the accused-applicant under Section 7 read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act (hereinafter referred to as 'the Act'), has been confirmed, but the sentence of rigorous imprisonment for one year and fine of Rs. 2,000/-, has been modified to rigorous imprisonment for six months and fine of Rs. 1,000/-, in default of payment of fine, rigorous imprisonment for three months.

2. The brief history of the case is that the Food Inspector, Ambikapur, filed a complaint against the accused on 3-11-1979, with the allegation that the accused was found selling milk near Police Station, Rajpur, on 7-9-1979. He obtained sample of milk from the accused-applicant, and, after observing all the formalities of notice, sealing and sampling, sent it to Public Analyst, Bilaspur, for analysis. The Public Analyst found the sample of milk to be adulterated, as it did not conform to the prescribed standard.

3. The accused adjured the guilt and stated that the Food Inspector demanded Rs. 25/- per month, and, on his refusal of payment, has implicated him falsely.

4. The learned trial court has convicted and sentenced the accused as above.

The conviction was sustained by the first appellate court with the modification in the sentence as referred above. Hence, this revision.

5. The learned counsel for the applicant has submitted that--

(i) the Food Inspector was not competent to file the complaint, as there was no sanction under Section 20(1) of the Act;

(ii) the provisions of Section 13(2) of the Act, have not been complied with and, therefore, the whole prosecution is vitiated;

(iii) reasonable opportunity was not afforded to him for the sample being examined by the Central Food Laboratory; and

(iv) the milk in question cannot be termed to be adulterated as milk fat and solid non-fat must have deteriorated because of natural causes.

Learned counsel for the State, on the other hand, has submitted that the provisions of Section 13(2) of the Act, are directory and not mandatory and, therefore, irregularity to that effect ought to be ignored. It has been further argued that the sample of milk must conform to the prescribed standard and contents thereof.

6. The prosecution has examined P. W. 1 Food Inspector B. D. Dwivedi and P. W. 2 Ramvachan Ram, Vaccinator, in support of its case. The fact as to sale of milk has not been assailed.

P.W.1 B.C. Dwivedi, Food Inspector, has proved Ex. P. 3, letter dated 10-8-1978, addressed by the Local Health Authority, Ambikapur. Operative part of this letter shows that the Food Inspector was empowered to file complaint after scrutiny from Assistant Public Prosecutor, Food and Medicine, Raipur, and without prior approval of the Local Health Authority.

7. The Food Inspector B. D. Dwivedi has been examined in the case as P. W. 1.

The State Government of Madhya Pradesh has, vide Notification No. 7770/XVII, dated the 31st December, 1959, authorised the Food Inspectors to institute the prosecution, which is reproduced below:

Notification No. 7770/XVII, dated the 31st December, 1959. -- In exercise of the powers conferred by Sub-section (1) of Section 20 of the [Prevention of Food Adulteration Act, 1954](#) (No. 37 of 1954), and in supersession of this Department Notification No. 2442-1655-XVH, dated the 19th August, 1958, the State Government hereby authorises all Food Inspectors appointed under the said Act, to institute or give written consent to prosecution for offences under the said Act within the local area respectively assigned to them.

It has not been shown that this Notification has either been amended or modified. In view of this Notification, the Food Inspector was competent to file complaint even without scrutiny from Assistant Public Prosecutor, Food and Medicine, and without prior approval of the Local Health Authority, and, therefore, the complaint has been legally and validly filed.

8. It is incumbent upon the Local Health Authority or the person filing the complaint under the Prevention of Food Adulteration Act, to give notice along with the report of the Public Analyst to the person from whom the sample of food was taken, within 10 days from the receipt of such report. Any irregularity with respect to notice will not be fatal as the provision is directory. However, the total non-compliance of the provision would definitely be fatal for the prosecution. Any irregularity in the compliance of the said provision may be cured, but complete denial of that opportunity to the accused would raise a presumption of prejudice having been caused to him.

In this case, the sample had been taken on 7-9-1979, i.e., after coming into force of the amended provision of Prevention of Food Adulteration Act. The report of the Public Analyst is dated 12-10-1979. The challan was filed on 3-11-1979. The accused made appearance on 7-1-1980. The notice of this fact was not given even after his appearance in the Court. Thus, there is total non-compliance of the provisions of Section 13(2) of the Act.

9. In the case reported in Ahmed Dadabhai v. State of Maharashtra, 1991 AIR SCW 931 : 1991 Cri LJ 1418, following observations of their Lordships of the Supreme Court are relevant for this case, as the delay in sending the notice was taken to be fatal--

(B) Prevention of Food Adulteration Rules (1955), Rule 9-A. Word 'immediately' -- Connotation of -- Report whether sent immediately to accused -- Has to be determined on facts and circumstances of each case -- Report dated 1-9-1978 -- Complaint filed on 26-4-1979 -- Report despatched on 11-7-79 -- Cannot be said that report was sent promptly. Accused entitled to acquittal.

In this case, there was total non-compliance of Section 13(2) of the Act and Rule 9-A of the Prevention of Food Adulteration Rules (hereinafter referred to as 'the Rules').

10. The report of the Public Analyst (Ex. P. 9) shows that milk in question contained fat 3.1% and solid non-fat 10.9% (total of it comes to 14.00%). The cow milk is required to contain 3.5% fat and 8.5% solid non-fat. In this case, the

contents of non-fat were more than the prescribed standard. However, it was deficient with respect to fat contents, but the total of fat and solid non-fat contents was 14.00% more than what is required in the cow milk.

The milk is an item of primary food. The proviso to Section 2(1)(m) of the Act reads as follows:--

Provided that, where the quality or purity of the article, being primary food, has fallen below the prescribed standards or its constituents are present in quantities not within the prescribed limits of variability, in either case, solely due to natural causes and beyond the control of human agency, then such article shall not be deemed to be adulterated within the meaning of this sub-clause.

11. As is apparent from the report of the Public Analyst, the milk in question did not contain any other thing, including water, or else, it must not have contained fat 3.1% and solid non-fat 10.9% (total 14.00%) and, therefore, it appears that variability must have been because of natural causes. As such, article of food, which is milk, cannot be deemed to be adulterated under the provisions of the Prevention of Food Adulteration Act.

12. Though, it is true that the prosecution cannot be expected to prove that the fall in standard was not solely due to natural causes and beyond the control of human agency. In the very nature of the circumstances, this is a matter which it would be for the accused to prove, but the burden of proof cast on the accused is not onerous as that of the prosecution to establish the case beyond doubt. It is enough for the accused to establish preponderance of probability for that purpose.

13. It is a matter of common knowledge that the quality of primary food can be affected due to various natural reasons which are beyond the reach of human power to control. Breed of the animal, manner of its feeding, quality of the food given, variations in seasonal changes, time of milching, intervals between milching, health of the animal and various other factors may influence variability from the prescribed standards and justify the existence of components, the qualities of which are not within the prescribed limits of variability.

Where the primary food is not deficient in the total of its various contents (here the milk) where the total of fat and solid non-fat contents are equal or more than the prescribed standard, the possibility of deterioration because of natural causes and beyond the control of human agency can be presumed, and if the accused is able to demonstrate that it may be because of natural causes, the burden would shift on the prosecution to show that the variance in the various contents thereof, has been because of human agency and, in the absence of such a proof, the accused would be entitled to benefit thereof.

14. Thus, in this case, there has been total non-compliance of Section 13(2) of the Act and Rule 9-A of the said Rules, and the accused has not been given an opportunity to get the sample in question examined by the Central Food Laboratory, and, secondly, variability in the contents of the milk may have been because of natural causes beyond the control of the accused and, therefore, the milk cannot be treated to be adulterated.

15. As a consequence, revision succeeds and is accepted. The accused is acquitted of the charge under Section 7 read With Section 16(1)(a)(i) of the Prevention of Food Adulteration Act. He is on bail. His bail bonds stand cancelled.

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