

Ramprasad Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Jun-25-2002

Reported in : 2002(5)MPHT271

Judge : S.L. Kochar, J.

Acts : Prevention of Food Adulteration Act - Sections 7, 7(1), 13(2), 14A, 16(1), 20 and 20(1); Prevention of Food Adulteration Rules - Rules 7(3), 8, 9A and 50

Appeal No. : Criminal Revision No. 215/2002

Appellant : Ramprasad

Respondent : State of M.P.

Advocate for Def. : G. Desai, Addl. Adv. General

Advocate for Pet/Ap. : Deshpande, Adv.

Disposition : Application allowed

Judgement :

ORDER

S.L. Kochar, J.

1. This revision is directed by the applicant against the judgment passed in Criminal Appeal No. 254/2000 on 14-3-2002 by the IInd Addl. Sessions Judge,

Indore dismissing the appeal and confirming the judgment of conviction under Section 7(1) read with Section 16(1)(a)(1) and Section 7(iii) and Rule 50 read with Section 16(1)(a)(1) of the Prevention of Food Adulteration Act and sentencing the applicant to six months' R.I. and fine Rs. 1,000/- on each count, in default of payment of fine to further suffer R.I. for one month in Criminal Case No. 3994/97 passed by the Chief Judicial Magistrate, Indore on 1-11-2000. The substantive sentences are directed to run concurrently.

2. The prosecution case in brief was that on 14-6-97, the applicant, in Transport Nagar, Indore was found selling cow-milk without licence, by the Inspector B.P. Dwivedi. The Inspector purchased 750 ml milk after paying Rs. 10/- as price thereof. He divided the said milk into three equal parts of 250 ml. each and kept it in three clean and dry bottles and after performing necessary formalities of mixing 20 drops of formalin and sealing etc., a sample was sent to the Public Analyst for analysis.

3. On 5-8-97, the report of the Public Analyst was received and according to the said report, the milk was found adulterated. Thereafter, a complaint was filed on 15-9-97 before the Trial Court. The prosecution examined only one witness, i.e., Bhagwanprasad Dwivedi (P.W. 1), Food Inspector and on the basis of the statement of this witness, the learned Trial Court convicted the applicant for the aforesaid offences as stated hereinabove.

4. Against the judgment of conviction passed by the Chief Judicial Magistrate, Indore, the applicant went up in appeal and the same has been dismissed by the Addl. Sessions Judge, Indore, hence this revision against the impugned judgment.

5. This Court has heard Shri Deshpandey, learned Counsel appearing for the applicant and Shri G. Desai, learned Dy. Advocate General for the non-applicant/State and perused the record.

5. Learned Counsel for the applicant has submitted that the Food Inspector Shri B.P. Dwivedi was not legally authorised to take the sample, because, he was appointed as a Sanitary Inspector. For appointment of Sanitary Inspector as Food Inspector, for complying with the duties under the provisions of Prevention of Food

Adulteration Act, he was not possessing the prescribed qualification as per Rule 8 of the Prevention of Food Adulteration Rules (hereinafter referred to as the 'Rules' for short) and also not undergone the training for required number of days. He placed reliance on a judgment of this Court passed in *State of M.P. v. Bhagwan* [1992(II) MPWN 204]. This judgment is not helpful to the contention of the Counsel for the applicant, because, in this case, the sample was taken by the Sanitary Inspector, Babulal (P.W. 1). The State had conceded before the Court that the complainant Babulal (P.W. 1) was simply a Sanitary Inspector and he was not vested with the powers of Food Inspector. Therefore, the accused was acquitted holding that the prosecution launched against the respondent was illegal. This is not the position in the present case. In the complaint itself, it is mentioned that by the Notification dated 14-8-72 and 16-8-91, issued by Public Health and Family Welfare Department of State of M.P. all the Sanitary Inspectors were appointed as Food Inspectors. Photo-copy of this Notification was also filed and proved and marked as Exs. P/2-C, P/3-C, P/4-C and Ex. P/5-C by the Food Inspector Shri B.P. Dwivedi.

6. According to the learned Dy. Advocate General Shri Desai, the qualifications of the Food Inspector cannot be looked into when he lays prosecution. He placed reliance on a judgment of the Supreme Court in *Suresh H. Rajput v. Bhartiben* (AIR 1996 SC 2883). In para 14, the Hon'ble Supreme Court has held as under :--

'..... the learned Magistrate had further held that the Food Inspector did not have training for required number of days and that, therefore, he was not competent to take the samples. We find that the Magistrate illegally proceeded on that assumption. The qualifications of the Food Inspector cannot be challenged in collateral proceedings. What is material is whether the Food Inspector had taken the samples in accordance with the provisions of the Act or the Rules made thereunder. In case the Court finds that if he committed any contravention, what would be its effect on the prosecution is a matter to be considered but his qualifications cannot be looked into when he lays the prosecution for adulteration of the articles of food under the Act.'

7. In view of the aforesaid Supreme Court pronouncement, there is no force in the arguments of the learned Counsel for the applicant.

8. Learned Counsel for the applicant has submitted that vide Ex. P-16, sanction was not granted by the concerned authority, i.e., Deputy Director Food and Drugs Administration for launching the prosecution against the applicant. For this purpose, he pointed out some ambiguity and lacuna in Ex. P-9 which is a Panchnama alleged to have been prepared on 14-6-97 by the Food Inspector (P.W. 1), but under his seal and signature, the date is mentioned as 16-4-97. He submitted on this factual aspect that the Panchnama (Ex. P-9) was not recorded as stated by the Food Inspector. Further, he submitted that in Ex. P-10, the Code number of Local Health Authority is mentioned as p94875. The same Code number is not mentioned in Ex. P-11. In Ex. P-11, this is also not mentioned in the column regarding mode of sending the sample to the Public Analyst. Likewise, he has also pointed out some sort of difference in the documents Ex. P-12 and Ex. P-15. On the basis of these differences/contradictions, his contention is that the Local Health Authority while according sanction as per provisions under Section 20 of the Act, granted sanction mechanically without application of mind to the material ambiguity and contradictions in the documents. He relied on the judgment of the Supreme Court reported in Madan Mohan Singh v. State of Uttar Pradesh, AIR 1954 SC 637.

9. This Court has gone through all these documents from Ex. P-9 to Ex. P-15 and also given anxious consideration to the submissions of the learned Counsel for the applicant and finds no such ambiguity and contradictions except the fact that in the Panchnama Ex. P-9, the date of preparation thereof at the top of this document, the date is mentioned '14-6-97', whereas at the bottom underneath the signature of the Food Inspector, the date is mentioned 16-4-97. The applicant cannot get the benefit of this ambiguity because, in the cross-examination, he did not put any question about this giving opportunity to the Food Inspector to explain the same. Without doing so, the applicant cannot claim benefit of this. While granting the sanction the Local Health Authority considered the report of the Public Analyst and other pertinent papers/documents including the report of the Food Inspector before granting the sanction. Therefore, the grant of sanction was valid in law. In the case

of Suresh H. Rajput v. Bhartiben (supra), the Supreme Court had an occasion to consider the question of sanction and held in para 12 as under :--'It is seen that the analysis report which was placed before the Local (Health) Authority and the other pertinent material in connection therewith have been placed before the sanctioning authority. After going through the material, sanction was granted for laying the prosecution. At that stage, it was not for the sanctioning authority to weigh pros and cons and then to find whether the case could end in conviction or acquittal or the adulteration was abnormal or marginal etc. All these are not matters for the sanctioning authority to weigh and to consider the pros and cons of the case before granting sanction to lay prosecution against the respondents.'

10. In the case in hand, the sanctioning authority has after full application of mind accorded sanction and this Court finds no illegality in granting the sanction as per provisions of Section 20 of Sub-section (1) of the Act.

11. The conviction of the applicant rests solely on the testimony of Food Inspector Bhagwati Prasad Dwivedi (P.W. 1). This witness, in para 6 for compliance under Section 13 Sub-section (2) of the Act, has stated as under :--

^lwpuk ds vk/kkj ij mi&lapkyd;] [kk] ,oavkS'kf/k iz'kklu] bUnkSj }kjk fu;e 13 2 ds vUrxZr uksfVI fn;k o fjiksVZdh ,d izfr Hksth ftldh ,d izfr eq>s izklr gqbZ] tks eSa vkt U;k;ky; esaizLrqr dj jgk gw tks izn'kZ ih&17 g SA**

12. The Food Inspector has nowhere stated that the notice as contemplated under Section 13(2) of the Act was sent by the Office of the Dy. Director, Food and Drugs Administration to the accused, for compliance of the provisions of Section 13(2) of the Act. He has also not filed any document establishing the fact of compliance of the provisions of Section 13(2) of the Act which reads as under :--

'13. Report of Public Analyst.--

(2) On receipt of the report of the result of the analysis under Sub-section (1) to the effect that the article of food is adulterated, the Local (Health) Authority shall, after the institution of prosecution against the person from whom, the sample of the article of food was taken and the person, if any, whose name, address and

other particulars have been disclosed under Section 14A, forward, in such manners as may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both may make an application to the Court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory.'

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13. No other witness has been examined by the prosecution from the office of the Local (Health) Authority to prove the compliance of Section 13(2) of the Act. The statement of Food Inspector is also not showing the fact on what date the requisite notice was sent and by which mode. Therefore, on the basis of material available on record, this Court has no hesitation to hold that there is absolutely no compliance of Section 13(2) of the Act, regarding sending of the copy of the Public Analyst's report to the applicant, informing him that if he is so desired, he may make an application to the Court within a period of ten days from the date of receipt of copy of the report to get the sample of the article food kept by the Local (Health) Authority, analysed by the Central Food Laboratory.

14. After institution of prosecution against the applicant under Rule 9-A of the Rules, the manner in which, the report of the Public Analyst is to be sent as aforesaid has been prescribed. The rule requires that the Local (Health) Authority shall immediately after the institution of prosecution, forward a copy of the report of the result of Analyst in form 3 delivered to him under Sub-rule (3) of Rule 7 by Registered Post or by hand as may be appropriate. As held in number of cases, by the Supreme Court as well as the High Courts that Section 13(2) of the Act, is directory and, therefore, before it can be said that infraction of the aforesaid provisions has taken place, the accused will have further to prove that his case has been prejudiced in the instant case. It appears that the copy of the report of the Public Analyst was not at all forwarded to the accused/applicant as laid down in Rule 9-A of the Rules not only immediately or within a reasonable time of filing of the complaint, but even thereafter. It also does not appear that a copy of the

report was furnished to the accused/applicant when he appeared in the Court. A look at the entire record will show that the receipt of the accused/applicant about receiving the copy of the Report of Public Analyst either by Registered Post or by hand is not available on record. There is no material to say that a copy of the report of the Public Analyst was sent to the accused/applicant. Therefore, it is a clear case of clear non-compliance of provisions of Section 13(2) of the Act withholding the applicant to use his valuable right by sending the sample to the Local (Health) Authority for analysis to the Central Food Laboratory, and the same has caused prejudice to his case.

15. Resultantly, the applicant is entitled to be acquitted. Consequently, the revision is allowed and the conviction and sentence passed by the Court below are set aside. The fine amount, if deposited by the applicant, shall be refunded to him.

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