

Kiran Kumar Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Jan-18-2006

Reported in : 2006(3)MPLJ171

Judge : S.C. Vyas, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 13(2), 16(1) and 16A(1); Prevention of Food Adulteration Rules - Rule 7(3)

Appeal No. : Criminal Revision No. 319 of 1999

Appellant : Kiran Kumar

Respondent : State of M.P.

Advocate for Def. : G.S. Chouhan, Learned Govt. Adv.

Advocate for Pet/Ap. : Harish Kumar, learned Counsel

Disposition : Appeal allowed

Judgement :

S.C. Vyas, J.

1. This revision is directed against the judgment passed in Criminal Appeal No. 229 of 1998 by First Additional Sessions Judge, Dhar on dated 11.5.1999 dismissing the appeal and confirming the judgment of conviction under Section

16(1)(a)(i) of the [Prevention of Food Adulteration Act, 1954](#) (hereinafter referred as the Act for short) and sentence for six months R.I. and fine of Rs. 1,000/-, in default thereof three months R.I. passed against the applicant.

2. The prosecution case in brief was that on 27.8.1995 non-applicant food inspector after giving his introduction taken sample of Bundi Laddu from the shop of the applicant. After completing necessary formalities the sample so taken was sent to Public Analyst for analysis. On analysis Public Analyst found that the sample of Bundi Laddu contains non permitted colour Metanil Yellow and Khesari Dal also. Thereafter non-applicant food inspector after taking requisite sanction filed charge sheet against the applicant before learned Magistrate. Defence of the applicant was that he have been falsely implicated in the case. He has also taken the defence that mandatory provision of law have not been complied with and the report of the Public Analyst is vague which does not disclosed any percentage of adulteration. However, the learned trial Court after trial found the charge under Section 16(1)(a)(i) of the Act proved and sentenced applicant as stated hereinabove. Appeal preferred by the applicant being failed, present revision has been filed.

3. learned Counsel for the applicant Shri Harish Kumar submitted that the mandatory provision of Section 13(2) of the Act were not complied with by the prosecution and a copy of the report Public Analyst with information regarding the right of the applicant for moving an application before the Court to get the second part of the sample examined by Central Food Laboratory, were not complied with. No report was ever forwarded to the applicant by the local health authority in the present case. He has drawn attention of this Court towards statement given by witness Food Inspector D.R. Parashar (PW-1) and witness Dilip Sharma (PW-2) in this regard.

4. On the contrary learned Government Advocate submitted that copy of the report of Public Analyst was duly forwarded to the applicant as per the statement of witness Dilip Sharma (PW 2) and so there is nothing to presume that provision of Section 13(2) of the Act have not been complied with in this case.

5. D.R. Parashar Food Inspector (PW-1) in Paragraph 13 of his statement has deposed that the local health authority has sent a notice under Section 13(2) of the Act alongwith copy of report of Public Analyst by registered post and copy of such letter was also sent to this witness which is Ex. P-18. This witness has further stated in Paragraph 20 of his deposition that he has not brought the acknowledge of the registered letter which was sent to the applicant by local health authority.

6. Shri Harish Kumar learned Counsel for the applicant submitted that at the time of deposition of this statement stand of prosecution was that the copy of report of Public Analyst alongwith notice was sent to the applicant by registered post but when witness Dilip Sharma (PW-2) was examined prosecution took different stand and this witness deposed another story regarding sending notice under Section 13(2) of the Act. This witness in Paragraphs 2 and 3 of his statement has said that copy of report of Public Analyst alongwith notice was sent to the applicant by Dak Book of his office and one peon Gajendra Verma went to serve that notice and copy of report of Public Analyst to the applicant. Shri Harish Kumar Advocate further submitted that neither any Dak-book was produced nor peon Gajendra Verman was examined and, therefore, there is absolutely no evidence to prove that copy of the report of Public Analyst alongwith notice under Section 13(2) of the Act was really forwarded to the applicant.

7. I have considered the arguments advanced by Shri Harish Kumar Advocate for the applicant and perused the record. The record shows that while food inspector D.R. Parashar (PW-1) deposed that notice under Section 13(2) and copy of report of Public Analyst was sent to the applicant by registered post, another witness Dilip Sharma deposed that such notice alongwith copy of report was sent by Dak Book of the office. This witness further stated that the said Dak Book through which notice under Section 13(2) of the Act alongwith copy of report of Public Analyst was sent to the applicant is not traceable and has been missed. He has admitted that peon Gajendra Verma informed him that the Dak Book of the office is missing and is not traceable.

8. If the entire statement given by witness Dilip Verma is believed even then on the basis of the statement given by this witness only it can be inferred that one

Gajendra Verma peon was deputed to serve notice under Section 13(2) of the Act alongwith copy of report of Public Analyst, upon applicant and therefore, in absence of Dak Book of the office which is not traceable, Gajendra Verma could have been best witness to prove the fact that he had really served the notice upon the applicant and obtained the signature on the Dak Book. Peon Gajendra Verma has not been produced by the prosecution during the trial. An inference against prosecution can very well be drawn to the effect that if this witness could have been examined then he would have not given statement in support of prosecution case, so he has been deliberately withheld, and not examined.

9. Hon'ble Supreme Court in the Case of T.V. Usman v. Food Inspector, Tellicherry Municipality, Tellicherry : AIR 1994 SC1818 , considered the effect of non-compliance of provision of Section 13(2) of the Act. In Paragraph 14 of the judgment Hon'ble Supreme Court laid down the law on this point as under:

No doubt, Sub-section (2) of Section 13 of the Act confers valuable right on the accused under which provision the accused can make an application to the Court within a period of 10 days from the receipt of copy of the report of Public Analyst to get the samples of food analyzed in the Central Food Laboratory and in case the sample is found by the said Central Food Laboratory unfit for analysis due to decomposition by passage of time or for any other reason attributable to the lapses on the side of prosecution, that valuable right would stand denied. This would constitute prejudice to the accused entitling him to acquittal but mere delay as such will not per se be fatal to prosecution case even in cases where the sample continues to remain fit for analysis in spite of the delay because the accused is in no way prejudiced on the merits of the case in respect of such delay. Therefore, it must be shown that the delay has led to the denial of right conferred under Section 13(2) and that depends on the facts of each case and violation of the time limit given in Sub-rule (3) of Rule 7 by itself cannot be a ground for the prosecution case being thrown out.

10. Hon'ble Supreme Court clearly laid down that non supply of copy of report of Public Analyst under Section 13(2) of the Act constitute prejudice to the accused then entitled him acquittal. In the case of Rameshwar Dayal v. State of U.P. 1996

(2) PFA Page 197, it has been again held that non supply of the report of Public Analyst to the accused caused him serious prejudice. In the case of State of Orissa v. Gouranga Sahu 2002 FAJ page 490 in Paragraph 4 again it has been held that mere dispatch of the report is not enough and that the prosecution is further obliged to prove that the letter so dispatched had reached the addressee accused. It has been observed that forwarding a copy of the report is not only a ritual, but a statutory requirement to be mandatorily observed in all the cases dispatch of such a report it is intended to inform the accused of his valuable right to get the other sample analyzed from the central food laboratory.

11. Therefore, on the basis of law laid down by the Supreme Court it is held that it was the duty of the prosecution to prove that the report alongwith notice under Section 13(2) has really been reached to the office or residence of the applicant accused and without any proof of service or any material, regarding such service it cannot be held that the notice alongwith copy of the report was served upon the applicant. The evidence adduced by the prosecution on this point is not only conflicting, but does not inspire any confidence, as the two public servant i.e. Food Inspector and clerk in the office of Local Health Authority has given different and contradictory version regarding mode of service of the report to the applicant. Neither the acknowledgement of the registered envelope nor the Dak Book have been produced during trial even the peon who had gone alongwith Dak Book to serve the notice upon the applicant has not been examined.

12. Learned Appellate Court in it judgment has wrongly held that on the basis of official record it can be presumed that notice was duly served on the applicant. The learned Appellate Court further went head and held that even if the notice was not served upon the applicant then also when he was put on trial then he never tried to get another part of sample examined by the central food laboratory which shows that he has relinquished this right of taking another sample examined by central food laboratory.

13. In view of the law laid down by Hon'ble Supreme Court on this subject, the observation made by learned Additional Sessions Judge in his judgment does not appear correct. When no notice under Section 13(2) of the Act has even been

served upon the applicant then definitely a serious prejudice has been caused to him.

14. Therefore, this revision succeeds and is allowed the conviction and sentence passed against the applicant by two Courts below are set aside and he is acquitted from the charge for the offence punishable under Section 16A(1) of the Prevention of Food Adulteration Act.

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