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Court : Madhya Pradesh

Decided On : Nov-09-2006

Reported in : 2007(4)MPLJ396

Judge : Rakesh Saksena, J.

Appeal No. : Criminal Revision No. 176/2002

Appellant : Satish

Respondent : The State of Madhya Pradesh

Disposition : Revision allowed

Judgement :
ORDER

Rakesh Saksena, J.

1. Applicant has tiled this revision against the judgment dated 5-2-2002 passed by Third Additional Sessions Judge, Jabulpur in Criminal Appeal No. 19 of 2001, whereby the judgment dated 3-1-2001 passed by Special Municipal Magistrate, Jabalpur, in Criminal Case No. 1347 of 1995, convicting the applicant for the offence under Section 7(1)/16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954, (for short 'the Act') and sentencing him to rigorous imprisonment for one year with fine of Rs. 200/-, was affirmed.

2. Facts of the case are that on 9-5-1994, Food Inspector, H.D. Dubey took sample of cow-buffalo milk from the applicant, a milk vendor at Lalmati. Jabalpur. He purchased 750 millilitres of milk, kept it in a container and after making it homogeneous divided it into three parts of 250 millilitres each and filled the samples in three clean dry bottles as per rules and deposited the same in the office of Local Health Authority, Jabalpur. One sample alongwith Form No. 7 was sent for analysis to Public Analyst, Bhopal. Report of Public Analyst (Ex. P-12) was received on 17-6-1994. According to analysis report, the sample was found to be adulterated. After obtaining the sanction from the Dy. Director, Food and Drugs Administration, Jabalpur, the complaint was filed in the Court of Magistrate and a notice alongwith the report of Public Analyst, in accordance with the provisions of Section 13(2) of the Act was sent to the accused.

3. During trial the applicant abjured the guilt. In his statement under Section 313 of the Cr.PC he pleaded false implication. He also pleaded that he did not receive any notice under the provisions of Section 13(2) of the Act.

4. In the trial, the prosecution examined only one witness, viz., H.D. Dubey, Food Inspector (P.W. 1). Relying upon the prosecution evidence, the learned Magistrate held the applicant guilty and convicted and sentenced him as stated above. Appeal preferred by the applicant was dismissed by Third Add I. Sessions Judge. Hence, this revision.

5. Shri Surendra Singh, Senior Advocate, for the applicant challenged the conviction of the applicant mainly on the ground of non-compliance of provisions of Section 13(2) of the Act. He submitted that the complaint was filed on 23-9-1996, i.e., after inordinate delay of two years and four months. No explanation was furnished for the above delay. He submitted that the prosecution also failed to prove that the notice as required under the provisions of Section 13(2) of the Act alongwith the copy of the report of Public Analyst was sent to the applicant. H.D. Dubey (P.W. 1), Food Inspector, who happened to be the sole witness in the case, merely said that he had received information that a notice under Section 13(2) of the Act was sent to the applicant by registered post by the Local Health Authority.

6. Learned Panel Lawyer, Shri Arun Nema on the other hand submitted that merely by filing the complaint late and by mere failure to prove the compliance of Section 13(2) of the Act, no prejudice could be said to have been caused to him as the applicant himself did not make any application before the Court for sending of her part of the sample for analysis to the Central Food Laboratory.

7. Having heard the learned Counsel for the parties and gone through the record, I am of the opinion that this revision deserves to be allowed. It is admitted position that the sample of the milk was taken by the Food Inspector on 9-5-1994. The report of the Public Analyst (Ex. P-12) was given on 17-6-1994, but the complaint against the applicant was filed on 23-9-1996, i.e., after over two years of taking the sample. It is also apparent that the evidence of H.D. Dubey (P.W. 1), Food Inspector is hearsay in respect to sending of the notice and the copy of the report of Public Analyst to the applicant as postulated in Section 13(2) of the Act. In his statement, he merely stated that he had received the information that the notice was sent by Registered Post. It was not proved by any witness from the office of the Local Health Authority as to how and by whom the said notice was dispatched. No dispatch register of the office or any postal receipt was produced. In the absence of the evidence of any person as to who dispatched the notice to the applicant, the evidence of H.D. Dubey, Food Inspector could not have formed any legal evidence. In Slate of Orissa v. Gauranga Sahu AIR 2004 SC 1233, the Apex Court observed that mere dispatch of report is not enough; and that the prosecution is further obliged to prove that the letter so dispatched had reached the addressee, i.e., the accused. Forwarding the 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 is intended to inform the accused of his valuable right to get the of her sample analyzed from the Central Food Laboratory. In the case of Nagar Palika Parishad v. Kapoor Chand 1995 (1) FAC 68, this Court held that the failure of sending the report of the Public Analyst to accused amounts to non-compliance of the provisions of Section 13(2) of the Act and causes serious prejudice to accused, and this ground alone is sufficient to acquit him. Again in the case of Chainsukh Tiwari, Food Inspector v. Kamal Kishore 1995 (1) FAC 208, this Court held that mere production of the dispatch register, was not sufficient even if the acknowledgment was not received back, complainant who was in possession

of the postal receipt did not produce the same, therefore, the Magistrate was justified in concluding that the prosecution failed to prove the due compliance of Section 13(2) of the Act read with Rule 9(A) of the Rules framed thereunder. Similar view was reiterated by Allahabad High Court in the ease of Nagar Swasthya Adhikari, Allahabad v. Raghuraj Singh 2001 (1) FAC 134. In view of the above proposition of law it is abundantly clear that the prosecution failed to prove the compliance of the provisions of Section 13(2) of the Act, which are mandatory in nature and the non-compliance whereof causes serious prejudice to accused resulting in denial of the opportunity to accused of his right of sending another sample for analysis to Central Food Laboratory.

8. It is also on record that the complaint was filed by the Food Inspector after about 2 years and 4 months of taking of the sample and receipt of the report of Public Analyst. It is settled position of law that the inordinate delay in launching the prosecution causes serious prejudice to accused preventing him from exercising his right under Section 13(2) of the Act. This Court in Shiv Dayal Saligram Tiwari v. Stale of Madhya Pradesh 1977(1) FAC 90 observed:

9. Lactic organisms are present in milk in varying numbers even when produced under clean conditions. The composition of milk with the bacterial content undergoes a rapid change unless the milk is pasteurised or unless it is sent under refrigeration. The following passage from the book 'Milk Production and Control' by Harvey and Hill at pages 177-178 is quoted hereunder:

The keeping properties of milk depend upon the number of bacteria contained, Bacteria multiply more rapidly at high temperature than at low and the higher the temperature the more rapidly do they increase, this being specially the case with those organisms which cause rapid souring and objectionable flavours in milk. The bacteria most commonly found in milk grow more rapidly at temperature above 60 F. at temperatures above 70 F., milk speedily sours. If the liquid contains as few as 10,000 bacteria and is held at 60 F., it will become sour in fifty-three hours. If the same milk is held at 50 F., it will not sour for eighty-six hours. Every effort should, therefore, be made to ensure that the milk is cooled to a temperature as low as is possible under the prevailing circumstances.

Mudholkar, J., (as he then was) in Dattappa v. Buldana Municipality AIR 1951 Nag. 191, has observed 'where milk is kept in its natural condition for a long time, it may be taken, therefore, that its fat and non-fat content would be reduced.

10. In Encyclopaedia of Britanica (1970 Edition), Volume IX at page 546, on the subject of 'Food Preservation', it has given a table showing the safe storage period of various food products. Though milk is not mentioned in the table but butter and cheese have been included in the table and it has been stated that safe period of storage of these two articles is 6-8 months under freezing point refrigeration. Evidently, the period for milk will be lesser.

11. So considering the various authorities cited above, it can be said that a sample of milk, even after adding preservative, can remain fit for analysis at the most for a period of 6 months, if kept under refrigeration. The period given in the Encyclopaedia of Britanica is of course under the conditions prevailing in cold countries but our climate is much warmer. In fact, temperature is normally above 70 F. throughout the year, the summer temperature being very much higher. There are also no such facilities available here for preservation of the samples as in those advanced countries.

9. Following the case of Shiv Dayal Saligram Tiwari (supra), Punjab and Haryana High Court in the case oiReet Singh v. State of Haryana 1990 (2) FAC 413, held that the prosecution launched after about six months of the receipt of the report of Public Analyst caused serious prejudice to accused. In the case of Om Prakash Sharma v. State of Assam 1994 (1) FAC 17, Guwahati High Court observed that even if the sample is kept after adding chemicals in the refrigerator, the sample is bound to deteriorate after six months as laid down by the Apex Court in the case at Municipal Corporation of Delhi v. Gheesaram 1975 (1) FAC 186.

10. In the circumstances, appearing in the present case, even if the applicant/accused would have moved the Court for sending another part of the sample for analysis to Central Food Laboratory, it was doubtful that the correct result could have been obtained due to deterioration on the contents of the milk due to long lapse of two years.

11. On due consideration of the above facts and circumstances, I am of the opinion that the prosecution has failed to prove the compliance of the mandatory requirement of Section 13(2) of the Act. As such, the conviction and sentence of the applicant cannot be sustained in the eye of law. Accordingly, this revision is allowed, the order of conviction and sentence passed by the Court below is set aside, the applicant is acquitted of the charge. Fine amount if paid, be refunded to the applicant.

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