

Bijaya Kumar Ram Vs. the State

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Court : Orissa

Decided On : Feb-09-1989

Reported in : 67(1989)CLT531; 1989CriLJ1613

Judge : K.P. Mohapatra, J.

Appellant : Bijaya Kumar Ram

Respondent : The State

Judgement :

ORDER

K.P. Mohapatra, J.

1. The petitioner has challenged his conviction and sentence under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act (hereinafter referred to as 'the Act').

2. The petitioner was a dealer of grocery articles of Dharamsala Market of Keonjhar town. On 23-1-1980 at 12-30 P.M. the Food Inspector (P.W. 2) inspected the grocery shop and suspected that turmeric whole kept inside the shop was moth-eaten and unfit for human consumption. Accordingly, he purchased 600 grams of turmeric whole and after compliance with the rules, the samples were kept in clean and dry bottles in equal parts and subsequently one of them was sent to the Public Analyst for opinion. The Public Analyst reported in his report

(Ext. 4) to the effect that the sample of turmeric whole was damaged by insects and was adulterated in view of the provision of Section 2(ia)(m) of the Act. After receipt of the report, it was found that there was a prima facie case of food adulteration against the petitioner and after obtaining the sanction for prosecution Ext. 5 from the Authorised Officer, the Chief District Medical Officer, prosecution report was submitted in court.

3. The petitioner took the defence that turmeric whole which had been purchased by the Food Inspector (P.W. 2) was kept in the storeroom of the grocery shop and was riot exposed for sale for human consumption. Therefore, even if it might have been found by the Public Analyst that the same was adulterated, he did not commit the offence he was charged with.

4. The learned Judicial Magistrate, First Class, Keonjhar, accepted the prosecution case and found that the petitioner had exposed the turmeric whole for human consumption in the grocery shop and as the same was found to be adulterated and moth-eaten, he committed an offence under Section 16(1)(a)(i) of the Act. He sentenced the petitioner to undergo simple imprisonment for three months and to pay a fine of Rs. 500/- in default, to undergo simple imprisonment for one month more.

5. The petitioner carried an appeal to the learned Sessions Judge, Keonjhar, who in the impugned judgment upheld the conviction and sentence.

6. Mr. P. K. Dhal, learned Counsel appearing for the petitioner, raised many important points challenging the conviction. But the most important point was non-compliance of mandatory provision of Section 13(2) of the Act resulting in grave prejudice to the petitioner for his defence. Without touching any other point raised by him, the revision can be decided on this important point alone.

7. It is the settled position of law that the provision of Section 13(2) of the Act is mandatory in nature which means, the copy of the report of the Public Analyst must have to be served on the shop owner from whose shop samples have been collected in accordance with Rule 9A of the Prevention of Food Adulteration Rules (hereinafter referred to as 'the Rules') so that he will get opportunity of getting one

of the samples re-examined in the Central Food Laboratory. Contravention of Section 13(2) of the Act, therefore, is fatal to the prosecution. In support of the above view, I will refer to only three decisions of this Court in which several decisions of the Supreme Court and, other High Courts have been discussed. They are (1986) 1 Orissa LR 421, State of Orissa v. Jeebanlal Criminal Revision No. 14 of 1983. Ram Chandra Sahu v. State, disposed of on 10-12-1986 reported in 1987 Cri LJ 2025, and a Bench decision reported in (1985) 59 Cut LT 35, Nagendra Nath Roy v. Hariram Singhania.

In order to find out if the mandatory provision of Section 13(2) of the Act has been complied with or not, it is necessary to have a glance at oral and documentary evidence adduced by the prosecution. P.W. 2, the Food Inspector obviously did not send the copy of the report of the Public Analyst (Ext. 4) to the petitioner. In his chief examination he generally stated,

The copy of the analyst's report of the sample of turmeric whole had been send (sent) to the vendor by Registered Post by local health authority office after the institution of the prosecution.

He was recalled for chief examination where he stated,

Ext. 7 is the postal receipt showing the despatch of analyst's report to Vendor by registered post by the C.D.M.O.

In cross-examination he stated,

Except Ext. 7 there is no document to show that the copy of the analyst's report had been sent to accused.

Ext. 7 is only a postal receipt addressed to one Bijaya Kumar Raut, at /p.o. Keonjargarh. There is no other document to show that the copy of the report of the Public Analyst (Ext. 4) was sent to the petitioner, nor is there any oral evidence of the person from the office of the Chief District Medical Officer, Keonjhar, to depose that actually the same had been sent by registered post. In this connection, I would like to reproduce a paragraph from the judgment in the case of Rama Chandra Sahu v. State of Orissa 1987 Cri LJ 2025 (supra) which was also

an identical case with regard to non-compliance of the provisions of Section 13(2) of the Act and the facts are also similar in both the cases (at pp. 2027-28):

Surprisingly, the prosecution did not adduce any documentary evidence to establish that a copy of the report of the public analyst (Ext. 5) was delivered to the petitioner in the manner prescribed in Rule 9-A of the Rules. The office copy of the forwarding letter was neither produced nor proved according to law. No document in the shape of a receipt was either produced or proved indicating that the petitioner had received a copy of Ext.5. The learned Additional Standing Counsel drew my attention to Ext.6, a postal receipt, and urged that a copy of Ext. 5 was delivered at the post office and in due course it must have reached the destination so as to be delivered to the petitioner. The postal receipt, Ext. 6, does not prove anything beyond the fact that some article was delivered at the post office and a receipt was granted. It does not prove as to what was contained in the article which was delivered at the post office, much less the fact that the article contained a copy of the report of the public analyst (Ext. 5) along with the forwarding letter of the local health authority. In other words, on the basis of the postal receipt and without specific proof, no inference can be drawn that a copy of the report of the public analyst (Ext. 5) was delivered to the petitioner. I am therefore bound to conclude that a copy of the report of the public analyst (Ext. 5) was not delivered to the petitioner for compliance of the mandatory provisions of Section 13(2) of the Act read with Rule 9-A of the Rules.

8. On examination of the contention of Mr. Dhal along with oral and documentary evidence, I do not hesitate to hold that the prosecution signally failed to prove the compliance of the mandatory provision of Section 13(2) of the Act. Therefore, on the grounds of prejudice caused to the petitioner, he is entitled to an acquittal.

9. Before closing, I would like to point out the, erroneous view taken by the learned Sessions Judge in the impugned judgment to the effect that Section 13(2) of the Act is directory but not mandatory in nature. He relied upon : 1985 CriLJ663 , *Municipal Corporation of Delhi v. New Kwaliti Sweet House*, and quoted:

Section 13(2) read with Rule 9-A is directory in nature. Thus the non-compliance of the same cannot be said to be fatal to the prosecution.

On close examination of the aforesaid decision, it appears that no such observation had been made by the Supreme Court. On the other hand, it was a case where point for examination was whether the report of the Public Analyst would be satisfactory if quantity smaller than the requisite quantity of the food article is sent to him for examination. It was held that so long as the quantity sent for analysis is sufficient to enable the Analyst to make a satisfactory analysis according to accepted tests, conviction of a person for adulteration cannot be effected. This principle was not necessary to be referred to in the present case. The learned Sessions Judge patently referred to a wrong decision.

10. In the result, the order of conviction and sentence passed by the learned courts below cannot be sustained and so the petitioner is acquitted of the charge. Fine, if realised, be refunded, Bail bond is discharged.

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