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Court : Orissa

Decided On : Oct-29-1998

Reported in : 1999CriLJ1191

Judge : R.K. Dash, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 13(2), 16 and 16(1);
Code of Criminal Procedure (CrPC) , 1974 - Sections 482

Appeal No. : Criminal Misc. Case No. 1151 of 1996

Appellant : Ramesh Sharma and anr.

Respondent : Food Inspector, Cuttack Municipality

Advocate for Def. : B.B. Rath, ;N. Pande-1, ;S. K. Patnaik and ;S.K. Acharya,
Adv.

Advocate for Pet/Ap. : A.K. Mishra, ;G.B. Panda and ;R. Pati, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

R.K. Dash, J.

1. In this application under Section 482, Cr P. C. the petitioners have assailed the order of the learned S.D.J.M., Cuttack, passed in 2(c) CC No. 176 of 1994 under Section 16 of the Prevention of Food Adulteration Act (here in after referred to as 'the Act') whereby their prayer for quashing the aforesaid proceeding was rejected.

2. M/s. Oamodur Maharaj is a confectionary shop situated at Jaunliapati in the town of Cut-tack. Petitioner No. 2 is the proprietor and petitioner No. 1. son of petitioner No. 2, was allegedly conducting the business of the said shop on the date of incident, i.e. 28-9-1993. Food Inspector of Cuttack Municipality suspecting various sweets namely, Kalakand, Raj Bhog, Pedda, etc. exposed for sale for human consumption, to be adulterated, purchased 600 grams from each item on payment in presence of witnesses for analysis, divided into three equal parts and kept each part in cleaned and dry glass bottles after adding required quantity of formalin, sealed all the sample bottles and then sent one part from such item to the Public Analyst for examination. The Analyser after having examined reported one of the sweets, viz., Raj Bhog to be adulterated. There upon the Food Inspector placed the said report along with relevant document before the Chief District Medical Officer (C.D.M.O.) Cuttack for obtaining his consent to launch prosecution. The C.D.M.O. on scrutiny of the report/documents and after applying his mind, gave written consent, whereupon complaint was filed against the petitioners under Section 16(1)(a)(i) of the Act to stand their trial. Copy of the Analyst's report was also supplied to each of the petitioners as required under law.

On being summoned by the Court, petitioners entered appearance through counsel and filed an application in the Court to get the sample of the food article, viz 'Raj Bhog' analysed by the Central Food Laboratory. After long delay the local health authority namely, the C.D.M.O. Cuttack. produced the second part of the sample in the Court, whereafter the same was sent to the Central Food Laboratory for examination. The Director, Central Food Laboratory, on examination reported that the sample being decomposed was unfit for analysis. So, he intimated the Court to send another part of the sample for further analysis, In view of such report, the petitioners moved the learned Court below praying that since no prima facie case was made out against them, the proceeding be dropped. Upon hearing the panics, the learned S.D.J.M., Cuttack, by his order dated 28-2-96 rejected the

said prayer and it is against that order of rejection (he present Misc. Case is filed.

3. Learned counsel appearing for the petitioners strenuously urged that the petitioners being dissatisfied with the report of the Public Analyst exercised their right at the earliest opportunity to get the second sample analysed by the Central Food Laboratory and it was due to laches of the local health authority there was inordinate delay in sending the same to the Central Food Laboratory and because of the delay, the food article had . been decomposed for which it could not be analysed, in such a situation the report of the Public Analyst that the food article was adulterated loses its value. If the said report is excluded from consideration, there remains no material to prima facie hold that the food article in question was adulterated. In that view of the matter, it would be sheer wastage of Court's time to proceed with further hearing of the case and therefore, it is a fit case where the Court should in exercise of inherent power under Section 482, Cr.P.C. quash the proceeding.

4. Repelling the aforesaid contention learned counsel appearing for the opposite party would urge that the lower Court record reveals that the petitioners also contributed to the delay in getting the sample analysed by the Central Food Laboratory and so they cannot take benefit of the report of the Central Food Laboratory and pray the Court to quash the proceeding. It was further submitted that remedy of the opposite party is not exhausted inasmuch as another part of the sample could be sent for analysis and that was what the Director. Central Food Laboratory indicated in his report to the Court. Besides, when the hearing of the case has already begun and one witness has been examined, contended the counsel, the whole matter should be left to the Court below to take a final decision on the available evidence.

5. Causal approach to the case by the trial Court and the apathy shown by a public functionary, namely, C.D.M.O., Cuttack, deserve to be condoned. No anxiety was shown by them to discharge their duties. In a case of this nature, where the petitioners are alleged to be dealing in adulterated food, they should have kept them selves alive to the nature and seriousness of the crime which affects the society at large. After the report of the Public Analyst was received and consent of

the C.D.M.O. was obtained, prosecution was launched against the petitioners, since 'Raj Bhog' as reported by the Analyst was adulterated. As right has been conferred on the accused to challenge the report of the Public Analyst, the petitioners in the present case exercised their such right as envisaged under Section 13(2) of the Act and prayed the Court to direct the local health authority to get another sample of the food articles analysed by the Central Food Laboratory. Application to that effect was filed on 5-7-94. As the order-sheet reveals, copy of the said petition was not served on the complainant. Since the Presiding Officer was on leave, the record was placed before another Magistrate who directed the petitioners to serve a copy of the petition on the complainant and adjourned the case to 19-7-94 for objection and also for hearing. On the adjourned date the petitioners filed a petition for time on the ground of illness. The Court then fixed the case to 2-8-94 and directed the petitioners to serve the copy of the aforesaid petition on the complainant as ordered earlier. On 2-8-94 the petitioners were released on bail whereupon the case was adjourned to 9-8-94. Order dated 9-8-94 reveals that on that day the petitioners served copy of their petition on the complainant and since there was no objection to their prayer, the learned S.D.J.M. directed C.D.M.O. to produce the sample so that the same can be sent to the Central Food Laboratory for examination. Simultaneously the petitioners were directed to deposit a sum of Rs. 40/- towards fees for analysis and to take stops for sending the sample to the Central Food Laboratory. Neither the said order was communicated to the C.D.M.O. nor did the petitioners comply with the Court's direction. This necessitated the Court to address a letter to the C.D.M.O. to produce the sample. It would appear from the record that the concerned clerk though endorsed on the order-sheet that such a letter was addressed to the C.D.M.O. on the very day, but in fact it was not. A copy of the letter although is available on record, but it does not bear any number and it appears, someone received the same on 24-8-1994, On the next date there being no response by the C.D.M.O. the Court directed the office to issue a reminder. The record does not indicate that the said order had been complied with, although a copy of the letter bearing No. 3576 (without there being any date) is available. The case then suffered a number of adjournments to get the sample from the C.D.M.O. Consequently, the Court issued notice to the C.D.M.O. to show cause for not

complying with the order. It was only (hereafter the C.D.M.O. produced the sample on 17-2-1995. Thereupon the Court directed the petitioners to take steps by 2-3-1995 to send the sample to the Central food Laboratory for examination as ordered earlier. On the aforesaid date the petitioners filed chalan showing deposit of examination fees, but they did not file requisites. The case was then adjourned to 29-2-1995. On the adjourned date, no requisites were filed. The case was then posted to 3-4-1995 on which date the petitioners filed requisites whereafter the sample was sent to Central Food Laboratory. On examination, the Central Food Laboratory reported that the sample being decomposed is unfit for analysis. In view of such report, the petitioners moved the Court below to quash the entire proceeding.

6. In order to find out as to for whose laches and negligence there was inordinate delay in getting the sample analysed by the Central Food Laboratory, the C.D.M.O., Cuttack, was directed to file an affidavit explaining as to why such time was consumed at his level to produce the sample in Court. Pursuant to the said order the present C.D.M.O. filed an affidavit stating that S.D.J.M.'s letter calling for the sample was received on 22-12-94. Since the C.D.M.O. was on leave, the sample could not be produced. Subsequently on receipt of the show cause notice on 7-2-93 the sample was produced on 17-2-95. In view of such assertion the learned S.D.J .M., Cuttack, was asked to submit a report as to why the order dated 9-8-95 could not be communicated to the C.D.M.O. in time. Accordingly he submitted a report to the effect that orders dated 9-8-94 and 3-10-94 were not complied with by the Dealing Assistant Shri Narayan Mishra. So far as the order dated 23-8-94 is concerned he reported that a letter was sent through the Law Moharrir of Cuttack Municipality on 24-8-94 as stated by the Dealing Assistant.

7. I have verified the records as well as Issue Register and the Peon Book and found that orders dated 9-8-94, 23-8-94, 8-9-94, 3-10-94, 26-10-94 and 24-11-94 were not complied with at all. Though it is noted in Col. 3 against orders dated 23-8-94, 26-10-94 and 24-11'-94 that letter/reminder had been issued, but in fact it was not. Narayan Mishra, the Dealing Assistant was therefore, noticed to have his say explaining the reason for not complying with the Court's order. Pursuant thereto lie filed his reply which runs in the same line as that of the S.D.J.M.

According to him, pursuant to the Court's order dated 23-8-94 he served the notice on one Krishna Chandra Ghadei, Law Moharrir of Cuttack Municipality. As regards compliance of the subsequent orders he has stated that reminders had been issued to the C.D.M.O. through District Eizarat for service. I have scrutinised his explanation with reference to the record and the same being far from satisfactory is not accepted. When there was a specific direction of the Court to address a letter to the C.D.M.O. to produce the sample there was no reason for the Dealing Assistant to handover the copy of the letter dated 23-8-94 to the Law Moharrir who is not an officer of the Court. Besides, doubt also arises as to if the copy of the letter was at all handed over to the Law Moharrir. Learned counsel appearing for the opposite party in course of argument submitted that the endorsement and initial appearing on the reverse side of the said letter are not of any Law Moharrir of Cuttack Municipality. The Executive Officer of Cuttack Municipality in his affidavit has stated (hat Krishna Chandra Ghadei was temporarily working as Law Moharrir on daily wage basis and was in charge of criminal cases including food adulteration cases in different Courts. Since he failed to discharge his duties, one Dhaneswar Lenka was engaged from 4-8-94 to look after food adulteration cases. In view of such affidavit of the Executive Officer it is difficult to accept the explanation of Narayan Misra, Dealing Assistant that he had handed over the copy of the letter dated 22-8-94 to Krishna Ghadei who was no more incharge of the food adulteration cases of' Cuttack Municipality by that date. On a conspectus of the lower Court record, the relevant registers and the affidavit, I am of the view that the learned S.D.J.M. made a casual approach to the case and left the same to be handled by the Dealing Assistant. Conduct of Narayan Misra, Dealing Assistant is also not without blemish. The C.D.M.O., Cuttack, is equally to be blamed. When according to his own showing, a letter from the S.D.J.M.'s Court was received on 22-12-94 steps should have been taken to send the sample to the Court soon. But it was not done so. About two months thereafter the sample was produced and the reason for such delay according to him, is that the then C.D.M.O. was on leave. [This explanation being far from satisfactory is not acceptable, the reason being that compliance of the Court's order was merely a routine work, in usual course, the officer incharge of the C.D.M.O. should have attended to the letter of he S.D.J.M. and sent the sample to the Court immediately. The gravity of the offence

with which the petitioners stand charged should have been taken note of. Law requires that without any time-lag the sample should be examined by the Central Food Laboratory when the person accused of dealing in adulterated food has challenged the report of the Public Analyst. From the facts narrated above, I find that the provisions of law have been observed more in breach.

8. Apart from what has been stated above, it is further to be ascertained whether the petitioners contributed to the delay in getting the sample analysed by the Central Food Laboratory. It may be reiterated, the petitioners when exercised their right under Section 13(2) of the Act by filing a petition, they did not serve a copy of the said petition on the complainant. For serving a copy, the case suffered two adjournments. Even after the sample was produced, they did not file requisites to send the sample to the Central Food Laboratory for examination. They took about one and half months to file requisites. In the circumstances, they cannot take advantage of their own negligence and urge upon the Court not to act upon the Public Analyst's report, as no definite opinion could be given by the Central Food Laboratory due to decomposition of the sample. True it is, once the accused has exercised his right under Section 13(2) of the Act challenging the report of the Public Analyst, the report of the Central Food Laboratory will supersede the Public Analyst's report. But in the present case the said principle will not apply because the delay occasioned in sending the sample to the Central Food Laboratory was also attributable to the petitioners. It is fundamental that one cannot take the benefit of his own wrong. Besides, when hearing has already begun and one witness has been examined, the whole matter should be left to be finally adjudicated by the trial Court on the basis of the evidence and law as well.

9. In view of discussions made above, I find no merit in the present petition which is accordingly dismissed.

10. Before parting with, I would like to observe that the Courts while dealing with cases of this nature should bestow their attention to day-to-day proceeding so that no delay could occur in taking steps in accordance with law. When a petition under Section 13(2) of the Act is filed, the Court in seisin of such cases should mention in the front page of the record in red ink 'Section 13(2) petition is filed'. This is

necessary because such endorsement will remind the Court to see as to if timely steps have been taken to send the sample for analysis by the Central Food Laboratory. Besides, a separate register should be opened in such matters when the accused has exercised his right under Section 13(2) and steps taken on each date should be noted therein. The Chief Judicial Magistrate who is the immediate supervising authority should inspect and scrutinise the said register and the case records to see that there has been no delay in taking steps in the matter.

A copy of this judgment be sent to the Registrar. (Admn.) for issue of necessary direction to the lower Courts in the form of a General Letter.

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