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Court : Delhi

Decided On : Sep-11-1969

Reported in : ILR1970Delhi435

Judge : Hardayal Hardy, J.

Acts : Prevention of Food Adulteration Rules, 1955 - Rule 7

Appeal No. : Criminal Revision Appeal No. 14 of 1967

Appellant : Lachmi Narain

Respondent : State

Advocate for Def. : Mr. Tara Chand

Advocate for Pet/Ap. : U.M. Trivedi,; R.P. Bansal,; S.P. Pandey,;

Judgement :

Hardayal Hardy, J.

(1) The petitioner in this case is the owner of a shop in Gadodia Market. On 30-3-1965 at about 4-30 P.M. his shop was visited by three food inspectors, namely, Shanti Nath, Dina Nath and L. R. Bhatt. Each of the three inspectors lifted two samples of turmeric from bs of un-ground turmeric lying for sale in the shop. Each Inspector prepared a memo in respect of each sample according to rules and also

paid the necessary price for the samples taken by them. The memos Exhibits Pi 4 to Pi 6 which were placed on record purport to bear a writing in landa script in hand-writing of the petitioner admitting that a sample of turmeric (un-ground) was given by him. The food inspectors also filed in three proformas on Form Vi according to rule 12 of the Prevention of Food Adulteration Rules, 1955, hereafter to be referred to as the Rules and sent their reports to the Municipal Corporation of Delhi for a complaint being lodged against the petitioner for contravention of section 7 of the Prevention of Food Adulteration Act, 1954, hereafter referred to as the Act. Eventually three of the samples viz. two samles taken by Food Inspector Shanti Nath and one by Dina Nath, were found by the public analyst to be adulterated. Exhibits P5 to P7 are the reports of the Public analyst declaring the samples to be adulterated.

(2) On a complaint filed by the Municipal Corporation through the Assistant Municipal Prosecutor, the three food inspectors, Shanti Nath, Dina Nath, L. R. Bhatt, Sat Pal driver and R. N. Gujral, Assistant Municipal Prosecutor were examined as witnesses in support of the prosecution case. The three food inspectors and Sat Pal deposed that samples were lifted by Shanti Nath and Dina Nath according to the rules and the purchase memos bearing the hand-writing of the petitioner admitting the sale of samples to the food inspectors were duly prepared. They also proved the receipts with regard to the payment of price and the proformas in Form Vi which were thumb-marked by the petitioner.

(3) The petitioner denied the prosecution story but expressed his inability to affirm or deny the facturn of his having written in his own hand-writing that samples of turmeric were given by him from his shop or the factum of his having thumb-marked the receipts or the proformas. He explained his inability to make a categorical statement on that point on account of his weak eye-sight, but went on to add that as far as he remembered the proformas were nto signed by him. He examined defense- witnesses to establish that at the relevant time he was lying in front of shop No. 32 which belonged to Messers Bansi Dhar Behari Lal and was closed on that day and that samples were nto taken from his shop in his presence but were instead implanted on him.

(4) The Magistrate who tried the case accepted the prosecution case, convicted the petitioner of an offence under section 7 read with section 16 of the Act and sentenced him to undergo imprisonment till the rising of the court and to the payment of fine of Rs. 15,000.00. In default of payment of fine the petitioner was sentenced to undergo simple imprisonment for a term of 1' years.

(5) On appeal the conviction and sentence was maintained by the Addl. Sessions Judge.

(6) In revision the legality of the petitioner's conviction has been attacked on three grounds. It is contended that there has been no compliance with the provisions of section 10(7) of the Act and thereforee the evidence about taking of samples should be rejected. It has been argued that before the amendment of the Act by the Prevention of Food Adulteration (Amendment) Act, 49 of 1954, the food inspector taking action under clause (a) of sub-section (1), sub-section (2), sub-section (4) or sub-section (6) of section 10, was required to call, as far as possible, nto less than two persons to be present at the time when such action was being taken. The phrases 'as for as possible' and ''nto less than two persons' have since been omitted and sub-section (7) as amended reads:-

'WHEREthe Food Inspector takes any action under clause (a) of sub-section (1), sub-section (2), sub-section (4), or sub-section (6) he shall, call one or more person to be present at the time when such action is taken and take his or their signatures.'

(7) Under the amended provision the food inspector is bound to call at least one person to be present at the time when he takes action as aforesaid. The action against the petitioner having been taken on 30-3-1965 when the amended provision was in force, the observance of the requirements of sub-section (7) was obligatory. In the present case, the three food inspectors did nto take any independent person from the locality to supervise the taking of samples but instead, samples taken by one inspector were taken in the presence of the other inspector and their driver Sat Pal who could by no means be regarded as independent persons. In support of his argument the learned counsel has referred me to an un-reported judgment of a Division Bench of this Court in Municipal

Corporation of Delhi and another v. Ram Chand and another (Criminal Appeal No.152 of 1967) decided on January 16, 1969 where, it is urged, on facts similar to those in the present case the accused were acquitted and the appeal filed by the Municipal Corporation against their acquittal was dismissed. Mr. Tarachand Brijmohan Lal. counsel for the Municipal Corporation, on the other hand relies upon a judgment of I.D. Dua J. (as he then was) in Tilo Ram v. Stafe 1967 Plr 22 Delhi Section) where it was held that section 10(7) cannto be construed to mean that persons should never belong to the department concerned with preventing food adulteration. Reliance is also placed by Mr. Tarachand on a decision of the Supreme Court in Sunder Singh v. State of Uttar Pradesh : 1956 CriLJ801 . The section with which the Supreme Court was dealing in that case is section 103 Criminal Procedure Code which is in terms almost similar to subsection (7) of section 10 of the Act. It was held that any irregularity in the search and the recovery in so far as the terms of section 103 had nto been fully complied with, would nto affect the legality of the proceedings. It only affected the weight of evidence. Almost similar observations are to be found in another decision of the Supreme Court in Radha Kishan v. State of Uttar Pradesh : (1963)IILLJ667SC .

(8) The case of Tilo Ram v. Stafe no doubt dealt with section 10(7) of the Act before its amendment in 1964, but the ratio of the decision is to be found in the following observations of the learned Judge:-

'THEobject of enacting section 10(7) is really to ensure that the particular sample is taken from the accused. I am disinclined as at present advised, to hold that section 10(7) must be construed to mean that persons who are called should never belong to the department meant for preventing food adulteration.'

(9) All the three cases were considered by the Division Bench of this Court in the case of Municipal Corporation of Delhi and another v. Ram Chand and another referred to above. The learned Judges (S.K. Kapur and Jagjit Singh JJ) held that it was nto necessary in that case to decide the question as to whether the provisions of section 10(7) were mandatory or directory in view of the observations of the Supreme Court in the two cases mentioned above in connection with section 103 Criminal Procedure Code or in another judgment by Ismail J. of this Court in

Vishnu Kumar v. The State 1967 Plr Delhi 290 with reference to section 10(7) of the Act, to which their attention was invited during the course of arguments. On the other question it was held that the food Inspector had nto even made an attempt to call any person who could be regarded as nto being under his control and influence and that circumstance certainly affected the reliability of the food Inspector and his companions. In the instant case there was evidence to establish that efforts were made to persuade shop-keepers and others in the locality to be present at the time of taking samples but the persons approached by the Inspectors had shown their dis-inclination to do so. The question as to whether it was necessary under Sub-section (7) to call witnesses from the locality only, has nto been argued before me and thereforee no opinion need be expressed on that point.

(10) The second contention urged on behalf of the petitioner is that there has been no compliance with rules 7 and 18 of the Rule in that it has nto been established that when the package containing the samples for analysis was received from the food Inspectors the public analyst or an Officer authorised by him had compared the seals on the container and the outer cover with specimen impression received separately. The reports relating to the samples taken by the Inspectors merely stated that the samples were properly sealed and fastened and the seals were found intact and un-broken. There is nothing to indicate that any comparison of the seal was made as required by rule 7. Rule 18 requires that a copy of the memorandum and a specimen impression of the seal used to seal the packet shall be sent to the public analyst separately by registered post or delivered to him or to any person authorised by him. The observance of this rule had also nto been established in this case. According to the learned counsel, non-compliance with rules 7 and 18 vitiated the report of the public analyst. In support of his argument, learned counsel relies on a Bench decision of Madhya Pradesh High Court in State of Madhya Pradesh v. Abbasbhai 1967 JLJ779 where the learned Judges following the judgment of V. B. Raju J. in State of Gujarat v. Shantaben : AIR1964 Guj136 held that rules 7 and 18 were mandatory and when those rules were nto followed one could nto be sure that the samples reaching the public analyst had nto been tampered on the way. In the case before Raju J. also the report of the public analyst merely showed that the seals were intact and un-broken; but it did

nto show that the seals in the container were compared with the specimen seals sent to the public analyst. I do nto consider it necessary to express any definite opinion on the point as the question raised by the learned counsel is a mixed question of fact and law and no such question was raised by the petitioner in the two courts below. As at present advised, I also find it difficult to go to the length to which the learned Judges of Madhya Pradesh High Court and Raju J. of Gujarat High Court appear to have gone. The report Exhibit P5 (the other reports are in the same terms) states inter alias that 'I ..... Sudhamoy Roy public Analyst for Delhi Municipal Corporation area, duly appointed under the Prevention of Food Adulteration Act, 1954 received on 31st day of March 1965, from Sh. Shanti Nath F.I. .....a sample of Haldi sabat s-2614 for analysis, properly sealed and fastened and that I found seal intact and unbroken.' In my opinion, the certificate which purports to have been issued on a form prescribed under rule 7(3) of the Rules and states that the sample when received for analysis was 'properly sealed and fastened' and that the seal was found intact and unbroken clearly shows that the person signing the certificate had satisfied himself that the provisions of subrule (1) of rule (7) with regard to comparison of the seals in the container and the outer cover with the specimen impression received separately under rule 18 had been duly observed, otherwise it would nto nave been possible for him to certify that sample when received was 'properly sealed.' The contention is thereforee over-ruled.

(11) The last contention urged by the learned counsel is with regard to delay in filing the complaint. According to the evidence, the samples were taken on 30. 3. 1965 and were analysed on two dates between 8. 4. 1965 and 12. 4. 1965. The reports of the public analyst were submitted in 15. 4. 1965 and 20. 4. 1965 while the complaint was filed in October 1965. There was no doubt. a delay of eight months in filing the complaint. but delay by itself does nto vitiate the prosecution. In the first place, no request was made by the petitioner to have the samples sent to the Central Food Laboratory Calcutta for analysis. It was also nto shown that the samples gto de-composed as a result of the delay in filing the compalint and as such their analysis by the Central Food Laboratory became impossible. In this connection, learned counsel for the petitioner has referred me to a decision of the Supreme Court in Municipal Corporation vs. Ghisa Ram : 1967 CriLJ939 and also

to a Bench decision of this court in Municipal Corporation v. Ram Chand in Criminal Appeal No. 204D of 1962 decided by me and Jagjit Singh J. on 27. 8. 1969. Apart from the fact that no such objection was raised by the petitioner in the two courts below no prejudice seems to have been caused to the petitioner by the delay in the filing of the complaint. The petitioner has nto pointed to anything on the record to show that he did nto send the sample for analysis to the Central Food Laboratory Calcutta bacause of the delay in the filing of the complaint. While it is desirable that in all such cases complaint should be filed in court without any avoidable delay it cannto be said as a matter of law that mere delay in filing the complaint is sufficient to vitiate the action. The two decisions referred to above are thus distinguishable on their own facts and I do nto read the Supreme Court's decision in Ghisa Ram's case as laying down the law that delay by itself will vitiate the prosecution.

(12) The result of the fore-going discussion is that the revision is dismissed and the conviction of the petitioner is maintained. As regards sentence, the learned counsel for the petitioner submits that the sentence of fine of Rs. 15,000.00 is un-duly harsh and excessive. Under section 16(1)(f) the offence of which the petitioner has been convicted is punishable with a minimum sentence of imprisonment for a term of six months and fine which shall nto be less than Rs. 1,000.00. In this case, the learned magistrate has given adequate reasons as envisaged in proviso (ii) to clause (f) of section 16(1) for nto imposing the minimum sentence of imprisonment. Mr. Tara Chand, counsel for the respondent submits that the respondent has since filed a revision for enhancement of the sentence. That revision has so far nto even come up for preliminary hearing. According to the learned magistrate, the petitioner is an old man of 70 years. He is also stated to be suffering from cataract and is emaciated and lean. It is for these reasons that sentence of simple imprisonment till the rising of the court and to a fine amounting to Rs.15,000.00 has been awarded to him. The finding of the magistrate has been affirmed by the Addl. Sessions Judge. The petitioner is now present before me. From his appearance, the observations made by the lower courts about the state of his health and age appear to be correct and I thereforee agree with them that this in nto a case in which the minimum sentence required by clause (f) of section 16(1) should have been imposed. But if the courts below are right, and I am in

agreement with them, I cannto appreciate why the sentence of fine should have been so heavy as that. Surely the imposition of a very heavy fine is nto intended to offset the leniency shown in the matter of the imposition of sentence of imprisonment which, as I have said is justified in its own reasons. A sentence of heavy fine is nto a substitute in all cases for a sentence of imprisonment. The sentence of fine is thereforee ordered to be reduced from 15,000.00 to Rs. 5,000.00. If the fine has already been paid the excess amount should be refunded to the petitioner at once.