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SooperKanoon Citation : sooperkanoon.com/683966

Court : Delhi

Decided On : Jul-19-1976

Reported in : 13(1977)DLT105; 1976RLR573

Judge : Pritam Singh Safeer, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 13(2)

Appeal No. : Criminal Revision Appeal No. 263 of 1974

Appellant : Raj Kumar

Respondent : State and anr.

Advocate for Pet/Ap. : D.C. Mathur and; D.R. Sethi, Advs

Judgement :

Pritam Singh Safeer, J.

(1) This petition is directed against the petitioner's conviction under section 7/16 of the Prevention of Food Adulteration Act (hereinafter called 'the Act'). The petitioner was convicted on 30th April, 1976, by the trial court and sentenced to rigorous imprisonment for a period of six months and a fine of Rs. 1,000 was imposed. In case of his inability to pay the fine, the petitioner was to further undergo rigorous imprisonment for a period of two months.

(2) The conviction was based on the testimony of Public Witness 2 and P.W. 3 Sarvashri G. P. Baweja and Kharati Lal. Kharati Lal supported the deposition of Public Witness 2 Shri G. P. Baweja.

(3) In this case it is not necessary to deal with the alleged purchase by Public Witness 2 of the quantity of milk from the petitioner as mentioned in his evidence.

(4) The petition has been urged on the ground that the petitioner had been denied the right given by section 13(2) of the Act to get the sample in his possession examined by the Director of Central Food Laboratory, Calcutta, the certificate issued by whom would have superseded the report given by the Public Analyst. It is beyond controversy that the conviction of the petitioner is based upon the report given by the Public Analyst. It is also significant that the petitioner had made an application under section 13(2) of the Act praying that the sample bottle in his possession may be sent to the Director, Central Food Laboratory, Calcutta, for analysis and for obtaining the requisite certificate.

(5) Paragraph 6 in the trial court judgment discloses that an argument had been raised on behalf of the petitioner that he had been deprived of his right to get the sample bottle in his possession examined by the Director of Central Food Laboratory, Calcutta. The trial court which had the record before it did not deal with this aspect in a judicial manner. The observation made by the trial court is :

'INthis connection it is worthwhile discussing here that the accused in the present case had: full opportunity to exercise his valuable right under section 13(2) of the P.F.A. Act since at the time when the bottle was produced by the F.L for sending the same to Calcutta as per the request of the accused, was found to be quite in tact and the same was not Joking but the same wa.s found to be leaking when the bottle was produced by the F.I. on the next date of hearing fixed for sending the sample bottle to Calcutta.. Leaking of the sample bottle at such a latter stage of the case, cannot be attributed due to the negligence on the part of the prosecution and hence I am not inclined to appreciate the arguments of the id. defense counsel advanced in this behalf.'

The aforequoted observations in the judgment are an example of the disregard shown by the trial court to the record of the case.

(6) It is still more regrettable that when the appeal was heard by the Additional Sessions Judge, he also did not carefully examine the record and made unmerited observations.

(7) I have gone through the record. After the present petitioner made an application under section 13(2) of the Act, his statement was recorded on 7th March, 1974. In that statement, he stated that he was producing the sample bottle which was given to him by the Food Inspector and that the seal and fastening were intact. The accused stated:

'It has not been tampered with in any ways. (sic).' The statement of the Food Inspector was also recorded. He stated that the top seal of the bottle produced by the accused seemed to have been tampered with and was not legible. He also stated that the threads on the sample bottle were misplaced and that the wrapper was torn at several places. At this stage section 13(2) of the Act may be referred to. The same is as under : '13.(2) After the institution of a prosecution under this Act the accused vendor or the complainant may, on Payment of the prescribed fee, make an application to the court for sending the part of the sample mentioned in sub-clause (i) or sub-clause (iii) of clause (c) of sub-section (1) of section 11 to the Director of the Central Food Laboratory for a certificate; and on receipt of the application the court shall first ascertain that the mark and seal or fastening as provided in clause (b) of sub-section (1) of section 11 are intact and may then dispatch the part of the sample under its own seal to the Director of the Central Food Laboratory who shall thereupon send a certificate to the court in the prescribed form within one month from the date of receipt of the sample, specifying the result of his analysis.'

(8) The provision gives a right to the accused vendor or the complainant to make an application to the Court for sending the part of the sample mentioned in sub-clause (i) or sub-clause (iii) of clause (c) of sub-section (1) of section 11 of the Act. Any one invoking the provision has to deposit the prescribed fee. In this case the occasion for depositing the prescribed fee would have arisen if the court had found

that the bottle produced could be renutted for the purposes of obtaining the certificate from the Director of Central Food Laboratory, Calcutta.

(9) There is a reference to clause (b) of sub-section (1) of section 11 of the Act in section 13(2) of the Act. S. 11(1)(b) is :

'11.(1) When a food inspector takes a sample of food for analysis, he shall

(B)except in special cases provided by rules under this Act separate the sample then and there into three parts and mark and seal or fasten up each part in such a manner as its nature permits.'

(10) What is the intendment in the provision? The Food Inspector when he takes sample of food for analysis is then and there required to separate it into three parts. Each one of the parts so separated is to be marked, sealed and fastened up in such a manner as the nature of the sample may permit. Why is that done? The purpose is to seal and fasten up the sample in such a manner that the contents may not be interfered with. The postulation in section 13(2) is again to the effect that on receipt of the application the court has to ascertain as to whether the mark, the seal and fastening are intact or not. What has the court indeed to do The court is to bear in mind the provisions contained in section 11(1)(b) of the Act and its main function is to examine the sample offered for being sent to the Director, Central Food Laboratory, Calcutta, and come to a clear finding as to whether the contents have been interfered with or not. Even though by passage of time the seal be illegible or one or more of the threads be broken, it is the duty of the court dealing with the sample produced under section 13(2) of the Act to record a firm finding as to whether in the opinion of the court the contents of the sample have been interfered with or not, and as to whether it is safe or not to send the sample to the Director of Central Food Laboratory, Calcutta, for obtaining a certificate under the seal of the court. The duty imposed by the statute on the court is of great importance. The court cannot escape that duty by making the observation like the one it made on 7th March, 1974, as under :

'I have inspected both the bottles, one produced by the accused and the other by the F.I. The bottle produced by the accused is torn at several places by the neck,

the upper seal is not quite legible, one of the side seals on the sample bottle is also not in a legible condition and whole appearance of the bottle is such that it gives an impression at east an attempt has been made to interfere with the contents of the bottle. Hence I reject the bottle produced by the accused since the same is unfit for sending the same to Calcutta. On the other hand the bottle of the F.I. is quite intact so far as its seals and fastening are concerned. I, thereforee, declare that this bottle is quite fit for sending the same to Calcutta,. Since the counsel for the accused is not present today, the order for sending the same is, thereforee, reserved till the next date of hearing.'

(11) The aforequoted order is illegal in many respects. It was the petitioner (accused) who alone had made the application that the sample bottle in his possession should be sent to the. Director of Central Food Laboratory, Calcutta. There was no sanction in law for the Court to indulge in comparing the same with the bottle produced by the Food Inspector who never made any application under section 13(2) of the Act. The Court had no jurisdiction under section 13(2) of the Act to deal with the bottle in the possession of the Food Inspector for the reason that he had never made an application that the sample bottle in his possession be sent to the Director of Central Food Labo- ratory, Calcutta. The learned Magistrate while sitting in a judicial seal should have attended to the elementary duty imposed by the statute.

(12) I cannot appreciate as to why the learned Magistrate did not attend to the solemn duty imposed by section 13(2) to record a firm decision as to whether the contents of the bottle produced by the petitioner had been tampered with or not. If the provisions contained in section 11(1)(b) of the Act are read along with section 13(2) of the Act, it becomes clear that there is a warning in those provisions that the mark, seal and the fastening should be intact so as to furnish evidence that the contents have not been interfered with. The purpose of fastening and sealing the sample is that the contents may not be interfered with. If the court dealing with the sample under section 13(2) of the Act is unable to hold that the seals and the fastenings have been so interfered with as to provide evidence that the contents have been tampered with, it cannot lightly reject the sample. Something more curious happened in this case. The trial court rejected the sample bottle provided

by the accused. It was noticed that the bottle produced by the Food Inspector was intact. Why was that bottle not kept in court Why was it returned to the food Inspector If the subsequent order on the record made on 13th March, 1974, is perused, it is disclosed that the bottle left with the Food Inspector was found leaking on that day. It is a case in which without there being a firm finding that the contents of the sample bottle with the accused had been interfered with, the trial court rejected the sample bottle and then returned the bottle produced by the Food Inspector to him which was found to be leaking on the next date. In the circumstances noticed above, the accused/petitioner was denied the right which he had under section 13(2) of the Act to obtain a certificate from the Director of Central Food Laboratory, Calcutta which would have superseded the report by the Public Analyst. Sub-section (3) of section 13 of the Act clearly prescribes that the certificate issued by the Director of Central Food Laboratory under sub-section (2) of section 13 shall supersede the report given by the Public Analyst. The petitioner was denied a very valuable right. The courts below should have carefully examined the record.

(13) The petitioner having been denied the right given to him by section 13(2) of the Act, the conviction is unsustainable. I accept the petition, and set aside the conviction. The fine, if paid would be refunded to the petitioner. The petition is disposed of.