

Chanan Lal Vs. State

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Court : Delhi

Decided On : Nov-19-1971

Reported in : ILR1972Delhi530

Judge : V.D. Misra, J.

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

Appeal No. : Criminal Revision Appeal No. 321 of 1969

Appellant : Chanan Lal

Respondent : State

Advocate for Pet/Ap. : B.G. Singh,; Ghanshyam Das and; D.C. Mathur, Advs

Judgement :

V.D. Misra, J.

(1) This Revision is directed against die judgment of an Additional Sessions Judge, up-holding the conviction of the petitioner under Section 7/16 of the Prevention of Food Adulteration Act and the sentence of six months rigors imprisonment and a fine of Rs. 1.000.

(2) Chanan Lal, petitioner, was found selling Panir on October 12, 1968 at about 9 A.M. in Vegetable Market, Subzimandi, Delhi. Shri S. L. Mehra, Food Inspector,

after disclosing his identity purchased 600 grams of the same as sample for analysis on payment of its requisite price. It was cut into small pieces and divided in three equal parts and was put in three dry and clean bottles. After putting the requisite drops of formalin in each bottle, the same were duly sealed. Exhibits P-A, P-B and P-C are the documents which were prepared at the spot in relation to the taking of sample. The petitioner signed and also put his thumb impression on these documents. The Food Inspector handed over one sealed bottle to the petitioner, sent the second bottle to the Public Analyst and retained the third bottle, according to the rules. The Public Analyst vide his report Exh. P-E reported that the sample was adulterated due to 29.8 deficiency in milk fat percent of the dry matter. The Delhi Municipal Corporation, thereafter, lodged a complaint under Section 7/16 of the Prevention of Food Adulteration Act against the petitioner.

(3) The defense of the petitioner, as disclosed in his statement under Section 342 Criminal Procedure Code . was that though the sample was taken from him for analysis and he signed the various documents prepared at the spot, however, the sample was not taken properly and no preservative was added in the bottles.

(4) During the trial, the petitioner applied under Section 13 of the Act to the Magistrate for sending the sample bottle lying with the Food Inspector to the Director of Central Food Laboratory, Calcutta for analysis. The sample was accordingly sent but the Director reported that the sample was de-composed and was leaking. It was also reported that major portion of the sample had leaked out and it could not be analysed and that the other part of the sample may be sent for analysis and report. After receiving- this report the Magistrate informed the petitioner about it and asked him to produce the sample in his possession for being sent to the Director. It appears that the petitioner did not care to produce the sample with the result that it could not be sent to the Director for analysis.

(5) The trial court on the basis of the Report of the Public Analyst held the petitioner guilty and convicted and sentenced him as aforesaid. His appeal was dismissed by the Additional Sessions Judge.

(6) After hearing some arguments I decided to record evidence of the Public Analyst, Delhi. The petitioner was also given opportunity to produce any expert, if

he so desired. The petitioner produced Dr. B. D. Narang, Public Analyst, Haryana. The statement of both the witnesses was recorded by me.

(7) Shri P. P. Bhatnagar is the Public Analyst of the Municipal Corporation of Delhi. He is a Graduate in Science with Chemistry as one of the subjects and entered service in the year 1952 as a Chemist. He has been analysing articles of food since then. He had been working as a Public Analyst for the New Delhi Municipal Committee and also for Delhi Cantonment Board since September, 1964. He was appointed as a Public Analyst for Municipal Corporation of Delhi in 1969. He states that if two drops of formalin are added to 25 grams of Panir and the same is kept in sealed bottle it will be fit for analysis atleast for a period of 8 months. He further stated that in case the contents leaked out of the bottle, a part of formalin will go out with it and there is likelihood of the Panir getting de-composed. The action of formalin is to arrest the growth of bacteria and preserve the status-quo. The period for which the sample will remain fit for analysis will depend upon the fact whether it was prepared from fresh milk or from sour milk. Moreover, if, at the time of taking the sample, the decomposition has set in, the addition of formalin will not be able to preserve the Panir for the average period of 8 months. The weather conditions will also affect. In case of Panir prepared from sour milk, the period of fitness will go down by two to three months. This witness never carried out any tests to find out the period during which Panir will remain fit for analysis after formalin has been added to it.

(8) Dr. B. D. Narang is an M.Sc.(Hons.) in Chemistry from Punjab University and Ph. D. in Chemistry from University of Texas (U.S.A.). He has been in the field of food analysis for about 28 years and has been working as a Public Analyst since 1959. He is a Member of the Central Committee for Food Standards, a statutory body of the Government of India. He claims to have carried out experiments to find out the period of fitness of Panir. His experiments consisted of preparing the Panir in the laboratory after buying the milk. He had prepared two sets of sample bottles of Panir. To one set, he did not add formalin, but had put them in dry clean bottles, which were later on sealed. The other set of bottles in which Panir had been put in, he had added requisite drops of formalin and sealed them. From each set, the bottles were kept at room temperature as well as in the refrigerator. His

observations were that the sample of Panir to which formalin had been added remained fit for analysis for about one month when kept in the refrigerator. If the same was kept at room temperature, it remained fit from 11 to 15 days. Samples to which no formalin was added and was kept at room temperature, he found, that it started giving slight putrid smell the following day and became de-composed on the 5th day. A similar sample kept in the refrigerator did not give him satisfactory values and so he discarded this part of the experiment.

(9) Dr. Narang stated that the life of the sample would depend upon the condition of the milk from which the Panir was prepared. In case it was not fresh and had not been handled properly or was in an unhygienic condition, the fitness of the sample, inspite of the addition of requisite drops of formalin would not be as long as that of Panir prepared from fresh milk and handled under hygienic conditions. He had conducted the experiment in the month of July, 1969. He further stated that in case the sample bottle leaked, the bacteria from the atmosphere would be able to show their effect after about 12 hours. He agreed that the water which leaked out from the sealed bottle, is bound to contain a part of the formalin and such a bottle will provide good conditions, in which the bacteria could enter into the sample and move about.

(10) Dr. Narang has carried out the samples of khoya in 1967 and his results are published in the Indian Dairy Journal of January, 1970 issue. He has discussed the observations made by him regarding his experiment with Panir with the Director of Central Food Laboratory though he has not communicated in writing these results to the Central Committee for Food Standards.

(11) I find that I must give more weight to the statement of Dr. Narang. He is not only more qualified than Shri P.P. Bhatnagar but also is a Member of the Central Committee for Food Standards, which has been set up by the Government of India. The statement of Shri P. P. Bhatnagar is not based on any experiment he might have cared to conduct and are the general observations or conclusions arrived at by him on no reportable data.

(12) Mr. D. C. Mathur, learned counsel for the State, assails the statement of Dr. Narang on the ground that he had not conducted the experiment properly

inasmuch as that he had put in only 25 to 40 grams of Panir in each bottle, whereas, according to the rules a Food Inspector is required to send 200 grams of the sample to the Public Analyst for analysis. Dr. Narang was confronted with Rule 22 of the Prevention of Food Adulteration Rules, 1955 which lays down this requirement. He explained that all this quantity is not, in fact, required by the Public Analyst for analysis. He gave as an example that though 220 mile litres of milk are required to be sent by the Food Inspector for analysis, the Public Analyst, in fact, requires 50 mile litres of the same for actual analysis. I have no reason to doubt the Explanationn given by Dr. Narang, who is a responsible person and was not out to defend his thesis while giving evidence.

(13) On the basis of the above-mentioned evidence, it is safe for me to assume that the sample of Panir to which requisite drops of formalin have been added and which is kept in a refrigerator would remain fit for analysis for about one month.

(14) In the instant case, the sample was taken by the Food Inspector on October 12, 1968. It was analysed by the Public Analyst on 16th October. 1968 and the report Exh. P-E was signed on October 19, 1968. The complaint was put in the court on December 11, 1968 i.e. practically two months after the date of taking the sample. The petitioner appeared in obedience to the summons issued by the magistrate on December 24, 1968 when it was fixed for 9th of January, 1969. On that date, the petitioner made an application to the court under Section 13 of the Act for getting the sample lying with the Food Inspector sent to the Director Central Food Laboratory Calcutta. The magistrate directed that the Food Inspector should be present along with the sample on 13th January, 1969. Nothing seems to have happened on that date and the case was adjourned for 23rd January, 1969. On 23rd January, 1969 the Food Inspector produced the sample which was sent to the Director, Central Food Laboratory, who by his letter dated January 31, 1969 reported that the sample was un-fit for analysis.

(15) Bawa Gurcharan Singh, learned counsel for the petitioner says that in these circumstances, his right to have the sample analysed by the Director, Central Food Laboratory has been frustrated by the conduct of the prosecution and so he is entitled to acquittal. In this connection he relies on the decision of the Supreme

Court in Municipal Corporation of Delhi v. Ghisa Ram. : 1967 CriLJ939 .

'THE applicationSupreme Court in Ghisa Ram's case observed thus : 'It appears to us that when a valuable right is conferred by S .13(2) of the Act on the vendor to have the sample given to him analysed by the Director of the Central Food Laboratory, it is to be expected that the prosecution will proceed in such a manner that that right will not be denied to him. The right is a valuable one, because the certificate of the Director supersedes the report of the Public Analyst and is treated as conclusive evidence of its contents. Obviously, the right has been given to the vendor in order that, for his satisfaction and proper defense, he should be able to have the sample kept in his charge analysed by a greater expert whose certificate is to be accepted by Court as conclusive evidence. In a case where there is denial of this right on account of the deliberate conduct of the prosecution, we think that the vendor, in his trial, is so seriously prejudiced that it would not be proper to uphold his conviction on the basis of the report of the 'Public Analyst, even though that report continues to be evidence in the case of the facts contained therein. xx xx xx Xx Xx Xx Xx We are not to be understood as laying down that, in every case where the right of the vendor to have his sample tested by the Director of the Central Food Laboratory is frustrated, the vendor cannot be convicted on the basis of the report of the Public Analyst. We consider that the principle must, however, be applied to cases where the conduct of the prosecution has resulted in the denial of the vendor of any opportunity to exercise this right. Different considerations may arise if the right gets frustrated for reason for which the prosecution is not responsible. In the present case, the sample was taken on the 20th September, 1961. Ordinarily, it should have been possible for the prosecution to obtain the report of the Public Analyst and institute the prosecution within 17 days of the taking of the sample.'

(16) These observations of the Supreme Court clearly show that it is the duty of the prosecution to see that the right conferred by Section 13 on the petitioner, to have the sample analysed by the Director of Central Food Laboratory is not frustrated. For this they have to take steps not only for the analysis of the sample by the Public Analyst at an early date but also to launch the prosecution as quickly as the circumstances ordinarily permit. The Supreme Court was of the opinion that

it is possible for the Municipal Corporation of Delhi to institute the prosecution within 17 days of the taking of the sample, If this was done in this case, then, it could not have been claimed by the petitioner that he has lost his right because of the negligence of the prosecution. As I have already held that the sample would be fit for analysis for a period of one month, it was possible that the sample could have reached the Director Central the Food Laboratory within that period. Of course, if. after the prosecution has performed its duty of instituting the prosecution within 17 days of the taking of the sample, the right of the petitioner to have the sample analysed from the Director of Central Food Laboratory is frustrated because of any ordinary order of the court or due to his own conduct, he cannot claim any benefit. At this stage, Rule 9(j), as amended, may be taken note of. It is in the following terms:

'9-(J) It shall be the duty of the Food Inspector to send by hand or registered post, a copy of the report received in Form Iii from the public analyst to the person from whom the sample was taken, in case it is found to be not conforming to the Act or Rules made there under, as soon as the case is filed in the court.'

(17) This requires the copy of the report of the Public Analyst to be sent to the person from whom the sample was taken after the case is filed in the court. Presumably it is to warn him that the case has come before the court and he may exercise his right under Section 13 for having the sample analysed from the Director, Central Food Laboratory if he so desires. The accused would, thus, get sufficient notice about the pendency of the matter in court to decide his course of action.

(18) In the circumstances of that case, I must hold that the conduct of the prosecution resulted in frustration on the right of the petitioner to have the sample analysed from the Director, Central Food Laboratory and so he is entitled to acquittal. The Revision is, therefore, accepted and the conviction and sentence of the petitioner is hereby set aside.