

Gur Parshad Vs. State

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Court : Delhi

Decided On : Mar-23-1971

Reported in : ILR1971Delhi669

Judge : P.S. Safeer, J.

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

Appeal No. : Criminal Revision Appeal No. 52 of 1959

Appellant : Gur Parshad

Respondent : State

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

Judgement :

(1) This judgment will dispose of Criminal Revision Petitions Nos. 52 and 53 of 1969.

(2) The petitioner was standing separate trials under section 7/16 of the Prevention of Food Adulteration Act when he made applications with the prayer that the Director of Central Food Laboratory, Calcutta may be summoned as a defense witness for being examined in court. The material part of the application is :-

'THE petitioner wants to examine the Director of Central Food Laboratory, Calcutta, as a defense witness in connection with matters not to the examination of the report which is conclusive but matters extraneous to the report such as the dates on which the sample was opened, how it was kept, in what condition it was kept and the private correspondence that took place between the Director of the Central Food Laboratory, Calcutta, and this court in the absence of the petitioner.'

(3) At the very outset I must observe that no correspondence, which is placed on judicial record, can be termed as private correspondence. The application did not allege that after the remittance for examination by the Director of Central Food Laboratory, Calcutta, the sample had been opened on a particular date or that it remained in a particular situation for any approximate period which interfered with and influenced the ultimate analysis which was made after the lapse of any alleged period of time.

(4) The application having been dismissed, a revision petition preferred against the order of dismissal met with no better fate. It is contended by Mr. Gurcharan Singh, the learned counsel for the petitioner, that the effect of section 13 of the Prevention of Food Adulteration Act is that all that is stated in the certificates becomes conclusive evidence and all actions performed before or after or which are not the facts mentioned in the certificate given by the Director of Central Food Laboratory, Calcutta, would remain outside the protection given to the certificate by the proviso in section 13 of the said Act.

(5) The learned counsel has placed reliance upon an observation made in *Municipal Corporation of Delhi v. Niranjan Kumar and others*, 1965 P.L.R. 941. The proposition needs no detailed examination. The proviso gives benefit only to the facts stated in the certificate which may be bearing the signatures of the Director of Central Food Laboratory. The contention is well-founded that what transpired between the receipt of the sample at Calcutta and the discovery of the facts recorded in the certificate covered by the aforementioned proviso is not here in the certificate sent by the Director of Central Food Laboratory, Calcutta. It is urged that in respect of the facts not mentioned in the said certificate, the defense certainly can examine evidence. The learned counsel places reliance on Mohanlal

Chhaganlal Mithaiwala v. Vipinchandra R. Gandhi and another, : AIR1962 Guj44 .
(2). The observation made therein is :-

'WHAT is thus final and conclusive in the certificate is the finding on an analysis or test of the constituents in the sample sent, their proportions etc. The analyst has merely to give his opinion as to whether the article which he analysed has an excess or deficiency in constituents. The vendor would still be entitled to lead evidence or otherwise show that the article of food in question is not adulterated food. For instance, if the vendor wants to establish that some of the ingredients of the article (in this case ghee) are liable to get evaporated from having been boiled at high temperature while manufacturing the sweetmeat in question or that some change takes place, Chemical or otherwise by the ingredients of the ghee sed in the preparation being mixed with the other fats, or that a change takes place in the article in question owing to lapse of time or delay in making its analysis, the vendor can do so in spite of the facts stated in the certificate of the Director though made final and conclusive under the proviso.'

(6) I have held in a couple of cases that facts stated in the certificate furnished by the Director of Central Food Laboratory Calcutta, become 'conclusive evidence' which remains a part of 'prosecution evidence'. The proof does not disentitle the accused from establishing to the contrary.

(7) When a commodity is sampled, three samples are prepared. One is sent to the Public Analyst, the second kept by the Food inspector and the third one is given to the person who may later on suffer the accusation. It is open to the accused person to get the sample in the custody of the Food Inspector remitted to Calcutta for examination by the Director of Central Food Laboratory. He can even then while leading defense evidence produce his own expert witness and get the sample left with him examined. He can certainly produce evidence to establish as to whether the article is adulterated or not. These two cases cited before me do not clearly converge on the controversy with which these two petitions are concerned.

(8) The learned counsel has relied upon the judgment made on the 1st of March, 1966, while disposing of Criminal Revision No. 143-D of 1964 (Sita Ram v. The

Municipal Corporation of Delhi). In that case it had been significantly elicited from the Public Analyst that he had kept the sample bottle open in a steel almirah along with other samples. The contention raised was that it could not be excluded that some live insects might have travelled from the other samples kept along with the sample in question or from elsewhere into the sample bottle when it was lying open in the almirah, and caused the infestation discovered afterwards.

(9) No similar allegation is made in the cases out of which the present petitions arise. The petitioner's applications are wanting in particulars and sufficient allegations are not there on which a determination can be made as to whether it would be useful to allow the examination of the Director of Central Food Laboratory, Calcutta, whether in court or on commission or in any other way which may be resorted to in accordance with the procedure available at law. No fishing cross-examination can be allowed in any case. Before a party can seek the aid of a court it must disclose sufficient material on which the court can make up its mind as to usefulness of providing relief. The circumstances in which the applications have been preferred may be noticed. The report of the Public Analyst, which stands superseded by the Certificate of the Director of Central Food Laboratory, was clearly to the effect that Amchur (Sabat) showed in its contents living insects. The certificate of the Public Analyst is to the effect that insect infestation was present. It is not clear as to whether the Public Analyst was conscious of the distinction between 'insect infestation' and 'insect damage'. He has not clearly stated whether living insects were present. All these aspects will be considered in case the petitioner makes the choice of moving fresh application containing the requisite allegations calling for an exercise of judicial discretion. These petitions, as they stand, do not call for interference because there is no impropriety in the impugned orders. The petitions are dismissed.