

Jai Narayan Vs. State

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Court : Rajasthan

Decided On : Jan-18-2006

Reported in : 2006CriLJ2058; 2006FAJ107; RLW2006(1)Raj595;
2006(2)WLC420

Judge : R.S. Chauhan, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 7, 10, 10(4), 11, 11(1), 13, 13(1), 13(2) to 13(2D), 13(3), 13(13), 14A, 16, 16(1), 16(1A) and 17; Indian Penal Code (IPC) - Sections 272 to 276

Appeal No. : S.B. Criminal Misc. Petition No. 1193 of 2005

Appellant : Jai Narayan

Respondent : State

Advocate for Def. : Jainendra Jain, Public Prosecutor

Advocate for Pet/Ap. : Kapil Mathur, Adv.

Disposition : Petition dismissed

Judgement :

R.S. Chauhan, J.

1. The petitioner has challenged the order dated 16.8.2005 passed by the Additional Chief Judicial Magistrate No. 1, Jaipur City; Jaipur whereby he has rejected the application filed by the petitioner under Section 13(2) of the Prevention of Food Adulteration Act (henceforth to be referred to as 'the Act') praying that a sample of the article allegedly adulterated should be sent for further analysis to the Central Food Laboratory.

2. The brief facts of the case are that on 15.4.1997 the Food Inspector collected some sample of the milk from the petitioner, which was subsequently found to be adulterated. Therefore, on 19.11.1997, the Food Inspector submitted a complaint against the petitioner for offence under Section 7/17 of the Act. On 27.11.2002 i.e., after a lapse of five years, the petitioner submitted an application under Section 13(2) of the Act as aforementioned ed. However, vide Order dated 16.8.2005 the said application was dismissed by the learned Court. Hence, this petition before us.

3. Mr. Kapil Mathur, learned Counsel for the petitioner, has argued that Section 13 of the Act provides a valuable right to the alleged offender to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory. He has further argued that according to the case of Hanuman v. State of Rajasthan RLW 1997 (2) Rajasthan 422, the provisions of Section 13(2) are not mandatory but are merely directory in nature. Therefore, the requirement that a prayer be made by the alleged offender to the Trial Court within a period of 10 days from the receipt of the report of the Public Analysis is merely directory and not mandatory. Hence, according to him, whenever a request is made to the Court to send the sample for an independent analysis by a Central Food Laboratory, the request has to be granted by the Court. Therefore, the impugned order dismissing the said request is against the provisions of Section 13 of the Act.

4. On the other hand, the learned Public Prosecutor, Mr. Jainendra Jain, has argued that even if, the provisions of Section 13(2) of the Act is held to be directory in nature, even then the option has to be exercised within a reasonable period. In the present case, the complaint was submitted in 1997 and the application for independent analysis of the sample was filed on 27,11.2002 i.e.,

after a period of five years. According to the learned Public Prosecutor, a sample of milk cannot be kept fresh for a period of five years. The milk, being a perishable commodity, cannot be analysed after a lapse of five years. According to learned Public Prosecutor, the application has been filed after an inordinate delay. The application has been filed only to prolong the trial. Hence, he has supported the impugned order.

5. We have heard learned Counsel for the parties and perused the impugned order.

6. Section 10 of the Act enumerates the powers of the Food Inspector. Section 10(4) states as under:-

If any article intended for food appears to any food inspector to be adulterated or misbranded, he may seize and carry away or kept in the safe custody of the vender such article in order that it may be dealt with as hereinafter provided and he shall, in either case, take a sample of such article and submit the same for analysis to a public analyst.

7. Further Section 13 of the Act provides as under:--

13. Report of public analyst.-1. The public analyst shall deliver, in such form as may be prescribed, a report to the Local (Health) Authority of the result of the analysis of any article of food submitted to him for analysis.

2. On receipt of the report of the result of the analysis under Sub-section (1) to the effect that the article of food is adulterated, the Local (Health) Authority shall, after the institution of prosecution against the person from whom the sample of the article of food was taken and the person, if any, whom name, address and other particulars have been disclosed under Section 14-A, forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both of them may make an application to the Court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the

Central Food Laboratory.

(2-A) When an application is made to the Court under Sub-section (2), the Court shall require the Local (Health) Authority to forward the part or parts of the sample kept by the said Authority and upon such requisition being, made, the said Authority shall forward the part or parts of the sample to the Court within a period of five days from the date of receipt of such requisition.

(2-B) On receipt of the part or parts of the sample from the Local (Health) Authority under Sub-section (2-A) 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 the signature or thumb-impression as the case may be, is not tampered with, and despatch the part or, as the case may be, one of the parts 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 part of the sample specifying the result of the analysis.

(2-C) Where two parts of the sample have been sent to the Court and only one part of the sample has been sent by the Court to the Director of the Central Food Laboratory under Sub-section (2-b), the Court, shall, as soon as practicable, return the remaining part to Local (Health) Authority and that Authority shall destroy that part after the certificate from the Director of the Central Food Laboratory has been received by the Court:

Provided that where the part of the sample sent by the Court to the Director of the Central Food Laboratory is lost or damaged, the Court shall require the Local (Health) Authority to forward the part of the sample, if any, retained by it to the Court and on receipt thereof, the Court shall proceed in the manner provided in Sub-section (2-B). (2-D) Until the receipt of the certificate of the result of the analysis from the Director of the Central Food Laboratory, the Court shall not continue with the proceedings pending before it in relation to the prosecution.

(2-E) If after considering the report, if any, of the food inspector or other-wise, the Local (Health) Authority is of the opinion that the report delivered by the public analyst under Sub-section (1) is erroneous, the said authority shall forward one of

the parts of the sample kept by it to any other public analyst for analysis and if the report of the result of the analysis of that part of the sample by that other public analyst is to the effect that the article of food is adulterated, the provisions of Sub-sections (2) to (2-D) shall, so far as may, be apply,

3. The certificate issued by the Director of the Central Food Laboratory under Sub-section (2-B) shall supersede the report given by the public analyst under Sub-section (1).

4. Where a certificate obtained from the Director of the Central Food Laboratory under Sub-section (2-B) is produced in any proceeding under this Act, or under Sections 272 to 276 of the Indian Penal Code (45 of 1860), it shall not be necessary in such proceeding to produce any part of the sample of food taken for analysis.

5. Any document purporting to be a report signed by a public analyst, unless it has been superseded under Sub-section (3), or any document purporting to be a certificate signed by the Director of the Central Food Laboratory, may be used as evidence of the facts stated therein in any proceeding under this Act or under Sections 272 to 276 of the Indian Penal Code (45 of 1860):

[Provided that any document purporting to be a certificate signed by the Director of the Central Food Laboratory (not being a certificate with respect to the analysis of the part of the sample of any article of food referred in the proviso to Sub-section (1-A) of Section 16 shall be final and conclusive evidence of the facts stated therein.]

[Explanation.-In this section, and in Clause (f) of Sub-section (1) of Section 16, 'Director of the Central Food Laboratory' shall include the officer for the time being in charge of any Food Laboratory (by whatever designation he is known) recognised by the Central Government for the purposes of this Section.]

8. Clearly Section 10(4) of the Act empowers the Food Inspector to seize and carry away any article and to send a sample of such article to the Public Analyst for analysis. Section 13 imposes a legal duty on the Public Analyst to submit report

of his analyst to the Local Health Authority. However, Sub-section (13) of the Act clearly provides a right to the alleged offender to challenge the finding of the Public Analyst by requesting a Court to send the second sample kept by the Local Health Authority for an independent analysis by the Central Food Laboratory. According to Sub-section (2), the request to be made to the Court is to be done within a period of ten days. However, in the case of Hanuman v. State (supra), this Court had held that the period of 10 days is merely directory and not mandatory. Hence, even after the expiry of the 10 days, the alleged offender would be justified in requesting the Court to send a sample for independent analysis to the Central Food Laboratory. It is pertinent to point out that although, the said period is held to be directory, but it does not mean that such a request can be made after an inordinate delay of five years. Such a request should be made within a reasonable time while the self-life of the article is still intact. No fruitful purpose would be served after the self-life of the article is over. Obviously, since milk is a perishable commodity, its self-life cannot be intact for a period of five years.

9. From 1998 when the petitioner had appeared before the Court till 2002 when the application was made, the petitioner had ample opportunities to make the request. However, instead of making the request within a reasonable time, the petitioner waited till the end of the trial to file the application. Thus, filing of the application has been done with the ulterior motive of prolonging the trial. According to Section 13(2-D), 'until the receipt of the certificate of the result of the analysis from the Director of the Central Food Laboratory, the Court shall not continue with the proceedings pending before it in relation to the prosecution'. Therefore, once the sample has been sent to the Central Food Laboratory, the trial comes to a grinding halt until the report of the analysis is received from the Central Food Laboratory. Hence, the application filed by the petitioner was a subterfuge to stop the trial from proceeding any further. According to the impugned order, PW,1 was examined on 23.9.1998 and the trial continued till 27.11.2002. During this interim period, no application under Section 13(2) of the Act was ever filed. Thus, the learned Court has rightly concluded that the filing of the application is only a clever ploy to forestall the conclusion of the trial. In our opinion, after an inordinate delay of five years, the petitioner cannot exercise his right under Section 13(2) of the Act. The Court does not come to the rescue of those who are not

vigilant about their rights. The right under Section 13(2) of the Act does exist provided that the alleged offender Invokes the right within a reasonable period. Thus, the right cannot be used by an alleged offender to prevent conclusion of the trial. Therefore, the impugned order is legal and valid and does not call for any Interference from us.

10. In the result, there is no merit in this case and it is hereby dismissed.

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