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Court : Rajasthan

Decided On : Jul-12-1986

Reported in : 1996(2)WLN527

Judge : S.C. Mittal, J.

Appeal No. : S.B. Criminal Revision Petition No. 168 of 1987

Appellant : Kanji

Respondent : The State of Rajasthan

Judgement :

S.C. Mittal, J.

1. This petition is directed against the judgment dt. 6.7.87 passed by learned Additional Sessions Judge No. 2, Jodhpur whereby the conviction and sentence against the petitioner under Section 7/16 of Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'the Act 1954') by judgment dt. 27.2.85 passed by the Chief Judicial Magistrate, Jodhpur has been confirmed. The petitioner has been sentenced to undergo 6 months R.I. and a fine of Rs. 1,000/- or in default to undergo three months R.I.

2. Briefly stated the prosecution case is that Food Inspector Shri Purshottam Narain Vyas took the sample of cow's milk from the petitioner on 25.2.80 at 7 am

when the petitioner was bringing the milk for sale near Kanji-ki-Pyau, near Jodhpur. The petitioner could not also produce the licence. The sample was taken according to the provisions under the Act, 1954 and the Rules and it was got analysed from the Public Analyst who gave the report that it was not of prescribed standard and 14% fat had been extracted from the milk. Therefore, a complaint was lodged in the court of the Chief Judicial Magistrate, Jodhpur and letter was also addressed to the petitioner that if he is so desired, could get the sample tested from the Central Food Laboratory within 10 days from the receipt of the letter. The registered letter was returned by the postman with the remark that the address was incomplete.

3. The petitioner was charged under Section 7/16 of the Act, 1954. He denied this charge. Hence, trial was held and after completing the trial the petitioner was convicted and sentenced as stated above.

4. I have heard the learned Counsel for the petitioner and learned Public Prosecutor. It is contended on behalf of the petitioner that the prosecution has failed to comply the mandatory provisions under Section 13(2) of the Act and Rule 9A of the Prevention of Food Adulteration Rules, 1955 (hereinafter referred as 'the Rules, 1955'). Therefore, the petitioner's defence has been prejudiced because he could not get the sample tested from the Central Food Laboratory. The petitioner could not exercise his right to apply within 10 days from the receipt of the report of the Public Analyst to the court to get the sample of the milk kept by the local authority analysed by the Central Food laboratory. It is contended that the report of the Public Health Laboratory, Jodhpur Ex. P-8 cannot be made the basis for the conviction of the petitioner. Learned Public Prosecutor has argued that the copy of the report Ex. P-8 was sent by registered A.D. to the petitioner at his address given by him at the time of taking the sample which is Ex. P-12 but it was returned by the postman with the remark that the address is incomplete and the letter could not be delivered. Therefore, the prosecution has made the compliance of Section 13(2) of the Act. The defence of the petitioner has not been prejudiced in any manner because he did not file any application during the trial to get the sample analysed from the Central Food Laboratory.

5. I have carefully considered the arguments of the learned Counsel for the petitioner and the learned Public Prosecutor. Section 13(2) of the Act 1954 postulates that the Local Health Authority shall, after the institution of the prosecution, forward in such manner as may be prescribed a copy of the report of the result of the analysis to the person from whom the sample of the article of food was taken and the person whose name, address and other particulars have been disclosed under Section 14A informing such person or persons that if so desired an application may be made within 10 days to get the sample kept by Local Health Authority analysed by Central Food Laboratory. The manner of forwarding a copy of the report has been provided in Rule 9A of the Rules 1955. It is laid down in the said Rule that the Local Health Authority shall forward a copy of the report of the result of analyst in form III by registered post or by hand as may be appropriate to the person from whom the sample was taken by the Food Inspector and also to the persons under Section 14A of the Act. It is true that the copy of the report was posted to be delivered by registered A.D. Ex. P-12. But it is also a fact that this registered letter has not been delivered to the petitioner because it has been returned on account of incomplete address. There is no evidence on record that the copy of the report was again sent to the petitioner or efforts were made to forward the copy to the petitioner. I am unable to agree with the learned Public Prosecutor that even if the registered letter has been returned due to 'incomplete address, it should be accepted as a compliance of Section 13(2) of the Act. If the registered letter is not received back then in the ordinary course of business a presumption can be drawn, that the petitioner has received the letter and therefore, the copy of the report contained therein. But such inference cannot be drawn when it is clear from the record that the letter has not been delivered to the petitioner and has been returned by the postal department on account of incomplete address. When a registered letter was received back on account of incomplete address, I am of the view, that it was the duty of the Local Health Authority to take steps and to make efforts to again send the copy of the report on a complete address by post or by hand as deemed appropriate by it. In any case the copy of the report could have been forwarded or given to the petitioner when he appeared in the court to face the trial but the copy of the report was also not given to the petitioner after the appearance in the court. The sum and substance is that neither

the petitioner has received the copy of the report nor there is a ground to draw inference that the petitioner received the copy after the despatch of registered letter by the Local Health Authority. I agree with the learned Counsel for the petitioner that the word 'forward' used in Section 13(2) of the Act and Rule 9A of the Rules 1955 does not mean a mere formality of simply posting a registered letter containing the copy of the report because the accused has a right to apply in the court for analysis of the sample by the Central Food Laboratory within a period of 10 days from the date of the receipt of the copy of the report. If he does not apply to the court within 10 days even after receiving the report then only he loses right of getting the sample analysed by the Central Food Laboratory under Section 13(2). It is the duty of the prosecution to establish that the petitioner received the copy of the report either by producing the A.D. or by legal presumption but this fact has not been proved in this case. Therefore, when the petitioner did not receive the copy of the report, obviously, he could not know the result of the analysis and also about his right that he could apply within 10 days to the court from the date of the receipt to get analysed the sample from the Central Food Laboratory.

6. I am unable to agree with this contention of the learned Public Prosecutor that the petitioner after appearing in the court could have applied as he had come to know that a case under the Act 1954 has been filed against him and he has been summoned to face the trial. It is the duty of the prosecution to make available the report of the Public Analyst to the petitioner according to the procedure prescribed under Section 13(2) of the Act and Rule 9A of the Rules 1955, the non-compliance thereof is fatal to the prosecution case. I am also unable to appreciate the argument that the prosecution is not at fault because the report was forwarded to the petitioner on the address given by him at the time of taking the sample recorded in Form Ex. P-2 and the memo Ex. P-3. It is expected from the Food Inspector that he should take complete address of the person from whom he took the sample so that copy of the public analyst report may be forwarded to him and it is not received back on account of incomplete address. Be that as it may, at least it was the duty of the Local Health Authority to furnish the copy of the report to the petitioner when he had appeared in the court on the service of the Sommons.

7. In view of the above discussion, I come to the conclusion that the the prosecution has not made the compliance of Section 13(2) of the Act and Rule 9A of Rules 1955 i.e. copy of the Public Analyst report has not been forwarded to the petitioner. He could not exercise his valuable right to apply in the court for getting sample analysed from the Central Food laboratory as he was not informed about this right as required under Section 13(2) of the Act 1954. This has gone to the root of the matter and has prejudiced the defence of the petitioner beyond repair. It has been held by the Apex Court in Rameshwar Dayal v. State of U.P. 1996 Supreme Court Cases (Cr.) 75 that it is the valuable right of the accused to get the sample examined by the Central Food Laboratory and if the report of the Public Analyst is not supplied to the accused as required under Section 13(2) of the Act, a serious prejudice is caused. I agree with the learned Counsel for the petitioner that in the above circumstances, the petitioner's conviction cannot be sustained on the basis of the report of Public Health Laboratory, Jodhpur Ex. P-8. The revision petition deserves to be accepted and the conviction of the petition is liable to be accepted and the conviction of the petitioner is liable to the set aside.

8. In the result, the impugned judgments of learned Chief Judicial Magistrate, Jodhpur dt. 27.2.88 and that of learned Addl. Sessions Judge, Jodhpur dt. 6.7.87 are hereby set aside. The petitioner Kanji is hereby acquitted of the charge under Section 7/16 of Prevention of Food Adulteration Act 1954. His bail bonds are cancelled.