

Kajodmal Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Mar-01-1979

Reported in : 1979WLN803

Judge : M.B. Sharma, J.

Appeal No. : S.B. Criminal Misc Petition No. 249 of 1978

Appellant : Kajodmal

Respondent : The State of Rajasthan

Disposition : Application allowed

Judgement :

M.B. Sharma, J.

1. The petitioner challenges the order of the learned Chief Judicial Magistrate, Sawai Madhopur dated 23-3-1978 on the ground that the same was passed without jurisdiction. Previously also, an application under Section 482 Cr.P.C. against that order was presented to this Court, which was registered as SB Criminal Miscellaneous Petition No. 56/78, but the same was dismissed being premature on September 15, 1978, and it was observed fiat if the report of the Director, Central Food Laboratory, Calcutta is inverse to the accused, petitioner, be shall be at liberty to move a fresh application under Section 482 Cr PC.

2. After the decision of this Court, the report of the Director, Central Food Laboratory, Calcutta dated 27-5-1978 was received in the trial court, and the same being adverse to the accused-petitioner, he has moved afresh under Section 482 Cr.P.C., To dispose of this application, brief facts may be stated, which are these.

3. The Food Inspector, Gangapur City, took a sample of 'Ghee' from the shop of the accused, petitioner on December 25, 1975 and paid its price amounting to Rs. 990 p. vide receipt Ex. P2. The same was divided in three part, and each part was filled in a bottle which was wrapped, corked and sealed One sample was sent to the Public Analyst, Jaipur, who vide his report (Ex. P5) dated January 29, 1976, found that the richard value was 23.2 percent, where as under the presented standards should have been minimum 26% The other constituents were found as per the prescribed standards. A complaint was filed against the accused in the court of the learned Magistrate on March 19, 1976 The accused petitioner put in appearance and submitted an application on October 6, 1977 under Section 13(2) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the Act), for sending his own sample to the Director, Central Food Laboratory, Calcutta, That prayer was allowed and on payment of the prescribed fee, the court put its own seal over the sample and the same was sent to the Director, Central Food Laboratory, Calcutta, who after examining the same, submitted his report on November 21, 1977, and the moisture was found only as 0.21 per cent. So far as the richard value is concerned, it was found as 30.8 per cent and on this account it was opined by the Director, Central Food Laboratory, Calcutta that the sample of 'Ghee' was not adulterated. All other constituents were also found as par the prescribed standards of purity. An application was submitted on behalf of the Prosecutor on January 12, 1978 before the learned Magistrate that the third sample which was in the court should now be sent to the Director, Central Food Laboratory, because in his report dated November 21, 1977 the Director could not compare the seals on the container for want of specimen of impression of the seals. In spite of objection on behalf of the accused, that application was allowed and when the third sample was examined by the Director, Central Food Laboratory, Calcutta it was found that the percentage of moisture was 0.42 percent when as per the requirement it should have been to the maximum of 0.3 per cent. The Director, the refer, opined that the sample of 'Ghee' was adulterated

under Section 2(1a)(m) of the Act. He submitted his report dated May 27, 1978 to the trial court.

4. A perusal of the report dated May 27, 1978 of the Director, Central Food Laboratory, Calcutta will show that except the moisture content which was more than Order 12 percent, the other constituents were as per the prescribed standards of purity. The number of the sample was in fact 67-75 but the Director, Central Food Laboratory in his report dated May 27, 1978 has mentioned its number as 68/76. To this Court, it appears to be a bonafide mistake. A perusal of the letter of the learned Chief Judicial Magistrate, under which the third sample was sent to the Director, Central Food Laboratory, will show that the sample No. SLS 67/75 was mentioned, but the case number of the court 68/76 was also mentioned, and, therefore, it can be said that the sample, which was sent to the Director, Central Food Laboratory, Calcutta related to this very case.

5. The argument of the learned Advocate for the accused-petitioner is that the learned C.J.M. had no jurisdiction to send the third sample to the Director, Central Food Laboratory, after the report of the Director had been received on the second sample, which was sent to him under Section 13(2) of the Act. That report superseded the report of the Public Analyst and under law no second report of the Director, Central Food Laboratory can supersede his first report. A perusal of Section 13(2) of the Act, as it stands after the Amendment by Act No. 34 of 1976, which came into force with effect from April 1, 1976 as well as a reading of Section 13(2) as it stood prior to the amendment will make it clear that only a provision for sending the sample for analysis once to the Director, Central Food Laboratory. There is also a provision that the report of the Director, Central Food Laboratory, will supersede the report of the Public Analyst, but there is no provision that the second report of the Director Central Food Laboratory will supersede his first report, if any. It may also be mentioned here that as and when an application is made under Section 13(2) of the Act, before the sample is sent to the Director, Central Food Laboratories, it is the duty of the court concerned to first ascertain that the mark and seal of fastening as provided under the Act and the Rule are intact. The court has to put its own seal. Therefore, presumption that all official acts have been regularly performed is there and it can be said that when the sample of

'Gae' we sent by the court at the request of the accused, the learned Magistrate, only after being satisfied that the mark and seal or fastening was in fact should have sent it to the Director, Central Food Laboratory, Merely because the Prosecutor again applied that the third sample should be sent to the Director, the learned Magistrate was not authorised under the provisions of the Act or the Rule made there under to accede to his request, as there is no provision under the Act or the Rules that the se and report of the Director, Central Food Laboratory shall supersede the first report of the Director. The learned Advocate has placed reliance on *Salim & Co. and Ors. v. Municipal Corporation of Delhi* and Anr. 1978 Cr.L.J. 240 where it has been held that the words used in Section 13(2) have to be given ordinary, natural and grammatical meanings. They are not susceptible to any hypothetical construction Only one certificate can be issued by the Director after the analysis of the sample has been carried out. The Public Analyst's report once superseded by the Director's certificate cannot be revived on account of a party offering to send the second sample to the Director.

6. Therefore, the position of law, which emerges from the above discussion, is that under Section 13(2) of the Act, as it stood prior to the amendment or as it stands after the amendment by Act No. 34 of 1976, only one sample can be sent to the Director, Central Food Laboratory, and the report received will supersede the report of the Public Analyst. But, normally third sample cannot be sent to the Director, Central Food Laboratory, nor its report, if any, will supersede the first report, nor will revive the report of the Public Analyst.

7. The learned Chief Judicial Magistrate, therefore, acted without jurisdiction when he sent the third sample to the Director, Central Food Laboratory for analysis. Report, if any received, will not supersede the first report of the Director, Central Food Laboratory, which confirms to be the evidence in this case and is conclusive under the provisions of the Act.

8. It will be clear that the report of the Director, Central Food Laboratory, Calcutta dated November 21, 1977, which has superseded the report of the Public Analyst, clearly shows that the sample of 'Ghe' was not adulterated. In this view of the matter, it is a fit case in which the inherent powers of this Court should be

exercised.

9. Therefore, the order of the learned Chief Judicial Magistrate dated March 23, 1978 is hereby quashed and consequently the second report of the Director, Central Food Laboratory, Calcutta cannot be read into evidence.

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