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Court : Rajasthan

Decided On : Mar-07-1990

Reported in : 1990WLN(UC)74

Judge : M.B. Sharma, J.

Appeal No. : S.B. Cr. Revision Petition No. 203 of 1988

Appellant : Ram Charan

Respondent : State of Rajasthan

Disposition : Petition allowed

Judgement :

M B. Sharma, J.

1. It was urged by the learned Counsel for the petitioner that because non-compliance with the provision of Section 13(2) of the Prevention of Food Adulteration Act, 1954 (for short P.F Act) read with rule 9 A of the Prevention of Food Adulteration Rules. 1955 (for short 'the Rules'). The accused has been denied a valuable right given to him Under Section 13(2) of the P.F. Act. Though this point does not appear to have been taken either in the trial court or in the appellate court, but it is a point that can be decided on the available material and therefore the learned Counsel for the petitioner was allowed to agitate this ground.

2. The accused petitioner has been convicted Under Section 7/16 of P.F. Act and the learned Munsif and Judicial Magistrate while convicting, the accused petitioner as aforesaid under his judgment dated 11-10-1984 sentenced to him undergo 6 months simple imprisonment and a fine of Rs.1000/- in default of payment of which to further suffer 3 months simple imprisonment. The aforesaid conviction and sentence were affirmed by the learned Addl. District and Sessions Judge, Baran, District Kota under his judgment dated 7-9-1988.

3. On 19-9 1983 at about 7 a.m. the; food Inspector Shri Sanwar Pal Singh (PW 1) saw that the accused petitioner was carrying about 5 Kg. of milk in the brass pitcher and suspected it to be adulterated; purchased 660 ml. milk for analysis and it was divided into three equal parts and each one was filled in the clean bottle and 18 drops of formaline was added to each of the sample and each of the sample was duly corked, wrapped and sealed. It was on 20-9-1983 that Kanwar Pal Singh handed over the sample to the Public Analyst; Kota and the sample was examined on 22-9-83 and was found to be adulterated as not only both the complaints i.e. milk fat and milk solid not fat were found to be adulterated and not confirming prescribed standards of purity but it was also containing 57% of added water. After receiving the consent of the Local Authority for prosecution of the accused petitioner the Food Inspector filed a complaint against the accused petitioner on 23-11-1983 i.e. within 2 months of the taking of the sample. The accused petitioner was tried and was convicted and sentenced as aforesaid and his appeal was dismissed. The plea of the accused was of bare denial and he said that he does not sell in milk.

4. As stated earlier report of the Public Analyst is dated 22-9-1983 and the complaint was filed on 23-11-1983. Under Section 13(2) of the P.P. Act, on receipt of the report of the result of the analysis from the Public Analyst that the article of food is adulterated, the Local (Health) Authority is required to send to the person from whom the sample was taken, in such manner as may be prescribed a copy of the report of the result of the analysis after the institution of prosecution against the person from whom the sample of the article of food was taken. Under Rule 9-A of the Rules, the manner in which the report of the Public Analyst is to be sent as aforesaid has been prescribed. The aforesaid rule requires that the Local (Health)

Authority shall immediately after the institution of prosecution forward copy of the result of the report of the result of analysis in Form III delivered to him Under Sub-rule (3) of Rule 7, registered post or by hand as may be appropriate. After the receipt of the copy of the report of the Public Analyst as aforesaid, as provided in Sub-section (2) of Section 13 of the PF Act the person from whom the sample was taken and the copy of the report of the Public Analyst was sent to the court within a period of 10 days from the date of the receipt of the copy of the report, to get the sample of article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory. A reading of Sub-section (2) of Section 13 of the PF Act along with Rule 9-A of the Rules, will show that a statutory duty has been cast on the local (Health) Authority to send a copy of the report of the Public Analyst, if the report is that the article of food is adulterated, either by registered post or by hand as may be appropriate and to inform the person that if he so desires he may make an application to the court within a period of ten days from the date of receipt of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory. As held by me in a number of cases that Section 13(2) of PF Act is directory and therefore before it can be said the infraction of the aforesaid provision has taken place, the accused will have further to prove that his case has been prejudiced. In the instant case, it appears that the copy of the report of the Public Analyst was not at all forwarded to the accused petitioner as laid down in Rule 9-A of the Rules not only immediately or within a reasonable time of filing of the complaint but even thereafter, it also does not appear that a copy of the report was furnished to the accused petitioner when he appears in the court. A look at the entire record will show that the receipt of the accused petitioner about the receiving the copy of the report of the Public Analyst either by registered post or by hand is not available on record. There is no material to say that the copy of the report of the Public Analyst was sent to the accused petitioner, even the Food Inspector Kanwar Pal Singh (PW 1) has not made such a statement. Under the circumstances it can be said that the copy of the report of the Public Analyst was not given to the accused petitioner informing him that he may file an application in the court for sending the sample with the local (Health) Authority for analysis to the Central Food Laboratory. Thus, the result of the total non compliance of the aforesaid provisions of Section 13(2) of

the PF Act as well as Rule 9-A of the Rules is and it can be said that prejudice has been occasioned to the accused petitioner in as much as he has been deprived of his valuable right available to him Under Section 13(2) of the PF Act for filing application that the sample with the local (Health) Authority should be sent to the Central Food Laboratory for analysis.

5. Consequently, I hereby allow this revision petition, set aside the judgment dated 7-9-1988 of the learned Additional District Judge, Baran as well as dated 11-10-1984 of the learned Munsif and Judicial Magistrate Chhabra convicting and sentencing the accused petitioner Under Section 7/16 of the Prevention of Food Adulteration Act, 1954. The accused petitioner is hereby acquitted of this aforesaid charges and sentence is also set aside. He is on bail he need not surrender to his bail bond which shall stand discharged.

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