

Shakoor Vs. the State of Rajasthan

Shakoor Vs. the State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/767621

Court : Rajasthan

Decided On : Nov-11-1976

Reported in : 1976WLN697

Judge : M.L. Shrimal, J.

Appeal No. : S.B. Criminal Revision No. 403/72

Appellant : Shakoor

Respondent : The State of Rajasthan

Judgement :

M.L. Shrimal, J.

1. This revision petition is directed against the judgment of the learned Sessions Judge, Jodhpur, dated July 31, 1972, affirming the judgment dated April 6, 1972, of the, learned Municipal Magistrate, Jodhpur, whereby he convicted the accused-petitions under Section 7/16 of the Prevention of Food Adulteration Act (No. XXXVII of 1954) (hereinafter referred to as 'the Act') and sentenced him to six months' simple imprisonment and a fine of Rs. 1,000/- or in default of payment of fine to further undergo simple imprisonment for a period of six months.

2. The prosecution story, in a nut shell, is that on August 23, 1988, PW 1 Maghraj, Food Inspector, saw that the accused was selling milk, Suspecting the milk to be

adulterated he gave a notice in Form No. VI (Ex. P/1) and purchased 750 gms. of milk for 37 paise. The milk was divided into 3 parts. Each part was then filled in a clean bottle. All the three bottles were sealed in the presence of the petitioner. A memorandum containing the details of the action taken by the Food Inspector was prepared and is marked as Ex. P/2. It bears the signatures of P.W. 1 Maghaj, Food Inspector and those of two attesting witnesses PW 2 Harumal and PW 3 Kewalram. It also bears the signature of Shakoor, the accused petitioner. One sample bottle was given to the accused petitioner and the other was sent to the Public Analyst, Jodhpur, along with the specimen of the seal impressed on Ex. P/3. The third bottle was retained by the Food Inspector. The sealed bottle was received by the Public Analyst on August 24, 1968. The Public Analyst received the bottle for analysis properly sealed and fastened. The seal was noticed by him to be intact and similar to the seal Impression given on the memorandum. The endorsement to this effect has been made by the Public Analyst in Ex. P/4. He analysed the contents of the bottle and declared the result as under:

Fat content ---- 3.9% Solid not fat ---- 7.6%

3. In the opinion of the Public Analyst the sample of the milk was found to be adulterated, as it did not conform to the standard of purity, prescribed by the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as 'the Rules'). the Food Inspector after obtaining section filed a complaint in the court of Municipal Magistrate, Jodhpur, against the accused-petitioner for his prosecution under Section 7/16 of the Act. the accused denied his complicity in the crime, the prosecution in support of their case examined three witnesses namely PW 1 Maghaj, Food Inspector, 'mot bits' PW 2 Harumal and PW 3 Kewalram, The accused in his statement recorded under Section 342 Cr PC. stated that the milk was not for sale. He was carrying it to distribute it amongst lepers. No witness was examined by him in his defence the trial court, relying on the testimony of the prosecution witnesses, held the accused guilty under Section 7/16 of the Act.

4. Being aggrieved the accused preferred an appeal against the above verdict in the Court of learned Sessions Judge, Jodhpur, who by his judgment dated July 31, 1972 upheld the conviction and sentence awarded by the Trial Court. Dissatisfied

with his judgment, the accused petitioner Shakoor has preferred this revision.

5. The learned Counsel for the accused petitioner has contended that PW 1 Maghraj (Food Inspector) was examined by the learned Magistrate on 21-12-68. After framing of the charge under Section 7/16 of the Act against the accused petitioner Shakoor, the witness was resummoned for further cross examination under Section 256, Cr PC (Old) and was cross-examined by the counsel appearing for the accused on 15-3-1969, It is urged that on that date neither the oath was administered to him nor was he made to sign his statement. The learned Magistrate realised this mistake and in order to rectify it, he later on administered oath to the witness on 15-4-69 and at the same time made him to append his signature to the statement recorded on 15-3-69. To me, this contention appears to be without any substance the learned Counsel for the petitioner admitted at the bar that there is at dispute on the point that this witness was cross-examined on 16 3 1969. A perusal of the order-sheet dated 15-3-1969 shows that this witness (PW 1 Maghraj) was cross-examined on 15 3 1969, and the case was posted for cross-examination of other witnesses on 26-4-1969. As such, the question of administering oath to the witnesses on 15-4-1969 could not have arisen. It appears that on the date of recording the subsequent cross-examination of the witness under Section 256, Cr PC the date noted was 15-4-1969 instead of 15-3-1969. The witness, too, while appending his signature, might have noted 15-4-1969 on the basis of what was written above. It is pertinent to note that the Magistrate has noted the date as 15 3-1969 under his signature appended to the very statement. The objection that the oath was not administered to PW 1 Maghraj on 15-3-1969 and that he did not also sign it on the date, was not taken In the trial court it was also not urged at the time of the argument before the trial court which in itself is suggestive of the fact that the accused knew it very well that the oath was administered on 15.3.1969 and not on 15-4-1969. The latter date was thus implicitly taken as an honest error. This point was neither raised in the memo of appeal in the first appellate court nor argued before it the accused is being represented to do so by the same lawyer, who has argued the case before me. Such an objection at a belated stage cannot be entertained in revision. In this respect, I stand fortified by the following observation made by Hon'ble Hidayatullah, J. in *The State of West Bengal v. Motilal Kanoria* : 1966 CriLJ1210 .

The objection that he was not named as an accused throughout the complaint and that he was thus not an accused could have been raised at the trial but it was not. On the contrary Kanoria entered a plea of not guilty on his own behalf and also stood examined as an accused. It is obvious that he was regarded as the accused and be understood his own position. The objection could not be entertained in revision in the High Court as it was belated and the defect, if any, had not occasioned a failure of justice. This ground also has no force.

6. Even if it is held that the mistake pointed out by the learned Counsel did take place, the main question still remains whether there had been any prejudice against the accused or whether it has in any way, led to the miscarriage of justice warranting interference in revision, Section 587, Cr.P.C., is a complete answer to the objection as the petitioner. Here are the relevant portions of Section 537, Cr.P.C.:

537 Subject to the provisions herein-

Finding or sentence when reversible before contained; no finding, by reason of error or omission in sentence or order passed by a charge or other proceedings. Court of competent jurisdiction shall be reversed or altered under Chapter XXVII or on appeal or revision on account-

(a) of any error, omission or irregularity in the complaint, summons warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or

(b) XXXX

(c) XXXX

(d) XXXX

Explanation - In determining whether any error, omission or irregularity in any proceedings under this Code has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

7. Their Lordships of the Supreme Court in *Moseb Kaka Chowdhary and Anr. v. State of West Bengal* AIR 1958 SC 536 while considering the defect in the procedure adopted by the Court and in the method of recording the statement of the accused in that case under Section 312, Cr.P.C., observed as under:

We are, therefore, not prepared to accept the argument of the learned Counsel for the appellants in this behalf. In any case, an argument of this kind which would, if accepted, necessitate a retrial, is one that ought to be put forward at the earliest stage and at any rate at the time of the regular appeal in the High Court.

The consistent view of the Hon'ble the Supreme Court of India and this Court is that unless some prejudice is established, the decision of a court of competent jurisdiction cannot be reversed on account of irregularities in procedure. His only contention is that the statement was not recorded according to law and as such the trial has been vitiated. For the reasons already mentioned by me I do not find any merit in this first contention of the petitioner.

8. The second contention of the petitioner, which is of considerable Importance, is that a copy of the report of the Public Analyst Ex. P/4 was neither delivered by hand nor by registered post to the petitioner by the Food Inspector as soon as the complaint was filed against him. The non-compliance of Rule 9(j) has caused not only infraction of the provision but also injustice. The two courts below did not take into consideration this infirmity of the prosecution case and as such he was entitled to an acquittal.

9. The contention of the learned Counsel for the State is that the directions in Rule 9(j) of the Rules are directory and not mandatory and consequently any Irregularity in not complying with its terms would not vitiate the whole trial.

10. The question which needs determination is whether the accused is entitled to an acquittal, even though the judge in a given case is satisfied that the article of food sold was adulterer, simply because the Food Inspector has not made strict compliance of Rule 9(j) of the Rules. The question whether non compliance of the Rule 9(j) would per se vitiate the trial depends on the answer to question viz. (a) whether the provision is mandatory or directory (b) whether the non-compliance

has in any way prejudiced the accused petitioner.

11. I shall read Rule 9(j) of the rules:

Rule 9. Duties of Food Inspector : It shall be the duty of the Food Inspectorial:

(a) XXX

(b) XXX

(c) XXX

(d) XXX

(e) XXX

(f) XXX

(R) XXX

(h) XXX

(j) XXX

(j) to send by band or registered post, a copy of the report received in Form III from the public analyst to the person from who the sample was taken, in case it is found to be not conforming to the Act or Rules made there under; as soon as the case is filed in the Court;

This Rule lays down no penalty for its non compliance. When a statute requires that a thing shall be done in the prescribed manner or form but does not set out the consequences of non-compliance, the question whether the provision is mandatory or directory has to be judged in the light of the Intention of legislature as disclosed by the object, purpose and scope of the Act. It is the duty of courts of justice to try to get at (he real Intention of the legislature by carefully attending to the whole scope of the statute to be considered.

12. In the face of repeated declaration made by the Parliament to stamp out food offences by severe sentence, it cannot be said that the intention of the rule-making authority was to allow the offenders punishable under the Act to get away simply because it suited a negligent officer to neglect his duty after the filing of the complaint in the court. Once the cognizance of a case against an accused is taken by the court, the judicial discretion whether to accept the particular evidence adduced at the trial, is vested in the Court the judicial discretion vested in the court of law to rely upon or not to rely upon a particular type of evidence in the case should not be allowed to be hampered by the future action of the Food Inspector, who is nothing more than a witness in a case. Reference may be made to the following observations made by Lord Black Burn in the case, *The Justices of the Peace for Middlesex v. the Queen* (1884) Vol IX Appeal Cases 757 at page 778,

a condition as to which the responsible persons may be blameable and punishable if they do not act upon it, but their not acting upon it, shall not invalidate what they have done, third persons having nothing to do with that.

13. It will be too dangerous a proposition of law to accept that the accused is entitled to an acquittal, merely because the Food Inspector has not given a copy of the report of the Public Analyst to him, though the same was given to the accused by the Court in which he was prosecuted. If it were so. It would be possible for any guilty person to escape punishment for resorting to the device. A dishonest officer would always be able to make such a mistake to allow the accused to get away from the clutches of law and defeat the very purpose of the Act and the Rules to punish such offender. It would not promote the main object of the legislature. The prescription of the statute relates to the performance of public duty, the neglect of which may be penal for the public officer but cannot affect the validity of the act done by some other public officer and decision of a competent court. Maxwell in his book. 'The Interpretation of Statutes' (Ninth Edition) at page 379, while dealing with the effect of neglect of duty by a public officer, observed as under:

On the other hand, where the prescriptions of a statute relate to the performance of a public duty and where the invalidation of acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control

over those entrusted with the duty without promoting the essential aims of the Legislature, such prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed, or, in other words, as directory only. The neglect of them may be penal, indeed, but it does not affect the validity of the act done in disregard of them. It has often been held, for instance, when an Act ordered a thing to be done by a public body or public officers and pointed out the specific time when it was to be done, that the Act was directory only and might be complied with after the prescribed time. Thus, the 13 Hen IV, (c. 7), which required Justices to try rioters 'within a month' after the riot, was held not to limit the authority of the Justices to that space of time, but only to render them liable to a penalty for neglect. To hold that an Act which required an officer to prepare and deliver to another officer a list of voters on or before a certain day, under a penalty, made a list not delivered till a later day invalid, would, in effect, put it in the power of the person charged with the duty of preparing it to disfranchise the electors, a conclusion too unreasonable for acceptance.

14. A close reading of Rule 9(j) would reveal that the object behind the Rule was to give notice to the accused that a complaint has been filed against him under the Act, and if he so desires to take advantage of Section 13(2) of the Act, he should keep the sample bottle given to him well preserved.

15. The object of this provision is to promote the private interest of an individual and the person affected can always waive it. For this reason also, this rule cannot be held to be mandatory.

16. The Rule 9(j) in itself does not create a right in favour of an accused in a case to earn his acquittal simply because the Food Inspector in a particular case was negligent in not sending the report to the accused. The conviction and the acquittal of an accused in a case involving the health of the community at large cannot be made dependent on the alertness or negligence of a Food Inspector. The rules of an enactment are required to subserve the purpose for which they are made. They cannot be allowed to eat up the main enactment and defeat the very purpose of the Act for which they have been framed. The liberty of a citizen is no doubt

important, but the very maintenance and unseeing of society cannot be allowed to be jeopardised by the sweet will of a negligent officer. If the interpretation given by the learned Counsel for the accused-petitioner is accepted, Section 13(2) will become otiose. The case cited by the learned Counsel for the petitioner *Rajaldas G. Pamnani v State of Maharashtra* : 1975 CriLJ254 has no relevance to this case. It is an authority on the Interpretation of Rule 22 which has no bearing on the subject matter dispute in this case.

17. Now remains the question whether the alleged con-compliance of the Rule has in any way prejudiced the defence of the petitioner. The legislature intended by making this rule that within a reasonable time of filing of the complaint, the report of the Public Analyst should be made available to the accused. In the case on hand the sample of the milk was taken on 23-8-68, The Public Analyst analysed the sample on 24-8-68, despatched the report on 2-9-68 and the complaint was filed on 13-9-68. On the same day the process was ordered to be issued against the petitioner. The accused attended the court on 26-10-68 and the order sheet of this date reads that all the papers were made available to him on 26-10-68. It has been admitted by the learned Counsel for the petitioner that an application under Section 13 of the Act praying for sending his sample bottle to the Director of Central Food Laboratory, Calcutta, was not made by the accused-petitioner at any stage of the trial. Under Sub-section (5) of Section 13 the report of the public analyst is to be read as evidence of adulteration of the article analysed by the public analyst unless it stands superseded by a certificate obtained from the Director of Central Food Laboratory, Calcutta. The first sample bottle given to the accused petitioner was available with him and if he wanted to make use of the provisions of Section 13(2) of the Act, he could have made an application after making payment of the prescribed fees for sending the part of the sample mentioned in Sub-clause (d) or Sub-clause (iii) of Sub-section (1) of Section 11 of the Act. It is not the case of the petitioner that because a report of the public analyst was not sent to him as required by Rule 9(j) he destroyed the sample lying with him. It is also not his case that the sample lying with him had deteriorated and so it was no more worth analysis. He never utilized the right under Section 13(2) of the Act of sending the sample to the Director of Central Food Laboratory, Calcutta, and as such it can not be said by any stretch of imagination that he has been

prejudiced in his defence. In Babulal Hargovindas v. State of Gujarat : 1971 CriLJ1075 Hon'ble P. Jaganmoban Reddy, J. speaking for the Court observed that unless an application to send the sample to the Director is made, the vendor cannot complain that he was deprived of his right to have the sample analysed by the Director. In the case on hand substantial compliance of Rule 9(j) has been made and the petitioner can not make any grievance in the absence of any prejudice being caused to his defence.

18. The offence committed by the petitioner was under Sub-clause (1) of Clause (a) of Section 16(1) of the Act and with respect to an article of food. It was adulterated under Sub-clause (d) of Clause (1) of Section 2 of the Act. Therefore, the proviso of Section 16 of the Act is applicable. The offence is alleged to have been committed in August 1969. We are in the year 1976. The period of more than eight years has elapsed in between the commission of the offence and the bearing of this revision-petition. It has been urged on behalf of the petitioner that he has now given up the business which he was doing upto the date of filing of the complaint in this case, and that he is settled in a different business. After taking into consideration all the circumstances of the case uphold the conviction of the accused petitioner Shakoor, son of Shri Lal Mohammed Ghosi resident of Udaimandir, Jodhpur, under Section 7/16 of the Prevention of Food Adulteration Act, but reduce his sentence from six months simple imprisonment and a fine of Rs. 1,000/- to three months' simple imprisonment and a fine of Rs. 1,000/. (one thousand) or in default of payment of fine he shall further undergo simple imprisonment for a period of three months. The accused-petitioner is on bail and not before me. The learned Chief Judicial Magistrate, Jodhpur, will take necessary steps for the arrest of the accused petitioner Shakoor and send him to jail to undergo the remaining period of sentence awarded by this Court. He shall report compliance. The revision petition is partly allowed as indicated above.