

State of Rajasthan Vs. Ravi Kumar

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Court : Rajasthan

Decided On : Feb-06-2002

Reported in : 2002CriLJ2608; RLW2003(2)Raj925; 2002(4)WLN234

Judge : D.N. Joshi, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 7, 13(2) and 17;
Prevention of Food Adulteration Rules - Rule 9A

Appeal No. : S.B. Criminal Appeal No. 533 of 1993

Appellant : State of Rajasthan

Respondent : Ravi Kumar

Advocate for Def. : H.M. Sarsawat, Adv.

Advocate for Pet/Ap. : O.P. Singaria, Public Prosecutor

Disposition : Appeal dismissed

Judgement :

Joshi, J.

1. This criminal appeal by the State has been filed against the judgment dated 7th April, 93 passed by the learned Chief judicial Magistrate, Sri Ganganagar in criminal original case No. 401/86, by which the accused was acquitted of the

charge Under Section 7 read with 17 of Prevention of Food Adulteration Act (in short 'the Act' hereinafter), the accused was acquitted mainly on the ground of non-compliance of mandatory provision of Section 13(2) of the Act, which was seriously opposed by the learned Public Prosecutor.

2. The relevant provision of Section 13(2) of the Act runs as follows:-

'13(2) : On receipt of the report of the result of 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, persons from whom the sample of the article of food was taken and the person, if any, whose 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 10 days from the date of 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.'

Rule 9-A of the Rules runs as follows:-

'9-A. Local (Health) Authority to send report to person concerned:-The Local (health) Authority shall within a period of ten days after the institution of prosecution forward a copy of the report of the result of analysis in Form 111 delivered to him under Sub-rule (3) of Rule 7, by registered post or by hand, and may be appropriate, to the person from whom the sample of article was taken by the Food Inspector and simultaneously also to the person, if any, whose name address and other particulars has been disclosed under Section 14-A of the Act:'

3. It was argued by me learned Public Prosecutor that the judgment of the trial court is liable to be set aside on the ground that as the accused did not exercise his right of re- analysis of the sample within the prescribed period, even though, the report of the Central Food Laboratory was sent to him vide Ex.P/17 and Ex.P/18 and it cannot be said that the respondent was deprived of his right of re-analysis of the sample envisaged Under Section 13(2) of the Prevention of Food Adulteration

Act. Therefore, the impugned order passed by the learned trial Court be set aside and the accused be convicted of the offence charged Under Section 7 read with 16 of the Act.

4. Mr. H.M. Sarsawat, learned counsel for the respondent supporting the judgment on the learned trial Court argued that in view of the judgments of this Court, there is a proof of non-compliance of Section 13(2) of the Act and therefore, the accused was deprived of his right to get the sample re-analysed and he could not be convicted of the offence charged. According to him, the learned trial Court has right acquitted the accused. He relied upon the judgment of this Court in Nagarpalika, Baran v. Chitar Lal (1).

5. The factual position in the present case is that aspire statement of PW 1 Ram Swaroop, Food Inspector, the analysis report of the sample of ice-candy was sent by the office of C.M. & H.O., Sri Ganganagar vide Ex.P/17 through registered post and alongwith postal receipt, ex.PIS to the accused respondent.

6. Perused the letter dated 27.10.1986 (Ex.P/17). The signature of C.M. & H.O. has not been proved. Ex.P/18 is the receipt of registry in which the name of addressee has been shown 'Ravi Kumar'.

7. Now the question is whether this is a sufficient compliance of the provision of Section 13(2) of the Act. As per contention of the State this is sufficient compliance of Section 13(2) of the Act and Rule 9-A of the Rules framed thereunder. The A.D. or registry sent to 'Ravi Kumar' has not been produced in evidence nor it is the case of the prosecution that it was received back. Therefore, the proof of fact that the registered envelope was duly received to the accused is evidently required. There cannot be any dispute that a letter sent by post and not received undelivered by the sender will be presumed to have been delivered to the addressee. Such presumption will be stronger in case of the letters posts under the certificate of posting and those sent under the registered cover. However, to raise such a presumption, it will have to be shown that the address on the envelop was correctly given. Secondly, such a presumption is always rebuttable.

8. What can be said on the basis of the postal receipt Ex.P/18 is that a registered envelope was posted to Rave Kumar. Evidently, this address does not contain the full required particulars of the accused. Therefore, on the strength of the postal receipt of registry Ex.P/18 it cannot be said that the Registered AD envelope allegedly containing the notice copy (whereof is Ex.P/17) and the report of the C.M. & H.O. was correctly addressed. The only witness examined to prove that the requisite notice and copy of report were sent to the accused is P.W.1 Ram Swaroop, Food Inspector, who has stated that the registered envelope was dispatched from the office of C.M. & H.O. and nobody has appeared from the office of C.M. & H.O. to prove these facts. P.W. 1 Ram Swaroop has not stated that the registered envelope contained the complete and correct address of the accused. The accused in the statement Under Section 313 Cr.P.C. has denied the fact of sending the copy of the report to him by the office of C.M. & H.O., Sri Ganganagar. In the absence of proof of correct address of the accused having been given on the alleged registered envelope, it cannot be presumed that the requisite intimation and copy of report of the C.M. & H.O. were duly sent to and received by the accused. Therefore, presumption of service of the report of the accused cannot be made. The rule provides two alternative modes of service, one by hand and other by registered post. It was open for the concerned Local (Health) authority to send the notice again by registered post at the address of the addressee or he could have sent it by the other mode contemplated method under the rule and when none of these two steps were taken by him, there is non-compliance of provision of Section 13(2) of the Act and Rule 9-A framed thereunder. By provision of Section 13(2) of the Act a very important right has been given to the accused who is facing trial, to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory by making an application to the Court within a period of ten days from the date of receipt of the copy of report. The requirement is to forward a copy of the report to the person from whom the sample was taken, by registered post or by hand or by both, which may be appropriate. Thus, the prosecution case is bound to fail for non-compliance of the provisions of Section 13(2) of the Act and Rule 9-A of the Rules.

9. For the sake of argument, if it is taken that the compliance of Section 13(2) of the Act and Rule 9-A was made, even then, the judgment of the trial Court is not liable to be interfered with. The accused appeared in the trial Court after service on 22nd April, 1991 and when the case was fixed for recording the evidence of the witness Ram Swaroop on 4th May, 1991, he moved an application (Ex.B 2/3 on the file of trial Court) to get the sample re-analysed. As per the judgment of the learned trial Court, it appears that after the receipt of the parcel box, it was intimated by the Central Food Laboratory vide latter No. 5908 dated 5th June, 1991 that parcel box is intact and no stain is found on the outer wrapper. The brown paper packet of CJM is found soaked, with contents of the bottle inside. The top of the glass bottle of container (F.I.'s packet) was found broken and all the liquid sample leaked out the sample is therefore, rejected. Third counter part of the sample may please be sent to us immediately for out analysis and report.

10. Again the third sample was sent to the Central Food Laboratory, Calcutta, who in its turn vide its letter No. 6191 dated 14th August, 1991 informed the Court as under (at A 25/1 on the file of the lower Court):-

'Outer wrapper of the parcel is found soaked with some coloured and flavored the parcel. On opening the parcel, the brown paper packet is also found soaked. On shaking, the sound of broken pieces of glass is heard and all the contents of the sample are suspected to have leaked out. This is the third part of the sample which is also rejected. However, the brown paper packet as received by this laboratory is being sent to you for your investigation, if necessary, by Regd. Post Parcel.'

11. It has been held in Nagarpalika, Baran v. Chitar Lal (supra), which was relied by the learned trial Court that:-

'The accused respondent as early as on 31.5.1976 asked the complainant to produce his sample and at that time he gave out that his sample did not contain 220 ml. milk as the capacity of the bottle was less than this. This fact was not contested by the complaint and the matter continued to remain pending for 5 years after which the complainant produced his sample. Then again the bottle got cracked and this leaked out. The accused had a right to got a second sample

examined by the Director, Central Food Laboratory, whether the sample was his own or that of the complainant. When the court accepted that either he had no sample or it was not enough for examination and directed the complainant to produce the sample retained by it and this sample ultimately could not be tested for no fault of the accused, then the conclusion is that the accused has been deprived of his right Under Section 13(2) of the Act and in such circumstances he cannot be convicted for the offence under Section 7/16 of the Act.'

12. it has been held in State v. Budharam (2), that as the accused was deprived of a valuable right of examination of the sample by the Central Food Laboratory as it had reached to the Central Food Laboratory in a broken condition, and therefore, the accused-respondent was rightly acquitted by the trial Court. It has been further held in the said case that the case is covered by the decision of this Court given in The State of Rajasthan v. Gopal Krishan (3), decided on 21st February, 1983. In that case, the sample was empty but reliance was placed on Municipal Corporation of Delhi v. Shri Devki Nandan Khurana (4). The sample of the accused-respondent could not be sent for analysis, as it was already broken.

13. Therefore, in the opinion of the Court there was non-compliance of Section 13(2) of the Act and Rule 9-A made thereunder. Further, the accused has been deprived of the right of re- analysing the sample for no fault on his part and valuable right on his part. Therefore, no reasonable grounds exist to interfere with the order passed by the learned trial Court. The appeal lacks merit and is liable to be dismissed and is hereby dismissed. The order of acquittal passed by the learned trial Court is affirmed.