

The State Vs. Arumugham

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Court : Chennai

Decided On : Feb-02-1989

Reported in : 1990CriLJ1497

Judge : Janarthanam, J.

Acts : Provision of Food Adulteration Rules - Rule 9 and 9-A; Provision of Food Adulteration Act - Sections 13(2)

Appeal No. : Criminal Appeal No. 469 of 1985

Appellant : The State

Respondent : Arumugham

Advocate for Def. : M. Karpagavinayagam, Adv.

Advocate for Pet/Ap. : R.M. Kannappa Rajendran, Govt. Adv.

Judgement :

1. This is an appeal by the State against acquittal of the respondent-accused.
2. The Food Inspector of Thiruvarur Municipality, P.W. 1, on 23-11-1982 at 11.30 a.m. inspected the premises of the respondent-accused at No. 7, V.R.M. Road, Thiruvarur and took sample of butter. After complying with the formalities he sent one of the samples to the Public Analyst, who in turn sent a report, Exhibit P. 6 stating that the sample sent falls below the minimum standard prescribed. He

preferred the complaint on 10-1-1983 before the Sub-Divisional Judicial Magistrate, Nagapattinam.

3. The trial Court found the respondent guilty under the relevant provisions of the Provision of Food Adulteration Act (hereinafter referred to as 'the Act') convicted him thereunder and sentenced to rigorous imprisonment for six months and a fine of Rs. 1,000/- in default rigorous imprisonment for three months. Aggrieved by the conviction and sentence, he preferred Criminal Appeal No. 9 of 1984 before the Sessions Court, Nagapattinam. The learned Sessions Judge set aside the conviction and sentence of the trial Court and acquitted him. Against the said order of acquittal, the State has now come forward with this appeal.

4. The learned Government Advocate would submit that the reasons given by the appellate Court, namely, (1) delay in launching the prosecution after receipt of the Public Analyst's report; and (2) non-compliance of Rule 9(j) (wrongly quoted as Rule 9(i) of the Rules) framed under the Act are perverse and therefore it is that the order of acquittal deserves to be set aside.

5. No doubt true it is that the evidence of the Food Inspector as P.W. 1 reveals that the complaint had been filed before Court on 10-1-1983. It is also not in dispute that the report of the Public Analyst had been received by P.W. 1 on 24-12-1982. As such, there is a delay of 17 days in filing the complaint on and from the date of receipt of the report of the Public Analyst by the Food Inspector. The learned Sessions Judge would make a much ado about the delay caused in filing the complaint before Court and would state that the delay is fatal to the prosecution. Prudent it is to note here that there is no provision under the Act fixing a time limit for the filing of the complaint before Court. The mere fact that there is no such provision as respects the filing of the complaint before Court does not mean that the complaint by the Food Inspector can be filed in Court at his whims and fancies. There are plethora of decisions available pointing out that though there is no provision under the Act for filing of the complaint, within a specified time, yet the complaint has to be filed within a reasonable time from the date of receipt of the Public Analyst's report by the Food Inspector. The question that would fall for consideration in this case is whether the delay of 17 days

caused in filing the complaint could be fatal to the case of the prosecution, in the sense that the delay is unreasonable. The Food Inspector, P.W. 1 would offer an explanation for the delay caused in filing the complaint by stating that since he was on leave, he was unable to file the complaint immediately after the receipt of the Public Analyst's report. His evidence on this aspect of the matter is not convincing, in view of the fact that he would himself admit during the course of cross-examination that during the time when he was on leave, there was another Food Inspector attached to the Municipality. In such state of affairs it is rather inconceivable as to what prevented the other Food Inspector in launching the prosecution in his absence. As such the explanation given by P.W. 1 is not at all acceptable for the delay caused in filing the complaint. Even otherwise what I feel is that the delay of 17 days, in the circumstances of the case cannot be stated to be unreasonable. The respondent had exercised the option given to him under S. 13(2) of the Act in sending one of the samples to the Central Food Laboratory, Mysore for analysis. The Central Food Laboratory, Mysore, on analysis gave Exhibit P. 11 report in tune with the report of the Public Analyst, Exhibit P. 6 stating that the sample falls below the minimum standard prescribed. It is also found that at the time when the Central Food Laboratory, Mysore analysed the sample, the quality of the sample was found intact, in the sense of the same being fit for analysis. The reason why the complaint has to be given only within a reasonable time is this. The valuable right given to the person accused of an offence under the Act in sending one such sample to the Central Food Laboratory for the purpose of analysis should not get lost by the unreasonable delay caused in filing the complaint. In other words, there is likelihood of the defeasance of the valuable, right given to a person accused of an offence under the Act, in the sense of his inability to get an independent report from the Central Food Laboratory, if the sample got deteriorated and not found fit for analysis, because of the delay caused in launching the prosecution. So far as the case on hand is concerned, since the sample that was sent to the Central Food Laboratory was found fit for analysis, it cannot be stated that there was prejudice caused to the respondent because of the delay of 17 days in filing the prosecution. As such, the finding of the appellate Court that the delay caused in launching the prosecution is fatal is factually untenable, in the circumstances of the case.

6. Regarding other reason of non-compliance of R. 9(j) of the Rules framed under the Act, I am of the view that the learned Sessions Judge had given a finding on this aspect of the matter without even taking into account that R. 9(j) had been deleted at the relevant point of time. Before the deletion of the said rule, it was mandatory for the Food Inspector to serve a copy of the Public Analyst's report and a notice under S. 13(2) of the Act to the person from whom the sample was taken within ten days from the date of receipt of the Public Analyst's report. Since the Public Analyst's report in this case had been received on 24-12-1982 and a copy of the Public Analyst's report and S. 13(2) notice had been served on the accused on 10-1-1983, that is, after a delay of 17 days, the learned Sessions Judge, acting on the deleted R. 9(j) gave a finding that the mandatory rule had not been followed by the Food Inspector and gave a finding accordingly, which is not tenable in view of the fact that that rule was not in force at the time when the sample had been taken from the respondent-accused.

7. Though the reasons given by the learned Sessions Judge are perverse, and the verdict of acquittal rendered by him cannot be sustained, yet the learned Counsel appearing for the respondent would submit that since copy of the Public Analyst's report, Exhibit P.6 and S. 13(2) notice Exhibit P.8 had been served on the respondent at 8 a.m. on 10-1-1983, the date on which the complaint had been filed in Court, the case of the prosecution has to be thrown lock, stock and barrel for violation of the mandatory R. 9-A of the Rules framed under the Act. He would amplify the same by stating that according to this Rule, copy of the Public Analyst's report and S. 13(2) notice have to be served upon the person from whom the sample had been taken immediately after launching of the prosecution in Court and not earlier. So far as the case on hand is concerned, the evidence of P.W. 1 is crystal clear that both copy of the Public Analyst's report as well as the notice under S. 13(2) of the Act had been served on the respondent much earlier to the launching of the prosecution in Court. It cannot be stated that since the serving of the Public Analyst's report as well as copy of S. 13(2) notice had happened on the same day on which the prosecution was launched in Court, there is no violation of the mandatory Rule 9-A. What the rule contemplates is that the serving of the Public Analyst's reports and S. 13(2) notice must not be anterior in point of time to the launching of the prosecution in Court. Though the prosecution has been

launched on the same day, the evidence of P.W. 1. makes it fluidly clear that the complaint had been filed in court only at 11 a.m. while a copy of the Public Analyst's report as well as S. 13(2) notice had been served on the respondent three hours prior to the launching of the prosecution. As such, there is a clear violation of the mandatory R. 9-A. In view of this, the verdict of acquittal has to be sustained dismissing the appeal preferred by the State.

8. In the result, the appeal fails and the same is dismissed.

9. Appeal dismissed.

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