

Shanmugham Vs. State

Shanmugham Vs. State

SooperKanoon Citation : sooperkanoon.com/777325

Court : Chennai

Decided On : Apr-05-1988

Reported in : 1989(42)ELT196(Mad)

Judge : K.M. Natarajan, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 2, 7(1) and 16(1)

Appeal No. : Criminal Revision case No. 788 of 1984 in Criminal Petition No. 784 of 1984

Appellant : Shanmugham

Respondent : State

Advocate for Def. : S. Govindaswamy, Public Prosecutor (Pondicherry)

Advocate for Pet/Ap. : T.S. Arunachalam, Adv.

Judgement :

ORDER

1. This petition coming on for hearing on Monday the fourth day of April, 1988 and on this day, upon perusing the Petition and the order of the Lower Courts, and the record in the case and upon hearing the arguments of Mr. T. S. Arunachalam, Advocate for the petitioner and of Mr. S. Govindasamy, Public Prosecutor (Pondicherry) on behalf of the State, the Court made the following order :-

This revision is directed against the conviction of the petitioner under Section 7(1) read with 2(i-a)(M) and Section 16(1)(a)(i) of the [Prevention of Food Adulteration Act, 1954](#), hereinafter referred to as the Act, and the sentences of simple imprisonment for three months and the fine of Rs. 1,000/- in default to undergo S.I. for three months by the learner Sub Divisional Judicial Magistrate, Pondicherry, which were confirmed by the Chief Judicial Magistrate, Pondicherry.

2. The facts which are necessary for the disposal of this revision are briefly stated as follows: The Food Inspector P.W. 1 stopped the accused on 3-2-1982 at about 9.15 a.m., who was carrying milk for sale in brass pots on his bicycle, and after disclosing his identity has purchased 660 ml. of cow's milk for Rs. 1.62 and obtained a receipt Ex.P. 2. He also served a copy of the form VI Ex.P. 1 on the accused. Thereafter, he divided the sample milk into three equal portions, poured into three clean, empty, dry bottles, added 18 drops of formalin preservative to each portion, closed each bottle tightly with cork, wrapped each bottle with thick brown paper, padded Local (Health) Authority with slip around brown paper on each bottle, obtained the signature of the accused on all bottles and then sealed the samples in the presence of the accused and P.W. 2. Then P.W. 1 sent one bottle to the Public Analyst with a copy of Form VII on 4-2-1982 and also sent remaining two bottles to the Local (Health) authority. The Local Health Authority received the Public Analyst report Ex.P. 3 which is to the effect that the sample contained 4.1% fat and therefore, the milk is not adulterated. It is further stated therein that milk solids, nor fats was 7.0%, which is deficient in milk solids not fat to the extent of at least 7 per cent. After receipt of sanction order Ex.P. 4 prosecution was launched against the accused and intimation Ex.P. 5 was sent to the accused about the filing of the case against him, and the intimation as acknowledged by the accused under Ex.P. 6. Thereafter a complaint was filed against the accused. In support of the same, the prosecution examined the Food inspector P.W. 1 and three other witnesses namely P.W. 2 witness to the mahazar, P.W. 3 Local (Health) Authority and P.W. 4 another Food inspector, and filed Ex.P. 4. The plea of the accused is one of denial. The learned Sub Divisional Judicial Magistrate for the reasons assigned in his judgment convicted and sentenced the accused as stated in the opening paragraph of this judgment. He was unsuccessful before the Chief Judicial Magistrate. Hence the revision.

3. The learned counsel for the petitioner Mr. T. S. Arunachalam mainly submitted that in the instant case, in the notice Ex.P. 5 under Section 13(2) of the Act the name of the Court in which the prosecution was launched has not been mentioned, and as such the petitioner was deprived of his substantial right to challenge the Analyst report and therefore the entire prosecution has to fail. The learned Counsel also submitted that though the Analyst report is dated 10-2-1982, the prosecution was launched in August, 1982, i.e. after six months, and the delay was not been explained and the delay in launching the prosecution resulted in prejudice to the case of the petitioner. On the other hand, the learned Government Advocate for Pondicherry submitted that Section 13(2) is not mandatory but only directory and that since the accused has not specifically that plea before the lower Court and it is a technical plea, the petitioner cannot be permitted to raise the same in the revision stage, and in any event the concurrent finding of both the Courts below cannot be reversed on that score. The question now arises for consideration in this revision is whether the failure to section the Court in the notice under section 13(2) of the Act resulted in miscarriage of justice and the non-compliance of mandatory provision would vitiate the entire prosecution case against the petitioner. In this connection, the learned counsel for the petitioner Mr. T.S. Arunachalam drew my attention to the decision in Criminal Appeal No. 419 of 1978 (State by Public Prosecutor v. Palanichamy, judgment dated 22.10.1981), wherein Sathar Sayeed J., had an occasion to consider the similar question and held that 'as per the rules framed under the Act, the respondents is entitled to or had a right to apply for sending the sample seized from him and kept by the Local Health Authority to the Central Food Laboratory for analysis. This is a valuable right conferred on the accused person is not informed as to which Court he has to apply and in which court the case is pending against him, the valuable right afforded to him under the Act is lost, which would vitiate the prosecution case'.

4. In Criminal Appeal Nos. 58, 127, 177, 802, 812 and 825/79, while disposing of C.A. No. 127/79 (State by Public Prosecutor v. Sellamuthu, judgment dated 24-11-1981). Ratnavel Pandian, J., as he then was, held that in 'addition to the ground,

'I would like to point out there is more ground in Criminal Appeal No. 127 of 1979 viz., in the memo of intimation under section 13(2) of the Act served on the

accused, the Local (Health) Authority has not specified the Court before which the prosecution has been launched. This is in breach of the provision of section 13(2) of the Act'.

In *Kandasami v. Food Inspector, Athoor* 1981 L.W. (Cri.) 299, a Division Bench consisting of Natarajan and Maheswaran, JJ, on a reference made regarding the correctness of the view taken by Paul J., in Crl.R.C. No. 7 of 1978 in his order dated 18th June, 1979, held that :-

'If the report is received before the institution of prosecution, to which Court is the affected person to make his application There may be stations where there may be more than one Magistrate to deal with cases filed under the Act. The affected person may not be in a position to know to which Court he must make the application.'

Their Lordships have also observed that 'the accused will be left wondering to working to which Court he should make application and as to what he should make the application;

4A. The Government Advocate for Pondicherry drew my attention to a decision *Babboo v. State* : AIR1970 All122 , wherein it was held by a single judge of that Court that :

'where the accused from whom the sample of cow's milk was taken, was sought to be prosecuted after six months before the expiry of 10 months from the date on which the sample was collected, it could not be said that the accused was deprived of an opportunity to avail himself of the benefit of the provisions contained in Section 13, if the necessary precautions prescribed by the Rule for preserving the same have been taken.

Relying on the decision the learned Government Advocate submitted that even if the prosecution was launched after a delay of six months, such delay would not vitiate the prosecution. After going through the decision I find that the said decision has no relevance to the present case. There question in this case is whether the statutory right that is available to the accused has been deprived of by not sending

a proper notice. I do not find any material to show that the sample was preserved and it was in good condition. In this case even after the receipt of report of Public Analyst Ex.P. 3 on 10-2-1982, the prosecution was launched after six months and Ex.P. 5 was issued on 12-8-1982. Certainly the accused was prejudiced by not mentioning the same of the Court in the notice and it is not in dispute that there are number of Courts in Pondicherry and not only the Court which is located in Pondicherry. On the other hand, the learned counsel for the petitioner Mr. T. S. Arunachalam, drew the attention of this Court to decision of Allahabad High Court in Braj Bihari Lal v. State 1981 FAJ 149 wherein it was held that :

'inasmuch as a valuable right is conferred on the accused to get the sample examined by the Central Food Laboratory, the accused is apprised of the prosecution which has been launched against him so that he could move the Court in which the prosecution has been launched to send the sample kept with the local (Health) Authority for analysis to the Central Food Laboratory. The provision being mandatory, it must be complied within all the particulars. In the present case the report of the Analyst was despatched on 9-5-1978 while the complaint was instituted on 10-5-1978. The applicant was not apprised of the name of the Court in which the prosecution was being launched and as such he could not approach the Court within the prescribed period of ten days to send the sample for analysis to the Central Food Laboratory. Non-compliance of a mandatory provision goes to the very root of the prosecution case, and therefore, the conviction of the applicant could not sustain.'

The above said decision is directly applicable to the facts of the present case. In view of the fact that the name of the Court in which the prosecution against the petitioner was launched was not mentioned in Ex.P. 5 notice under Section 13(2) of the Act, the entire prosecution against the petitioner is vitiated. The conviction is not sustainable.

5. In the result, the revision is allowed. The conviction and the sentence awarded to the petitioner are set aside and he is acquitted of the charge. Fine amount if paid is directed to be refunded to the petitioner.

