Public Prosecutor Vs. Basheer Sahib

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Court : Chennai

Decided On : Sep-07-1964

Reported in : AIR1966Mad325; 1966CriLJ1023; (1965)2MLJ325

Judge : S. Ramachandra Iyer, C.J. and ;Srinivasan, J.

Acts : Prevention of Food Adulteration Rules - Rule 22; Prevention of Food Adulteration Act, 1957 - Sections 2(1), 7, 8, 9, 10, 11, 12, 13 and 16(1)

Appeal No. : Criminal Appeal No. 688 of 1962

Appellant : Public Prosecutor

Respondent : Basheer Sahib

Judgement :

(1) This appeal comes before us on a reference by Kunhamed Kutti J. The learned Judge felt a doubt with regard to the proper interpretation of rule 22 of the rules framed under the Prevention of Food Adulteration Act, though in two earlier judgments of single judges of this court, the view had been taken that the Rule is not mandatory in the sense that noncompliance therewith would vitiate the prosecution proceedings. For that reason that this question is one which is likely to arise frequently the matter has been posted before a Bench.

(2) The petitioner was prosecuted under Ss. 7 and 16(1) read with S. 2(1)(a) of the Prevention of Food Adulteration Act 1957. The Food inspector, who is the complainant seized a certain quantity of milk from the petitioner and divided the

milk into three parts, one of which was handed over to the petitioner and one part sent to the Government Analyst. The report of the analyst showed that the milk contained 13 per cent of added water. The Sub-Divisional Magistrate, who tried the case found that the quantity sent to the Government Analyst consisted only of 5.2 fluid ounces. Rule 22 however prescribes that the quantity of the sample to be sent to the Public Analyst shall be in the case of milk, 9 ounces. The trial magistrate accepted the contention that the opinion of the Analyst arrived at on conducting test with a quantity less than that prescribed by the Rule cannot be taken to be one arrived in accordance with the law. He accordingly acquitted the accused.

(3) The Public Prosecutor filed an appeal against the acquittal, and that is how the matter came before the High Court.

(4) It is unnecessary to refer to the several sections of the Act. Broadly stated, Food Inspectors have been appointed under S. 9 of the Act. Under S. 10 certain powers have been conferred upon them which include the power to take samples of any article of food from any person selling such articles and to send such sample for analysis to the Public Analyst for the local area within which such sample was taken. Public Analysts are appointed under S. 8 of the Act. Section 11 prescribes the procedure to be followed by the Food Inspectors when taking sample of food for analysis. Section 12 enables the purchaser of any article of food also to have such article analysed by the Public Analyst. Section 13 provides that the Public Analyst shall deliver a report to the Food Inspector of the result of the analysis of any article of food submitted to him. A report so made by the Public Analyst may be used as evidence of the facts stated therein in any proceeding under this Act. The rules framed under the Act prescribe by Rule 22 the quantity of sample to be sent to the Public Analyst. In so far as milk is concerned, the quantity so prescribed is 220 ml (cc) and this quantity is described in that rule as the "approximate quantity to be supplied". The only point to be noticed in this connection is that with regard to a variety of articles of food, different approximate quantities to be supplied are specified in the appropriate column of the rule.

(5) There is no doubt that in this case a quantity less than what is prescribed in this rule was sent to the Analyst. The question is whether, though the Public Analyst did not apparently find any difficulty in making a proper analysis of the article sent to him, the failure of the food inspector to send an approximate quantity of 220 ml vitiates either the result of the analysis or the proceedings under the Act. Rule 22 reads thus:

"The quantity of sample of food to be sent to the Public Analyst for analysis shall be as described below:

milk--approximate quantity to be supplied--220 ml"

Before Kunhamed Kutti J., the learned Public Prosecutor relied upon two earlier judgments and urged that though the provision of Rule 22 is worded mandatorily, the exact quantity of the food articles specified therein need not be sent for analysis and that if the quantity sent to the Analyst was sufficient for analysis, then that should be deemed to meet the requirements of Rule 22. But the learned Judge felt unable to accept this argument which had apparently been accepted in the earlier judgments and thought that an authoritative ruling was necessary.

(6) In C.A. No. 363 of 1961 reported in Public Prosecutor v. Muthu Naicker, 1963 Mad WN Cr 9: (1963 (1) Cri LJ 688), Sadasivam J. was of the view that the quantity mentioned in Rule 22 is only an approximate quantity and sending a smaller quantity would be proper compliance with the rule, unless the Central Food Laboratory finds difficulty in analysis because of the smallness of the quantity and prejudice is caused to the accused. The learned Judge observed in that case that the Public Analyst was able to give his opinion by analysing four ounces of milk, though the rule required a larger quantity to be sent. This view was followed by Ramakrishnan J. in C.A. 637 of 1963 (Mad) who dealt with the matter thus:

"The question whether the sending to the Analyst of a quantity of the sample less than the one prescribed in the rule has made the report of the analysis unreliable must be considered independently on the facts of the case..... It appears that the provision under Rule 22 was intended to enable the Analyst, to have samples

in an adequate quantity for the purpose of making his analysis and provide guidance for the authorities who take the sample. If the sample sent was less than the prescribed quantity, it was for the analyst in any particular case to express his difficulty in analysing and insist upon the prescribed quantity being sent. But there is nothing in the present case to show that the Analyst felt any difficulty in making the analysis. The conclusion of the learned Sessions Judge that the analysis was vitiated is based on the sole reason that the quantity sent was only half of the quantity prescribed under the rule such a conclusion would not necessarily follow....." He then referred to the judgment earlier cited and accepted that interpretation.

(7) We are in entire agreement with the view expressed above. Though the rule employs the word "shall" the specification of only an "approximate quantity" minimises the apparent mandatory force of that expression. Nor can we agree that the supply of a lesser quantity than what the rule indicates would affect the evidentiary value of the analysis solely for the reason of such short supply. As the learned Judges have pointed out, this provision is only a means for securing evidence of an expert witness and if the quantity which the expert was furnished with was adequate enough to render possible all the tests necessary and the expert was in a position to pronounce upon the material, the fact that he was supplied with a lesser quantity cannot detract from that evidence. Whether the quantity was adequate enough for the purpose in question is a matter which might call for investigation in the circumstances of the particular case. It can never be stated as an absolute proposition that upon a lesser quantity than that prescribed in the rule, no proper analysis could at all be done. The argument advanced on behalf of the respondent is precisely to that effect, an argument which we wholly fail to appreciate.

(8) The learned Public Prosecutor has drawn our attention to a passage in Halsbury's Laws of England, Vol 17, 3rd Edn. at page 470. The passage reads:

"The insertion in the certificate of the weight of the sample is not obligatory, unless the weight is a material factor in the analysis and its omission will not necessarily invalidate the certificate".

It is not however clear whether in the case of the basis of which the above commentary has been made, there was any insistence upon furnishing to the Analyst any minimum weight of the sample. This extract though not of much assistance in the context of the present case, is still helpful in showing that unless specification of the quantity is a material factor in the contract of the analysis of the article, the submission of a lesser quantity would vitiate the validity of the analysis.

(9) The reference is answered on the lines indicated above.

(10) Reference answered accordingly.