

The State Vs. Gangaraman and Another

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Court : Chennai

Decided On : Apr-16-1996

Reported in : 1997CriLJ510

Judge : M. Karpagavinayagam, J.

Appeal No. : Criminal Appeal No. 1014 of 1987

Appellant : The State

Respondent : Gangaraman and Another

Advocate for Pet/Ap. : B. Sriramulu, Public Prosecutor

Judgement :

1. This appeal filed by the Food Inspector, Corporation of Coimbatore, through the Public Prosecutor, is directed against the judgment in C.A. No. 287 of 1985 on the file of the First Additional Sessions Judge, Coimbatore, acquitting the respondents for the offence under Sections 7(1),, 16(1)(a)(i) read with Section 2(1a)(a)(m) of Prevention of Food Adulteration Act, 1954.

2. Originally, the respondents faced the trial in respect of the above said offences in C.C. No. 352 of 1985, on the file of the Additional Judicial First Class Magistrate, Coimbatore, in which they were convicted and sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs. 1000/- and in default of payment to undergo rigorous imprisonment for three months. Against this

judgment, the respondents filed an appeal in the I Additional Sessions Judge, Coimbatore in C.A. No. 287 of 1985, which ended in acquittal as referred to earlier.

3. Mr. B. Sriramulu, learned Public Prosecutor contended that the grounds on which the judgment of acquittal was rendered by the lower appellate Court in C.A. No. 287 of 1985 was not valid in law. The following three grounds have been given in the said judgment for acquitting the respondents.

(i) The Food Inspector after taking the sample instead of sending it to the Court sent the same to the local authority. This is the violation of the relevant Sections of the Prevention of Food Adulteration Act, 1954.

(ii) Under Section 13(2) of the Act, after filing of the complaint, the notice under Section 13(2) must be served immediately. In the instant case, the notice was served after five days.

(iii) Of course Public Prosecutor report shows that the article referred was taken as a sample, was found to be adulterated, however, the public analyst was not examined. This is also fatal to the case of prosecution.

4. As rightly pointed out by Mr. B. Sriramulu, learned Public Prosecutor, all these grounds are not valid in law for the following reasons :

(i) Section 11 of the Act provides procedure to be followed by the Food Inspector. Section 11 says as follows :-

(1) When a Food Inspector takes a sample of food for analysis, he shall -

(a) & (b)

(c)(i) send one of the parts for analysis to the public analyst under intimation to the Local (Health) Authority; and

(ii) send the remaining two parts to the Local (Health) Authority for the purposes of sub-section (2) of this section and sub-sections (2-A) and (2-E) of Section 13.

So under this Section, the Food Inspector is bound to send the samples only to the local authority and not to the Court. As such, it cannot be said that the act of the Food Inspector in sending the remaining sample to the local authorities was not in accordance with law.

(2) Section 13 of the Act provides with reference to the report of the analyst on the accused after the complaint is filed. Section 13(1) provides that the public analyst shall deliver, in such form as may be prescribed, a report to the Local (Health) Authority of the result of the analysis of any article of food submitted to him for analysis. Section 13(2) reads as follows : 'on receipt of the report of the result of the 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 the person from whom the sample of the article of food was taken forward, in such manner as may be prescribed, a copy of the report of the result of the analyst to such person informing such person or persons that if it is so desired may make an application to the Court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory.' As such this Section does not say that the period within which the notice to be served.

5. But under Rule 9-A of Prevention of Food Adulteration Rules, 1955, it has been specified that 'the Local Authority shall within a period of ten days after the institution of prosecution forward a copy of the report of the analyst in Form No. III to the person from whom the sample of article was taken!' Thus the period of 10 days has been introduced in Rule 9-A of the Act by the notification dated 9-7-1984. As such either Section 13(2) of the Act or Rule 9-A, do not refer that the notice must be sent within 5 days after the institution of the prosecution. As such, in this case, admittedly the report has been forwarded and sent within 10 days after the institution of the prosecution case. In that view of the matter, the Food Inspector has followed this procedure also correctly.

6. Mr. B. Sriramulu, learned Public Prosecutor brought to my notice the decision of the Supreme Court, reported in *Tulsiram v. State of M.P.*, : 1984 CriLJ1731 ,

wherein, it has been held that the expression immediately as found in Rule 9-A conveys the sense of continuity rather than urgency and even non-compliance with Rule 9-A is not fatal to the prosecution. The learned Public Prosecutor also cited another decision of the Apex Court, reported in Rajendra v. State of M.P., : 1991 CriLJ2497 . Wherein, the Apex Court held that the requirement that the Local Authority to send copy of the report of result of analyst to accused immediately after institution of prosecution is only a formal one and failure to forward copy instantly will be of no consequence and that the word 'immediately' conveys reasonable despatch and promptitude intending to convey sense of continuity rather than urgency. However, in the instant case, the sample has been taken on 5-7-1985 and the complaint was filed on 20-8-1985 and then after four days the notice under Section 13(2) of the Act and the report of the analyst have been served on the accused. This means, within ten days, as referred to in Rule 9-A under the new amended Rule, which came into force with effect from 9-7-1984. As such there is a proper compliance in respect of Rule 9-A of the Act. In view of this I have no difficulty in coming to the conclusion that the grounds given in the judgment of the lower appellate Court are not valid in law and as such the judgment is liable to be set aside. However, even as pointed out fairly by the learned Public Prosecutor, the occurrence took place in the year 1985, the lower appellate Court has acquitted the accused on 24-10-1996 and the present appeal has been filed on 21-4-1987, as such now nearly nine years have lapsed. So, I do not interfere with the said judgment of the lower appellate Court, I merely point out about the illegality. With this observation, the appeal is disposed of .

7. Order accordingly.