

Hussaln Shaw Vs. State

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Court : Chennai

Decided On : Nov-21-2000

Reported in : 2001CriLJ2142

Judge : M. Chockalingam, J.

Acts : Essential Commodities Act (E.C. Act) - Sections 7; Tamil Nadu Scheduled Articles (Prescription of Standards) Order, 1977; Code of Criminal Procedure (CrPC) - Sections 313; Prevention of Food Adulteration Act (P.F. Act) - Sections 7(3) and 13(2)

Appeal No. : Criminal Appeal No. 63 of 1994

Appellant : Hussaln Shaw

Respondent : State

Advocate for Def. : S. Ravi, Govt. Adv., for Public Prosecutor

Advocate for Pet/Ap. : R. Rajasekar, Adv.

Disposition : Appeal allowed

Judgement :

M. Chockalingam, J.

1. This Criminal Appeal has been preferred from the judgment of the Special Judge under E. C. Act, Thanjavur dated 12-1-1994, made in S.T.C. No. 64 of 1992, convicting the appellant/accused under clause 3 of the Tamil Nadu Scheduled Articles (Prescription of Standards) Order, 1977 read with Section 7(i)(a)(ii) of the Essential Commodities Act and sentencing him to undergo R.I. for three months and to pay a fine of Rs. 500/- and in default, to undergo R.I. for one month.

2. The short facts leading to the conviction could be summarised as follows :--

On behalf of the prosecution, P.Ws. 1 to 4 were examined and Exs. P1 to P9 were marked, P.W. 2 turned hostile.

3. On 29-6-1991 at about 3.00 p.m., P.W. 1, Special Tahsildar, Flying Squad along with his party made an inspection at the shop premises of the appellant/accused, situate at No. 440, Main Road, Nellikuppam. He served a notice on the accused, as found under Ex. P1. He purchased 540 grams of groundnut oil for Rs. 18.30 under Ex. P2 receipt, in the presence of witnesses P.W. 2 Krishnamoorthy, P.W. 3, Thyagarajan and Jaffer Hussain. He prepared a Mahazar as found under Ex. O4. A copy of the mahazar was served on the appellant. The statement of the appellant/accused was recorded, which is marked as Ex. P5. He divided the oil into three portions, poured them into 3 dry and clean bottles, and sealed them. He handed over two of the said bottles to the District Supply Officer, while he sent the third one to the Public Analyst, Thanjavur through invoice dated 29-6-1991. After analysis, Ex. P. 9 report was received, stating that the groundnut oil was found to be adulterated. P.W. 4 Inspector, on receipt of the communication along with Ex. P3 report on 9-1-1992 from the District Collector, registered a case in Cr. No. 9/92. First Information Report was Ex. P8. The Inspector questioned the witnesses and recorded their statements. On receipt of Ex. P9 Public Analyst Report, he filed a chargesheet under Clause 3 of the Tamil Nadu Scheduled Articles (Prescription of Standards) Order, 1977 read with Section 7(i)(a)(i) of the Essential Commodities Act, before the Special Court under the E.C. Act, Thanjavur.

4. After the evidence of the prosecution, the appellant-accused was questioned under Section 313 of Cr. P.C. He pleaded innocence.

5. After termination of the trial, the trial Court found the appellant guilty, and convicted and sentenced him as referred to earlier. Aggrieved over this, the present appeal has been resorted.

6. The learned counsel appearing for the appellant would argue that failure to serve Section 13(2) notice as per the P.F. Act was fatal to the prosecution case, and it has caused great prejudice to the appellant, that the analyst report had not reached within 45 days from the date of the receipt of the sample, as per Section 7(3) of the P.F. Act; that the sample was not marked which was fatal to the prosecution case; that the date of receipt of the public analyst report was not known; that pure and clean implements and materials were not used for taking sample, which would have affected the result of the report and under the stated circumstances, the lower Court should have acquitted the appellant.

7. Heard the learned Government Advocate, Criminal side, for the respondent.

8. After hearing the rival submissions, and after careful scrutiny of the records placed before this Court, this appeal has to be necessarily altered on a short point.--

9. It has been already settled by this Court in a batch of cases reported in Section Arunachalam v. State rep. by the Inspector of Police, Tirunelveli, 1993 MLW (Cri) 211, that the relevant section of the Prevention of Food Adulteration Act for taking sample and sending it to the Public Analyst would be applicable to the prosecution case under Tamil Nadu Scheduled Articles (Prescription of Standard) Order, 1977.

10. Under Section 13(2) of the Prevention of Food Adulteration Act, the officer who took the samples, after receipt of the analyst report and after filing the report in the Court, shall give a notice to the appellant/accused along with a copy of the report of the Public Analyst and an intimation in writing that he would file an application before the Court making a request to send the second sample which was deposited with the Local Authority for the second analysis. A very reading of the Section 13(2) of the Act would clearly indicate that it was intended to provide certain safeguards and right to the accused.

11. In the instant case, admittedly, Section 13(2) notice was not at all served on the appellant-accused. Despite the same it was brought to the notice of the Court below, it was observed by the Court below that the appellant has not moved the Court with a request to send the second sample, which was deposited with the local authority for second analysis. The said observation is totally erroneous and against the very legislative intent of that provision.

12. Section 13(2) of the Act contemplates not only a notice to the accused, but also a notice as to the public analyst report, along with an intimation in writing that he is entitled to make an application before the Court requesting for second analysis. Even without service of the said notice, it cannot be stated that he has not made a request before the Court. The failure to serve a notice on the appellant as contemplated under Section 13(2) of the Act has vitiated the whole proceedings and would be fatal to the case of the prosecution.

13. The above short point would be suffice to set aside the judgment of the Court below, convicting the appellant on the said provisions. Accordingly, the conviction and sentence imposed upon the appellant are set aside, and the appellant is acquitted of the charges framed against him. The appeal is allowed. Fine, if paid, is directed to be refunded to the appellant.