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Court : Rajasthan

Decided On : Apr-15-2010

Judge : Dinesh Maheshwari, J.

Appellant : indra Mal

Respondent : The State of Rajasthan

Disposition : Petition allowed

Judgement :

Dinesh Maheshwari, J.

1. This revision petition is directed against the judgment and order dated 23.09.1993 as passed by the Special Judge and Additional Sessions Judge, Pratapgarh in Criminal Appeal No. 4/1992 (Old No. 192/1983) whereby the learned Appellate Judge dismissed the appeal and affirmed the judgment and order dated 25.08.1983 as passed by the Judicial Magistrate, Pratapgarh in Criminal Case No. 555/1976 convicting the accused-petitioner for the offence under Section 7/16 of the Prevention of Food Adulteration Act, 1954 ('the Act of 1954') and sentencing him to 6 months' rigorous imprisonment and fine of Rs. 1,000/-with stipulation of further rigorous imprisonment for 3 months in default of payment of fine.

2. The accused-petitioner was charged of the offence aforesaid on the accusation that on 28.07.1976 at about 8:00 a.m., the Food Inspector, Ramdhan (PW-1) purchased 660 ml. of milk from the petitioner; and upon analysis, its sample was found adulterated for the reason of 'containing about 19% of added water'. It was alleged that the report dated 07.08.1976 (Ex.P/4) as received from the Public Health Laboratory, Udaipur was supplied to the petitioner on 18.08.1976. The complaint whereupon the petitioner was proceeded against was filed in the Court on 15.09.1976.

3. The learned Magistrate took the evidence led by the prosecution; and, in the statement as recorded under Section 313 Cr.P.C., the accused-petitioner denied the circumstances appearing against him in the evidence with further submission that he was having the licence of working as Halvai and was not selling milk.

4. The learned Magistrate, after hearing the parties, found proved the prosecution case and held the petitioner guilty of offence under Section 7/16 of the Act of 1954. The learned Additional Sessions Judge endorsed the views of the learned Magistrate and dismissed the appeal filed by the petitioner.

5. Various submissions were made on behalf of the accused-petitioner in this matter against prosecution case including the one about want of compliance of the requirements of Section 13 (2) of the Act of 1954. In this regard, the learned Magistrate observed that the Food Inspector received the report of the analyst on 18.08.1976 and on the same day delivered a copy thereof to the petitioner wherefrom the petitioner was aware of the fact that sample was found adulterated and he could have exercised his right to get the sample examined from the Central Food Laboratory. The same submissions were made before the learned Appellate Judge but were rejected, again with reference to the statement of the Food Inspector, Ramdhan (PW-1) about having delivered the copy of report to the petitioner and having obtained the receipt thereof.

6. Assailing the orders so passed by the learned Subordinate Courts, the learned Counsel for the petitioner has urged various contentions including the one that the entire trial stands vitiated fundamentally for non-compliance of the requirements of Section 13 (2) of the Act of 1954 inasmuch as the prosecution failed to supply the

copy of the report of the result of the analysis to the petitioner after institution of the prosecution and with information that if so desired, he could make an application to the Court within 10 days from the date of receipt of the copy of the report to get the sample analysed by the Central Food Laboratory. The learned Counsel submitted that mere endorsement of the report to the petitioner and that too before institution of the prosecution, cannot be said to be the compliance to the requirements of the Section 13 (2) of the Act of 1954 and on this count alone, for the direct prejudice having been caused to the petitioner, the impugned judgment and order deserves to be set aside and the petitioner deserves to be acquitted.

7. The learned Public Prosecutor, on the other hand, submitted that the copy of the report was indeed supplied to the petitioner on very day the same was received by the Food Inspector; and there had not been want of compliance of Section 13 (2) *ibid*.

8. Without going into any other question sought to be raised on behalf of the petitioner, this Court is of the opinion that this revision petition deserves to succeed for noncompliance of Section 13 (2) of the Act of 1954 and for unexplained delay in launching the prosecution. The provisions contained in Section 13 (2) had been as under:

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 persons from whom the sample of the article of food was taken and the person, if any, whose name, address and other particulars have been disclosed under Section 14A, forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both of them 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.

9. In the present case, what the Food Inspector did was to endorse on 18.08.1976 a copy of the report dated 07.08.1976 as received from the Public Analyst to the

petitioner and then, got the complaint filed in the Court only on 15.09.1976. There does not appear any information having been given to the petitioner that he could make an application to the Court within 10 days of the date of receipt of copy of the report to get the sample analysed by the Central Food Laboratory. Moreover, such copy of the report was given to the accused-petitioner even before institution of prosecution and not after such institution. The facts of the case show that the article involved had been milk and the sample was collected on 28.07.1976. There is nothing on record to bring satisfaction as to why the prosecution was not launched immediately upon receipt of the report on 18.08.1976 and as to why the complaint was filed about a month later, i.e., only on 15.09.1976? Such a delay itself was likely to have the effect on the sample and even the repeat analysis from Central Food Laboratory, if resorted to after launching of prosecution, was likely to be farcical. For unexplained delay in launching of prosecution coupled with want of compliance of all the requirements of Section 13 (2) of the Act of 1954, this Court is clearly of opinion that the petitioner was entitled to be acquitted.

10. The learned Subordinate Courts having ignored the mandatory requirements of Section 13 (2) of the Act of 1954 and having failed to take notice of the relevant facts and surrounding circumstances, the impugned orders stand vitiated for illegality and impropriety and, thus, deserve to be set aside.

11. Accordingly and in view of what has been discussed above, this revision petition is allowed; the impugned judgments and orders are set aside; and the petitioner stands acquitted. The bail bonds stand cancelled.

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