

Ram Parkash Vs. State of H.P.

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Court : Himachal Pradesh

Decided On : Sep-08-1978

Reported in : 1979CriLJ750

Judge : C.R. Thakur, J.

Appellant : Ram Parkash

Respondent : State of H.P.

Judgement :

ORDER

C.R. Thakur, J.

1. This petition under Section 482 of the Code of Criminal Procedure (shortly called the Code) read with Article 227 of the Constitution of India for quashing the order of the Chief Judicial Magistrate, dated 17-1-1978 and the proceedings before him, has been filed by Shri Ram Parkash, who opposed the sending of the second sample retained by the local authority to the Director of Central Food Laboratory, Calcutta, for purposes of analysis in view of the fact that the sample earlier sent to the Director under the provisions of Sub-section (2) of Section 13 of the Prevention of Food Adulteration Act (hereinafter referred to as the Act) was found to be unfit for analysis because the same had decomposed.

2. The short facts of the case are that on 21-7-1977 at about 10-45 A.M.. the Food Inspector purchased a sample of cow's milk from the shop of the present petitioner. The same after having been divided into three parts was bottled and sealed as required under the rule. One of the parts of the sample was sent to the Public Analyst, and the other two parts were sent to the local (Health) authority for purposes of Sub-section (2) of Section 11 and Sub-sections (2-A) and (2-E) of Section 13 of the Act.

3. The sample sent to the Public Analyst was found to be adulterated and. therefore, the Food Inspector, who is authorised under Section 20 of the Act. lodged a complaint in the court of the Chief Judicial Magistrate, Simla under the provisions of Section 16 (i)(a) of the Act.

Thereafter the petitioner moved an application as required under Sub-section (2) of Section 13 of the Act and the court directed the authority concerned to forward one of the two samples to be sent to the Director of the Central Food Laboratory. The Director's report is as under:

The parcel containing the sample of cow's milk bearing No, 56/YL/77 has been received in this office on 8-12-77.

Item No. (i) below may also be noted in this connection.

(i) The sample is decomposed. It is unfit for analysis, hence rejected.

Note: The above-mentioned sample has been received by this Laboratory in a decomposed condition. It is unfit for analysis and hence rejected, Counterpart of the sample may therefore, please be sent to this Lab. immediately for analysis and report.

4. Thereafter it appears that the Chief Judicial Magistrate ordered that the third sample kept by the Food Inspector he sent for examination. Against this order, the petitioner moved an application that since the Director, Central Food Laboratory, had certified that the sample sent to him had decomposed and was unfit for examination, the third sample cannot be sent a second time to the Director as his report was final and conclusive and that under Section 13(2-C) of the Act the

sample can be sent a second time only in two contingencies, viz. either the first sample was lost or damaged in transit. Since the sample of milk had decomposed as certified by the Director, Central Food Laboratory, Calcutta, the third sample cannot be found to be fit and hence could not be got re-examined particularly when the petitioner did not want the same to be examined. However, the learned Chief Judicial Magistrate by his order, dated 17-1-1978 rejected the application and ordered the second part of the sample which had been produced in the court on 17-1-78 to be sent to the Director, Central Food Laboratory, Calcutta, for analysis. It is this order which has been challenged by the petitioner.

5. The learned Advocate-General has first of all taken an objection with regard to the maintainability of the petition contending that it being an interlocutory order a revision under the provisions of Sub-section (2) of Section 397 of the Code is barred.

No doubt under the provisions of subsection (2) of Section 397 no revision 'lies against an interlocutory order, but if this is not a revision filed under Section 397 (2). The petitioner has invoked the inherent powers as contained in Section 482 of the Code as also has invoked the powers under Article 227 of the Constitution contending that there is mis-carriage of justice and an illegal exercise of the jurisdiction vested in the Magistrate, inasmuch as he has ordered the sending of the third part of the sample to the Director, which, according to the petitioner was not the intention of law, and, therefore, in order to prevent the harassment to the party by these illegal acts, the Court must exercise its inherent powers. The entire case, therefore, depends upon the interpretation to be put on the proviso attached to Sub-section (2-C) of Section 13 of the Act. In case it is found that the interpretation put by the learned Chief Judicial Magistrate on the words that the sample which was sent at the instance of the accused to the Director of the Central Food Laboratory which was found to be decomposed and unfit for analysis could be said to be 'lost' or 'damaged' so as to empower the court to direct the local authority to forward the part of the sample retained by it to the court and to send it to the Director of the Central Food Laboratory is correct then there can be no question of invoking the inherent powers and if it is found that the interpretation put by him is incorrect then necessarily this Court would be justified in quashing the

order in exercise of its inherent powers under Section 482 of the Code and Article 227 of the Constitution.

6. It is apparent from the comparison of the provisions of Sections 392, 397 and 498 (sic) that the revisional jurisdiction is exercisable apart and independent of the jurisdiction which the High Court exercises by virtue of its inherent powers. There is nothing in Sections 397 and 399 which prevents the High Court to revise an order made by the Subordinate Court, The provisions of the aforesaid sections do not bar the inherent jurisdiction of the High Court. The jurisdiction of the High Court under Section 482 of the Code can be exercised in order to give effect to any order under the Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice, in *Dr. Babu-rao Patel v. Bal Thackeray* (1977 Cri LJ 1637), a Division Bench of the Bombay High Court has held that an interlocutory order can be interfered with for purpose of preventing abuse of the process of the court and that Section 397 is no bar to the same. To the similar effect is the ratio laid down in *Bhanwar Lai v. Madanlal* (1978 Cri LJ 697) by a Division Bench of the Rajasthan High Court. Also to the similar effect is the ruling of the Allahabad High Court in *Prestolite of India Ltd. v. Munsif Magistrate, Bawali* (1973 Cri LJ 538). The Supreme Court in *Madhu Limaye v. State of Maharashtra* : 1978 CriLJ165 has laid down the following principles which may be kept in view, while exercising the inherent powers by the High Court as envisaged under Section 482 of the Code:

- (1) That the power is. not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;
- (2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;
- (3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

It has further observed:

But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court.

7. Therefore, it would be seen whether the facts of the present case really are such which require this Court to exercise its inherent powers under the provisions of Section 482 in order to prevent the miscarriage of justice and harassment to the party.

8. The accused is given a right under Sub-section (2) of Section 13 of the Act to make an application for sending one of the two samples kept with the local authority to the Director, Central Food Laboratory, and as soon as an application is made, the Court will direct the local authority to forward the part of the sample to the court within a period of five days from the date of the receipt of such requisition and then under the provisions of Sub-section (2-B) of Section 13, the Court shall first ascertain that the mark and seal or fastening as provided in Clause (b) of Sub-section (1) of Section 11 are intact and the signature or thumb impression is not tampered with, and despatch the part or, as the case may be, one of the parts of the sample under its own seal to the Director of the Central Food Laboratory, who shall thereupon send a certificate to the court in the prescribed form within one month from the date of receipt of the part of the sample specifying the result of the analysis. Under Sub-section (2-C) where two parts of the sample have been sent to the Court and only one part of the sample has been sent by the Court to the Director of the Central Food Laboratory under Sub-section (2-B), the Court shall, as soon as practicable, return the remaining part to the Local (Health) Authority and that Authority shall destroy that part after the certificate from the Director of the Central Food Laboratory has been received by the court. But, there is a proviso added to this sub-section that in case where the part of the sample sent by the court to the Director of the Central Food Laboratory is lost or damaged, the court shall require the Local Authority to forward the part of the sample, if any, retained by it to the court and on receipt thereof, the court shall proceed in the manner provided in Sub-section (2-D), which reads as:

Until the receipt of the certificate of the result of the analysis from the Director of Central Food Laboratory, the court shall not continue with the proceedings pending before it in relation to the prosecution.

9. Here in the instant case, the sample which was sent at the instance of the accused as contemplated under Sub-sections (2) and (2-B) was found to be decomposed and unfit for analysis. So, now the question is whether the sample which was found to be decomposed can be said to be lost or damaged so as to empower the court to cause the part of the sample retained by the local authority to be sent to the Director of the Central Food Laboratory for analysis. The words used are; 'lost' or 'damaged'. In so far as the sample which was sent to the Director at the instance of the accused under Sub-section (2-B) the same cannot be said to be lost because it was received by the Public Analyst (Director?) The further question, therefore, is whether the same can be said to be damaged. The learned trial court has on the basis of the dictionary meaning of the word 'damaged' as given in the Concise Oxford Dictionary of Current English, 5th Edition (re-printed in India with corrections in 1972) held, that since the milk was found to be decomposed and not fit for analysis, therefore its usefulness for the purpose for which it was meant had been impaired, therefore, the part of the sample already sent to the Director having been decomposed is covered by the word 'damage', which means harm, injury, impairing value or usefulness amongst other meanings. Therefore, ha held that second part of the sample can be sent to the Director, Central Food Laboratory. There can be no dispute with the dictionary meaning, but, reading Sub-section (2-B) it would be quite apparent that as soon as the part or parts of the .sample from the Local Authority are produced in the court it is the bounden duty of the court to first ascertain that the mark and seal or fastening as provided in Clause (b) of Sub-section (1) of section II are intact and the signature or thumb impression, as the case may be, is not tampered with, and despatch the part or, as the case may be, one of the parts of the sample under its own seal to the Director of the Central Food Laboratory, who shall thereupon send a certificate to the court in the prescribed form. The intention of all this is that there is no tampering with while the same remains in the custody of the local authority and, therefore, the court has to make sure that mark and seal or fastening to those samples are not in any way tampered with and if it is found tampered with then it

would mean that, that sample cannot be sent as the possibility of planting could not be ruled out. Once the court has made sure that the sample is fully intact then it will forward the same to the Director of the Central Food Laboratory. Therefore, from the reading of this section it cannot be said that the sample can be said to be damaged. It would be damaged only in case the seal, etc. on the sample are not found intact and are tampered with. In so far as the contents of the bottle are concerned they cannot be said to be damaged if the bottle in which the sample is kept is quite intact and the seals are also not tampered with. It is the duty of the Food Inspector, who makes the purchase of the articles of food for purpose of analysis that he should put the necessary preservative or formaline in the case of milk so that it may not get decomposed and the sample should remain in its proper condition for purpose of analysis within the required period. Therefore, in these circumstances, I am of the view that the dictionary meaning which has been relied upon by the learned Magistrate cannot be put to the word 'damaged' as used in the proviso to Sub-section (2-C) of Section 13 of the Act. It could be said to be damaged, as already stated, if the bottle had been broken, when everything was intact and the contents inside the bottle were found decomposed then it can by no stretch of imagination be said to be damaged although it were not found .fit for analysis because of decomposition and which is because of the fault on the part of the Food Inspector who did not take proper care to put the necessary quantity of the preservative in the milk. So, on that basis, I am of the opinion that this second sample cannot be ordered to be sent to the Director of the Central Food Laboratory for analysis.

10. Sub-section (3) of Section 13 of the Act attaches finality to the certificate issued by the Director of the Central Food Laboratory under Sub-section (2-B) and, therefore, in these circumstances the order sending the third part of the sample by the court to the Director does not appear to be correct and is against the intendment of the proviso to Sub-section (2-C) which says that the third sample can only be sent when the part of the sample sent to him earlier is lost or damaged. But, as already stated, it is neither lost nor damaged. Therefore, this order is really bad.

The Andhra Pradesh High Court in re Kada Sembamurty accused in Criminal Revision Case No. 576 of 1971, decided on 22-9-1972 and reported in 1973 F.A.C. 178 : 1973 Cri. L.J. 786 has held (at p. 788).

When once the report is received, the proviso to Sub-section (5) of Section 13 makes the said report final and conclusive evidence of the facts stated therein. The remedy available under Section 13(2) of the Act is valuable right. Parliament in its wisdom attaches greater sanctity and accuracy to the report of the Director Central Food Laboratory under Section 13 of the Act. Although there is no specific prohibition for entertaining a second application for sending the third sample also to the Director for examination, the intention that the second application is not permissible for sending the sample for a second time to the Director is clear from the proviso to Sub-section (5) of Section 13 which makes the certificate signed by the Director of Central Food Laboratory final and conclusive. Therefore, no further evidence can be adduced to challenge the opinion of the Director given under Section 13 (2) of the Act.

11. Therefore, in these circumstances, I am of the view that the order of the learned Chief Judicial Magistrate is not correct and it is an illegal exercise of the jurisdiction vested in him and there is a great miscarriage of justice and as such this petition under Section 482 of the Cod and Article 227 of the Constitution is maintainable.

Since the order passed by the leraned Magistrate is illegal and it has resulted in miscarriage of justice as such the order is not sustainable. Therefore, this petition is allowed and the order of the learned Magistrate is hereby quashed.

The case shall now go back and the learned Magistrate shall proceed with the case in accordance with law.