

**Rangeel Singh Vs. the State and ors.**

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**Court :** Himachal Pradesh

**Decided On :** Jul-13-1982

**Reported in :** 1983CriLJ423

**Judge :** T.R. Handa, J.

**Appellant :** Rangeel Singh

**Respondent :** The State and ors.

**Judgement :**

ORDER

**T.R. Handa, J.**

1. The Food Inspector Simla purchased a sample Of milk from Shri Bai Kishan, Respondent No. 3, on 27-5-1980. The said sample was purchased and dealt with in accordance with the provisions of the Prevention of Food Adulteration Act, hereinafter called 'the Food Act' and the Rules framed thereunder. On being analysed the sample was found adulterated and hence a complaint under Section 7 read with Section 16 of the Food Act was filed by the Food Inspector against the respondent Bal Kishan. During the pendency of that complaint Bal Kishan respondent moved an application before the Chief Judicial Magistrate in whose court the complaint wag pending praying that the present petitioner be impleaded as a co-accused under Section 20-A of the Food Act inasmuch as the milk out of which the sample had been purchased by the Food Inspector was supplied to him

by this petitioner. That application was rejected by the learned Chief Judicial Magistrate. Respondent No. 3 then approached this Court in revision. On a notice being issued to the petitioner he did not object to his being impleaded as a party to the complaint and as such this Court vide its order dated 25-9-1981 directed that the present petitioner be made a co-accused, being a warrantor;

2. After the petitioner was impleaded as a co-accused in the complaint under Section 7 read with Section 16 of the Food Act. he made an application to the Chief Judicial Magistrate under Section 13 (2) of the Food Act praying that the Local (Health) Authority be directed to produce in Court the sample of the milk taken from respondent No. 3 by the Food Inspector and the same be ordered to be despatched to the Director, Central Food Laboratory for analysis at the petitioner's expense. The Chief Judicial Magistrate vide his order dated 23-10-1981 rejected that application observing that the petitioner had no right to make that sort of application under Section 13 (2) of the Food Act.

3. Feeling aggrieved the petitioner has now approached this Court praying that the order of the Chief Judicial Magistrate be quashed and that his application made under Section 13 (2) of the Food Act before the Chief Judicial Magistrate be allowed.

4. The sole ground on which the learned Chief Judicial Magistrate rejected the application of the petitioner under Section 13 (2) of the Food Act for getting his sample analysed by the Central Food Laboratory was that the right available under Section 13 (2) of the Food Act for getting the sample analysed by the Central Food Laboratory was available only to the vendor and the person, if any, whose name was disclosed under Section 14-A of the Food Act and that such right was not available to the manufacturer, distributor or dealer who had been impleaded as co-accused under Section 20-A of the Food Act. It is true that all that Section 13 (2) of the Food Act enjoins is that on receipt of a report from the Public Analyst 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 and the person, if any. whose name, address and other particulars had been disclosed under Section 14-A, forward a copy of the report of the result of the

analysis to the vendor and the person whose name and particulars have been disclosed under Section 14-A informing them that they may, if it is so desired, 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. On such application being made to the Court, the Court shall require the Local , (Health) Authority to forward the part or parts of the sample kept by it to the Court within a period of five days from the receipt of such requisition. The Court shall then after satisfying that the mark and seal on the sample is in tact and the signature or thumb impression, as the case may be, of the vendor is not tampered with, 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. The certificate issued by the Director, Central Food Laboratory shall supersede the report of the Public Analyst.

5. A literal reading of Section 13 (2) of the Food Act no doubt suggests that this provision does not enable the manufacturer, distributor or dealer to apply to the Court to have the sample sent for analysis by the Central Food Laboratory. Section 20-A of the Food Act under which such manufacturer, distributor or dealer can be impleaded as co-accused along with the vendor also does not enable these persons to seek the assistance of the Court in getting the sample analysed by the Central Food Laboratory.

6. Now in case Section 13 (2) of the Food Act was the only provision under which the petitioner could seek the indulgence of the Court in having the sample sent for analysis to the Central Food Laboratory, the learned Chief Judicial Magistrate was certainly on a solid ground in rejecting the petitioner's application made for that purpose. But then the position appears to be otherwise. The Food Act is a special Act, It. was enacted mainly to create specific offences. It prescribes no comprehensive procedure for the trial of the offences created under it. Of course it does prescribe a special procedure but only for a few matters. In terms of Section 4 of the Code of Criminal Procedure, the offences created by this special Act are

to be tried and dealt with in accordance with the general procedure prescribed in that Code for the trial of such like offences subject of course to the special procedure as prescribed by the Food Act. Sections 13, 19 and 20 are some of the provisions of the Food Act which lay down such special procedure. Barring such special procedure, the provisions of the Code of Criminal Procedure alone would govern the trial of the offences under the Food Act.

7. Now it is a fundamental principle of criminal jurisprudence which has been given due recognition in Section 243 of the Code of Criminal Procedure that an accused person is entitled as of right to rebut the prosecution case as sought to be made out against him. No person accused of an offence can be convicted unless he has been afforded a reasonable opportunity to lead all relevant evidence that he may offer to produce in his defence. In other words an accused person is entitled to every opportunity to meet the prosecution case and to prove his innocence.

8. Now Sub-section (5) of Section 13 of the Food Act provides that the report of the Public Analyst which purports to bear his signatures, unless it has been superseded under Sub-section (3), or any document purporting to be a certificate signed by the Director of the Central Food Laboratory, may be used as evidence of the facts stated therein in any proceeding under that Act. The report of the Public Analyst in the instant case is thus obviously a document which can legitimately be used as evidence against the petitioner unless it is superseded by a certificate signed by the Director of the Central Food Laboratory. The petitioner can, therefore, rebut the prosecution evidence adduced against him in the form of the report of the public Analyst only by obtaining the report of the Director of the Central Food Laboratory which he could obtain only after the sample was sent to the Central Food Laboratory for analysis. Section 13 (2) of the Food Act of course does not enable the petitioner to apply under that provision for getting the sample sent to the Central Food Laboratory for analysis but at the same time this provision does not specifically operate as a bar to the right of the petitioner under the common law to get, the sample analysed by the Central Food Laboratory. The petitioner in my view is in exercise of his right to lead his defence, entitled to claim that the sample kept with the Local (Health) Authority, if the same is available, be sent to the Central Food Laboratory for analysis and in case that right is denied it

may vitiate the trial itself as it would amount to denying the petitioner a reasonable opportunity to lead his defence.

9. It was pointed out that the application is now very much delayed and no useful purpose would be served by sending the sample at this stage since there is every possibility of the sample having become decomposed by lapse of time. The learned Counsel for the petitioner when confronted with this situation stated that the petitioner would like to take a chance and prayed that the sample be sent at his cost and risk for analysis by the Central Food Laboratory.

10. In view of what has been stated above I accept this petition, quash the order of the Chief Judicial Magistrate and direct the Chief Judicial magistrate to call for the sample from the Local (Health) Authority and despatch the same to the Director, Central Food Laboratory after observing the requisite formalities as detailed in S-13 (2) of the Food Act.

11. The parties through their counsel have been directed to appear before the Chief Judicial Magistrate on 2-8-1982.

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