

State of H.P. Vs. Prem Singh

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Court : Himachal Pradesh

Decided On : Nov-01-1999

Reported in : 2000CriLJ1249

Judge : M.R. Verma, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 13(2), 14(A) and 16(1A); ;Prevention of Food Adulteration Rule, 1954 - Rules 7(3) and 9A; ;Code of Criminal Procedure (CrPC) - Section 313

Appeal No. : Criminal Appeal No. 622 of 1996

Appellant : State of H.P.

Respondent : Prem Singh

Advocate for Def. : Subhash Punchhi, Adv.

Advocate for Pet/Ap. : Ram Murti Bisht, Asstt. Adv. General

Disposition : Appeal dismissed

Judgement :

M.R. Verma, J.

1. This is an appeal against the judgment dated November 15, 1995 passed by the learned Additional Sessions Judge, Kullu whereby the conviction of and sentence

awarded to the accused/respondent (hereafter referred to as the 'accused') under Section 16(1-A)(i) of the [Prevention of Food Adulteration Act, 1954](#) (hereafter referred to as the 'Act') by the learned Chief Judicial Magistrate, Kullu vide his judgment dated May 26, 1995 has been set aside, by the State.

2. The case of the prosecution, in brief, is that P.W. 1 P.L. Sharma, Food Inspector purchased a sample of 'Mirch Powder' from the business premises of the accused at Manglore and the sample so purchased was dealt with as per the rules. On analysis, the sample was found not conforming to the prescribed standard inasmuch as the month and year of manufacture and batch number were not mentioned. Address given as 'M' and 'S' Company, Delhi was not complete address. Total ash was 20-1% against the maximum prescribed limit of 8 per cent. Ash insoluble in dilute Hcl is 12.5% against the maximum prescribed limit of 1.3%. Nonvolatile ether extract was 6% against the minimum prescribed standard of 12%. Unpermitted oil-soluble coal tar dye was present and use of unpermitted colouring matter in an article of food is not safe for human consumption. Sodium chloride was also present in the sample of the 'Mirch Powder'.

3. After getting the sanction of the prescribed authority, the Food Inspector launched prosecution against the accused who came to be tried by the learned Chief Judicial Magistrate for the accusation under Section 16(1-A)(i) of the Act and was finally convicted and sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs. 2000/- and in default of payment of fine, to undergo simple imprisonment for six months.

4. Feeling aggrieved, the accused preferred an appeal which was heard and accepted by the learned Additional Sessions Judge and the conviction of and sentence imposed on the accused was set aside, hence this appeal.

5. I have heard the learned Assistant Advocate General for the State and the learned counsel for the accused and have also gone through the record.

6. The learned Addl. Sessions Judge acquitted the accused on the following grounds :-

(i) That there was no compliance with the provisions of Section 13(2) of the Act and Rule 9-A of the Prevention of Food Adulteration Rules.

(ii) That the accusations against the accused were not proved for want of corroboration of the testimony of the Food Inspector by the independent witness.

7. The learned Assistant Advocate General has contended that the communication Ex. PW-1/K addressed to the accused along with a copy of the report of the Public Analyst was sent to him by post under a registered cover vide postal receipt Ex. PW-1/L. The registered envelope was not received back undelivered, therefore, it has to be presumed that the registered communication along with copy of the report had been delivered to and received by the accused. Therefore, according to the learned Assistant Advocate General the prosecution has complied with the requirements of the provisions of Section 13(2) of the Act and Rule 9-A of the Prevention of Food Adulteration Rules (hereinafter referred to as 'the Rules') and the acquittal order on the ground of non-compliance of the aforesaid provisions, therefore, is not sustainable.

8. Section 13(2) of the Act reads as follows :

13(2) : On receipt of the report of the result of 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 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 14-A, 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 10 days from the date of receipt of the copy of the report to get the sample of article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory.

9. The relevant portion of Rule 9-A of the Rules reads as follows :-

9-A. Local (Health) Authority to send report to person concerned :- The Local (Health) Authority shall within a period of ten days after the institution of prosecution forward a copy of the report of the result of analysis in Form III delivered to him under Sub-rule (3) of Rule 7, by registered post or by hand, and may be appropriate, to the person from whom the sample of article was taken by the Food Inspector and simultaneously also to the person, if any, whose name address and other particulars has been disclosed under Section 14-A of the Act.

10. A plain reading of the above provisions makes it clear that these are intended to enable the accused to make an application to the Court to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory, if so desired by him. Thus an opportunity and right to defend himself has been provided to the accused. The consequence of non-compliance with these provisions will be that the accused will be deprived of exercising the option given, and the inference will be that he has been prejudiced in making his defence. Thus, compliance of these provisions is mandatory and failure to do so, fatal to the case of the prosecution.

11. In the case in hand the notice Ex. PW-1/K purports to be the requisite intimation to the accused and appears to have been posted vide receipt Ex. PW-1/L. The notice purports to have been sent under registered/A.D. cover. The A.D. has not been produced in evidence nor it is the case of the prosecution that it was received back by the sender. Therefore, the proof of fact that the registered envelope was duly received by the accused is evidently required. There cannot be any dispute that a letter sent by post and not received undelivered by the sender will be presumed to have been delivered to the addressee. Such presumption will be stronger in case of the letters posted under the certificate of posting and those sent under the registered cover. However, to raise such a presumption it will have to be shown that the address on the envelope was correctly given. Secondly, such a presumption is always rebuttable.

12. What can be said on the basis of the postal receipt Ex. PW-1/L is that a registered envelope was posted to 'Prem Singh, Mangier, Banjar'. Evidently, this address does not contain the full required particulars of the accused. Therefore, on

the strength of the postal receipt Ex. PW-1/L it cannot be said that the Registered AD envelope allegedly containing the notice copy whereof is Ex. PW-1/K and the report of the Public Analyst was correctly addressed. The only witness examined to prove that the requisite notice and copy of report were sent to the accused is PW-2 Praveen Kumar who has not stated that the registered envelope contained the correct address of the accused. It has been suggested to this witness in his cross-examination that such report and notice were not sent to the accused. In the statement Under Section 313, Cr.P.C. the accused has denied the receipt of such notice and report by post. In these circumstances, particularly in the absence of proof of correct address of the accused having been given on the alleged registered envelope it cannot be presumed that the requisite intimation and copy of report of the Public Analyst were duly sent to and received by the accused. Thus the prosecution case is bound to fail for non compliance of the provisions of Section 13(2) of the Act and Rule 9-A of the Rules.

13. The view I have taken hereinabove is fully supported by the view taken in case Ram Swarup v. State of Himachal Pradesh (1989) 1 Sim LC 70 and Food Inspector, Guntur v. Bavirisetty Hanumantha Rao, 1994 Cri LJ 1145 (Andh Pra).

14. The conclusions arrived at by the learned Addl. Sessions Judge that the accusations against the accused were not proved for want of corroboration of the statement of Food Inspector by the independent witness, is based on appreciation of the evidence on record and is possible.

15. In view of the above, there is no infirmity or illegality in the impugned judgment of acquittal, therefore, it does not call for interference by this Court.

16. As a result the appeal fails and is accordingly dismissed.

17. Bail bonds furnished by the accused are discharged.