

State of H.P Vs. Chuni Lal Tehsil Sadar, District Mandi

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Court : Himachal Pradesh

Decided On : Feb-28-2012

Judge : Surinder Singh

Appeal No. : Cr. Appeal No. 533 of 2004

Appellant : State of H.P

Respondent : Chuni Lal Tehsil Sadar, District Mandi

Advocate for Def. : Shri. B.K. Malhotra

Judgement :

Surinder Singh, J.

Oral:

1. The respondent faced prosecution in the instant case for the offence punishable under Section 16(1)(a)(i) read with Section 7(i) and 7(ii) and in contravention of the Rules 32 (b)(f), 47, 23 and 29 of PFA Rules, 1955 framed under Prevention of Food Adulteration Act, 1954, in short 'the Act', allegedly for selling sweet scented saunf, which was found to be adulterated. The respondent was charge-sheeted, tried and acquitted on the ground that there was non-compliance of Section 13(2) of the Act. State felt aggrieved by the impugned judgment of acquittal, as such, filed the present appeal.

2. I have heard the learned counsel for the parties and have meticulously examined the record in the light of relevant law.

3. In short the prosecution case can be summed up thus. On 12.7.2000, CW1 I.D. Verma, Food Inspector intercepted the shop of the respondent and found that besides grocery, he had kept some packets of sweet scented saunf each weighing 100 grams for sale to the general public. On disclosing his identity, the Food Inspector served a notice Ext.P1 upon the respondent to have a sample for analysis by the Public Analyst and purchased three sealed packets of the said article on payment of ₹.21/- against receipt Ext.P2.

(ii) The Food Inspector thereafter associated CW2 Dalip Kumar as an independent witness to witness the sampling process. All the three packets as such were put in clean and dry moisture proof poly-container, which were made air-tight, wrapped each of these parcels in thick paper, the ends of which were neatly folded and affixed with gum. A paper slip No.MDID-16/2000-5496 was pasted all around the packets of sample with gum. Each of the three packets were tied with a strong thread and sealed with four clear seals of wax in accordance with law. Panchnama Ext.P3 to this effect was prepared.

(iii) The entire proceedings were conducted in the presence of the respondent as well as the witness aforesaid. Panchnama was read over and explained to the respondent. After admitting its correctness, he as well as the independent witness appended their signatures.

(iv) One part of the sample alongwith memo in form No.VII was sent to the Public Analyst, Kandaghat, in a sealed packet under the registered parcel. The postal receipt of the same was also appended with the complaint. Specimen impression of the seal used for sealing the packets of the sample and outer cover of the registered parcel referred above were separately sent to the Public Analyst, Kandaghat in a sealed envelope in the registered letter.

(v) Remaining two parcels of the sample alongwith two copies of the memo in Form No.VII were deposited with the Local (Health) Authority concerned.

(vi) Sample was analyzed by the Public Analyst, which was found misbranded as per Section 2(ix)(k) of the Act as the name of ingredient, month and year of the Manufacture or packing were not mentioned and the address of the manufacturer was also incomplete. The aforesaid sample was also containing added water soluble green colouring matter, whereas, saunf should be free from added colouring matter.

(vii) The report of the Public Analyst alongwith all documents were produced before the Chief Medical Officer concerned through the Dealing Assistant (CW3 Joginder Kumar), for seeking written consent to launch prosecution against the respondent. After perusing all these documents, written consent was accorded. Ultimately, the complaint was presented in the Court for the trial of the respondent, for the offence aforesaid.

4. Finding reasonable grounds to proceed against the respondent, he was accordingly summoned. On putting his appearance, he immediately applied for sending second part of the sample for analysis to the Director, Central Food Laboratory (C.F.L.). Vide order dated 19.10.2000 passed on the said application, learned trial Court sent a notice to the Local (Health) Authority concerned and the Food Inspector to produce the second part of the sample on 25.10.2000, so as to send it to CFL for analysis. Second sample was produced, thereafter sent to the Director, C.F.L. The learned trial Court did not stay the proceedings till its report and examined witnesses, which should not have been done. The sample was analyzed in the Central Food Laboratory. Certificate of test of analysis dated 25.1.2001 was issued. In the opinion of the Director, C.F.L., the said sample contravenes the provisions of Rule 32(b)(f), 47, 23 and 29 of the PFA Rules, 1955. But, at the end of trial, respondent was acquitted on the sole ground of non-compliance of Section 13(2) of the Act.

5. Whereas, CW3 Joginder Kumar, Dealing Assistant, clearly stated that notice Ext.P13 was sent through registered A.D. cover in compliance of Section 13(2) of the Act. He also testified that alongwith notice, report Ext.P9 of the Public Analyst was also sent. He also produced postal receipt Ext.P14 during the trial, though in cross-examination he stated that he was not in receipt of the acknowledge due

and only on this basis, learned trial Court concluded that the notice was neither sent nor proved to have been served upon the respondent in accordance with law, which is wrong, incorrect and perverse finding. The address of the accused stood mentioned in the postal receipt and there is also a proof of sending the notice aforesaid alongwith copy of the report of the Public Analyst through postal receipt and in his application seeking examination of second sample he admits this fact. Therefore, acquittal could not have been passed by the learned trial Court solely on this ground and on the strength of this evidence.

6. Confronted with the above position, Shri B.K. Malhotra, learned counsel for the respondent submitted that there has been non-compliance of Section 13 (2-B) of the Act read with Rule 4 framed thereunder by the learned trial Court while sending the second sample to the Director, C.F.L. and further that after the production of second part of the sample in the Court till sending thereof to the Director, C.F.L., there is no evidence that the sample was properly sealed and relevant procedure was adopted. Therefore, identity of the sample itself was in question.

7. To controvert the above arguments, Shri A.K. Bansal, learned Additional Advocate General argued that the forwarding memo of the learned trial Court makes it very much clear that the sample was properly marked and sealed before sending it to CFL. The seal used by the Court on the sample parcel was sent separately by the registered post to the Director, C.F.L. The sample was received in the same condition in the Laboratory, analyzed and this fact stood mentioned in the report. Therefore, the point taken deserves to be rejected.

8. I have considered and examined the factual as well as legal aspect of the matter in extenso.

9. Pursuant to the order dated 19.10.2000, passed by the learned trial Court, second part of the sample was produced before the Court by CW3 Joginder Kumar, Dealing Assistant of the Local (Health) Authority, which was perused by the learned trial Court and passed the following order:-

“25.10.2000

Pr: Sh.Sushil Kapoor, Adv.for the applicant/ accused.

Sh.I.D.Verma, F.I. in person.

Sh. Joginder Kumar, Dealing Assistant, L.H.A. Mandi is present alongwith second part of the sample. The sample has been seen by me, it is having 4 seals intact and has been retained with the Reader of the Court for safe custody till the remaining amount of `800/- is not deposited by the accused. The accused is directed to deposit the remaining amount of `800/- on or before 6.11.2000.

Sd/-

Chief Judicial Magistrate,

Mandi (H.P.)”

10. On 6.11.2000, the sample parcel was shown to the accused and the following orders were passed:-

“6-11-2000

Present: Applicant in person with counsel Sh.Sushil Kapoor.

Food Inspector on behalf of the Local Authority in person.

The sample which has been retained vide order dated 25-10-2000 has been shown to the accused today in the court. He has admitted his signatures on the sample which is intact and his statement to that effect has been recorded separately and has been attached with this application. Be now put up on 10-11-2000 for sealing and sending the sample to the Director Central Food Laboratory.

Sd/-

Chief Judicial Magistrate,

Mandi (H.P.)”

11. Thereafter, on 10.11.2000, learned trial Court found that it does not have any seal to put it on the sample, therefore, the case was adjourned till seal was prepared, ultimately the matter was taken up on 1.12.2000. Food Inspector was not present as he had sought exemption, thereafter the case was adjourned for 23.12.2000. Even on that day, nothing was done. Finally the case was adjourned for 26.12.2000 and the following order was passed.

“26/12/2000 Present:

Food Inspector in person.

Applicant/accused in person.

The second part of the sample has been sent to Director, Central Food Laboratory. Be now put up on 26.2.2001 for obtaining the report of Director, C.F.L.

Sd/-

Chief Judicial Magistrate,

Mandi (H.P.)”

12. What procedure was adopted to send it to CFL, does not find mentioned in the Zimini orders. The procedure to which the learned trial Court was required to adhere before sending the sample to the Director, C.F.L. is compliance of Section 13(2-B) read with rule 4 framed under the Act, which is usefully reproduced as hereunder:-

“ Section 13(2-B) of the Act reads as follows :

"On receipt of the part or parts of the sample from the Local (Health) Authority under sub-section (2-A), the Court shall first ascertain that the mark and seal or fastening as provided in Cl. (b) of sub-sec. (1) of S. 11 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 within one month from the date of receipt of the part of the sample specifying the result of the analysis. [emphasis supplied]

Whereas Sub-Rules (1)(a), (2) and (3) of Rule 4 of the Rules reads as under:-

(1) (a) Sample of food for analysis under sub-sec. (2) of S. 13 of the Act shall be sent either through a messenger or by registered post in a sealed packet, enclosed together with a memorandum in Form I in an outer cover addressed to the Director.

(2) The container as well as the outer covering of the packet shall be marked with a distinguishing number.

(3) A copy of the memorandum and a specimen impression of the seal, used to seal the container and the cover shall be sent separately by registered post to the Director.

[emphasis mine]

A bare reading of sub-sec. (2-B) of S. 13 makes it clear that when the requisitioned part(s) of the sample are received by the Court, it will examine such part(s) to ascertain:

(a) that the mark, seal and fastening as provided in clause (h) of sub-sec. (1) of S. 11 of the Act are intact, and

(b) that the signature/thumb marks of the accused/witness appended to the part(s) of the sample are not tampered with.

On being satisfied that the mark, seal and fastening of the sample are intact and signatures/thumb marks thereon are not tampered with, the Court will despatch one part of the sample to the Director, Central Food Laboratory for analysis in the following manner :

(i) the sample part shall be despatched by the Court under its seal,

(ii) the sample shall be sent either through a messenger or by registered post in a sealed packet and a memorandum in Form I shall be endorsed therewith in an outer cover addressed to the Director, Central Food Laboratory;

(iii) The container of the sample and the outer cover of the packet shall be marked with a distinguishing number, and

(iv) a copy of the memorandum and a specimen impression of the seal used to seal the container and the cover shall be sent to the Director separately by registered post.”

13. After examining the record and the provisions of law, I find that the compliance of the above legal provisions was not done by the learned trial Court in the presence of the respondent, nor it is spelt out in the zimini orders as aforesaid. Further the identity of the sample to which the Food Inspector picked up on the spot stood not established in accordance with law. The observance of marking of seal which was put by the Food Inspector on the spot as provided in Section 11 of the Act was also not noted by the learned trial Court when the sample was received in the Court. Merely that the sample was shown to the respondent who admitted his signatures thereon would not relegate the trial Court from its duty which was mandated under the aforesaid provision. It is further not clear what seal and distinctive mark was applied by the Court after ascertaining the facts that seal of the Food Inspector was intact and there was no tampering with the signatures/ thumb impressions of the witness or that of the respondent. Perusal of the record merely indicates that the Court simply forwarded same sample not even mentioning the seal and number of the Food Inspector thereon and in the meantime continued examining witnesses before the receipt of this report from the Director, CFL, which is wrong and illegal.

14. In view of the aforesaid situation, no reliance can be placed on the report of the Director, C.F.L., therefore, it is difficult to say that the learned trial Court had in fact complied with the aforesaid mandatory provisions of the Act and no presumption can be drawn as impressed upon by the learned Additional Advocate General that the procedure was correctly followed as the prejudice to the accused in the instant case is writ large. Thus, the prosecution, in my opinion could not prove the case against the respondent beyond reasonable doubt, hence the acquittal of the respondent cannot be interfered with. The State appeal sans merits and is accordingly dismissed.

15. The respondent is discharged of his bail bonds entered upon by him during the proceedings of the case.

16. Send down the records.

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