
(2013) 06 JH CK 0060

In the Jharkhand High Court

Case No : Criminal M.P. No. 543 of 2012

Amit Kumar Shah and Subhash Chandra Shah

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 19-06-2013

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 13, 13(1)(2), 13(2), 14A, 16

Citation : (2013) 3 JLJR 354

Hon'ble Judges : R.R. Prasad, J

Bench : Single Bench

Advocate : V. Shivnath, for the Appellant;

Judgement

R.R. Prasad, J.—One Krishna Prasad Singh, Food Inspector, Ranchi, took samples of Krishna Spray Dried Skimmed Milk Powder and Krishna Marks Ghee from the shop of M/s. Shah Traders. Upper Bazar, Ranchi on 25/04/2008 and sent it for its analysis before the Public Analyst. Upon its analysis, a report was submitted to the effect that the sample of Krishna Spray Dried Skimmed Milk Powder is misbranded in terms of the provision as contained in Section 2(ix)(j) and (k) of the Prevention of Food Adulteration Act, as Batch number, Lot number and Date of Manufacture was not there over the packet of the milk powder. It was reported that it is in contravention of Rule 32(e) and (f) of the Prevention of Food Adulteration Rules, 1955. Thereupon, when sanction for prosecution was accorded by the competent authority, a prosecution report was submitted before the Chief Judicial Magistrate, Ranchi, on 25/07/2008, alleging therein that on account of contravention of Rule 32(e) and (f) of the Prevention of Food Adulteration Rule, petitioners have committed offence which is punishable u/s 16(1)(a)(i)(ii) of the Food Adulteration Act, 1954, upon which cognizance of the offence was taken for the said offences vide order dated 25/07/2008, which is under challenge. Mr. V. Shivnath, learned senior counsel appearing for the petitioners submitted that on receipt of the analysis report when the prosecution was launched copy of the report of the Public Analyst was never furnished to the

petitioners though it should have been served upon the petitioners in terms of the provision as contained in Sub-Section-2 of Section 13 of the Prevention of Food Adulteration Act, 1954. Since, the report has not been served, instant prosecution becomes quite bad on account of non-compliance of the statutory provision of the Act and on account of it the entire prosecution gets vitiated. Further it was submitted that petitioner No. 1 Amit Kumar Shah had purchased the milk products from M/s. Bhola Baba Milk Food Industries Limited, manufacturer of the product for retail sales and, as such, he was not responsible for putting Lot number, Batch number and Date of Manufacture over the packets of the product and, hence, any prosecution against him is quite bad.

Further, it was submitted that so far petitioner No. 2 Subhash Chandra Shah is concerned, he happens to be the father of petitioner No. 1 and had nothing to do with the business of the said products, still he is being prosecuted without there being any accusation of contravening the provision of Actor Rules and moreover, petitioner No. 2 has not been given any show cause for its prosecution and, hence, any such prosecution in absence of any show cause is bad and is fit to be quashed.

2. In spite of notice being served upon O.P. No. 2, he did not chose to appear in this case.

3. Having heard learned counsel for the parties, it does appear that when the sample of Krishna Spray Dried Skimmed Milk Powder and Krishna Marka Ghee was collected from a shop being run in the name and style of M/s. Shah Traders, Upper Bazar, Ranchi, it was sent before the Public Analyst. Upon its analysis, it was found that the Batch number, Lot number and the Date of Manufacture has not been given over the packets of the product, which is in contravention of Rule 32(e) and (f) of the Rules. It be stated that as per Sub-rule (e) of Rule 32 a distinctive batch number or lot number or code number either in the numerals or alphabets is required to be put in over the packets. Likewise, in terms of Sub-rule (f) of Rule 32 the month and year in which the commodity is manufactured or prepacked is required to be given. Since, it was never found to be there over the packets, it is in contravention of Rule 32(e) and (f) of the said Rules, which is punishable under Sections 16(1)(a)(i)(ii), which reads as follows:-

16. Penalties-(1) Subject to the provisions of sub-section (1A) if any persons-

(a) whether by himself or by any other person on his behalf, imports into India or manufactures for sales or stores, sells or distributes any article of food-

(i) which is adulterated within the meaning of sub-clause (m) of clause (ia) of section 2 or misbranded within the meaning of clause (ix) of that section or the sale of which is prohibited under any provision of this Act or any rule made thereunder or by an order of the Food (Health) Authority;

(ii) other than an article of food referred to in sub-clause (I), in contravention of any of the provisions of this Act or of any rule made thereunder.

4. On account of the said contravention, cognizance of the offence was taken u/s 16(1)(a)(i)(ii) of the Prevention of Food Adulteration Act.

5. While assailing the order taking cognizance submission was advanced that upon submission of the report by the Public Analyst, it was required to be given to the petitioners in terms of the provision as contained in Section 13(2) of the Prevention of Food Adulteration Act, 1954. According to the counsel appearing for the petitioners, since statutory provision has not been complied with, entire prosecution gets vitiated.

6. In context of the said submission, one needs to take notice of the provision as contained in Section 13(1)(2), which reads as follows:-

13. Report of public analyst-(1) The public analyst shall deliver, in such form as may be prescribed, a report to the Local (Health) Authority of the result of the analysis of any article of food submitted to him for analysis.

(2) 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 u/s 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.

7. On perusal of Sub-section (2) of Section 13, it does appear that only in the event of report being submitted by the public analyst with respect to "adulteration", said report of the public analyst is required to be given to a person from whom the article/product was seized. The said provision never speaks about the report being communicated to the concerned person in a case of "misbranding" and the reason for non-inclusion of the matter relating to misbranding appears to be quite obvious as from naked eyes one can find as to whether provisions of said Rules (e) and (f) of Rule 32 has been complied or not? Since, it is a case of misbranding, the submission advanced on behalf of the petitioners that entire prosecution gets vitiated on account of non-communication of the report of the public analyst, seems to be quite untenable.

8. At this stage, I may refer to a decision rendered in a case of Mrs. Santosh Ranjan Vs. State of Jharkhand and Another, , upon which reliance has been placed on behalf of the petitioners wherein it has been held that misbranding does not come within the mischief of Section 16(1)(a)(i) of the Act. On going through the said decision, it does appear that sample of Gram flour (Besan) seems to have been collected from a canteen where it had never been stored for its sale in the open market. On account of this fact, it seems to have been held

that misbranding does not come within the mischief of Section 16 of the Act.

9. Coming to the other aspect of the matter, it does appear from one of the documents, which appears to be a receipt given by petitioner No. 1 Amit Kumar Shah upon collection of sample from shop in presence of Amit Kumar Shah-petitioner No. 1, that petitioner No. 1 has been described as seller. Whereas, petitioner No. 2 Subhash Chandra Shah has been shown in the prosecution report as offender along with his son Amit Kumar Shah though nothing seems to be there over any of the documents of the prosecution as to in what manner he had contravened the provision of the Act or the Rule. It be stated that petitioner No. 2 has been shown to be a authorized signatory over one of the documents, which appears to be a tax invoice drawn on behalf of M/s. Bhola Baba Milk Food Industries Limited from where the product in question was purchased but that document never does indicate that at the instance of petitioner No. 2, petitioner No. 1 had been selling the products in question. Moreover, it has never been the case of the prosecution that at the instance of petitioner No. 2, petitioner No. 1 had been selling the products in question. It be reiterated as has been mentioned above that from one of the documents it does appear that it was petitioner No. 1, who has been described as seller and he had granted receipt upon seizure of the product. In spite of that prosecution for sanction has been granted by the sanctioning authority against petitioner No. 2 though none of the documents of the prosecution does indicate about the contravention of any of the provision either of the Art or the Rule by petitioner No. 2 and, thereby, the sanctioning authority can easily be said to have granted sanction against petitioner No. 2 without application of its mind. Once it is found that granting sanction is a mere mechanical exercise, it would apparently suffer from vice of non-application of mind. Thus, the prosecution against petitioner No. 2 Subhash Chandra Shah seems to be quite bad and, hence, order taking cognizance is hereby quashed so far as petitioner No. 2 is concerned. So far as petitioner No. 1 Amit Kumar Shah is concerned, the order taking cognizance against him never appears to be bad. Thus, this application is allowed but in part.