
(1969) 04 DEL CK 0013

In the Delhi High Court

Case No : Criminal Revision Appeal No. 154 of 1968

Ayashi Lal

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 02-04-1969

Acts Referred:

Citation : (1970) CriLJ 227 : (1969) ILR Delhi 978

Hon'ble Judges : Om Prakash, J

Bench : Single Bench

Advocate : Ghanshyam Das and Tara Chand Brijmohan Lal, for the Appellant;

Judgement

Om Prakash, J.

(1) This is a reference, made by the learned .Additional Sessions Judge, for setting aside an order of the magistrate ,refusing to summon the Public Analyst as a defense witness, in a case under sections 7/16, Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the Act.).

(2) A complaint, under sections 7/16 of the Act, was filed, by Shri Ganga Ram Sharma, Assistant Municipal Prosecutor, Municipal Corporation, Delhi, against Ayashi Lal petitioner, alleging that a Food Inspector, Shri H.R. Sood, had, on the 11th April, 1967, purchased a sample of milk, without indication, from the petitioner, who was taking the milk for sale and that the sample was, on analysis by the public Analyst, found to be adulterated.

(3) After the close of the prosecution evidence, the petitioner put in a list of defense witnesses. The only defense witness named therein was Shri S.Raj, Public Analyst, Municipal Corporation, Delhi. The Magistrate refused to summon the Public Analyst on the ground that the report of the Public Analyst was already on the record and that it would not serve any useful purpose to call him as a witness. The Magistrate, further, observed that if the petitioner was not satisfied with the report of the Public Analyst, it was open to him to make an application u/s 13(2) of the Act to get the sample analysed by the Director, Central Food

Laboratory, Calcutta.

(4) Against the above order of the Magistrate, the petitioner went up in revision. The revision was heard by the learned Additional Sessions Judge. He was of the view that, under the provisions of section 257, Code of Criminal Procedure, the Magistrate was bound to summon the witness, unless the Magistrate considered that the witness was being summoned for the purpose of vexation, delay or for defeating the ends of justice and that the Magistrate erred in refusing to summon the witness not on any of the above grounds, but on the ground that the petitioner could, in case he was dissatisfied with the report of the Public Analyst, get the part of the sample, with him, analysed by the Director, Central Food Laboratory, u/s 13 of the Act. The learned Additional Sessions Judge was, further, of the view that section 13 of the Act provided one of the modes in which the correctness of the report of the Public Analyst could be challenged and that section did not bar either the production of other evidence to contradict that report or the production and examination of the Public Analyst to test the veracity of the report. The learned Additional Sessions Judge, has, Therefore made a reference to this Court, recommending that the order of the Magistrate, which contravenes the provisions of section 257, Code of Criminal Procedure, be quashed and the Magistrate be directed to summon the Public Analyst as a defense witness.

(5) The reference has been supported on behalf of the petitioner while it has been opposed on behalf of the Municipal Corporation Delhi. The contention, on behalf of the Municipal Corporation, is that the only mode in which the report of the Public Analyst can be challenged is the one provided in section 13(2) of the Act and that an accused has no right to summon the Public Analyst as a defense witness u/s 257 Code of Criminal Procedure, for contradicting the facts stated in the report. Section 13 of the Act. reads[After reading S. 13 . of the Act, His Lordship proceeded :

The above section makes the report of the public Analyst as evidence of the facts stated therein without its being proved by calling the Public Analyst as a witness. If the accused is dissatisfied with the report, he can apply to the Court for getting the part of the sample, given to him by the Food Inspector, analysed by the Director, Central Food Laboratory. The Director is bound to send a certificate containing the result of his analysis. That certificate supersedes the report of the Public Analyst and is conclusive evidence of the facts stated therein. Thus, section 13, which makes the report of the Public Analyst, evidence in the case, also prescribes the mode in which that report can be superseded, i.e. the correctness of the report can be challenged. By implication, all other modes of challenging the correctness of the report are excluded. The only method, Therefore, in which the accused can challenge the correctness of the report of the Public Analyst, is by getting the part of the sample analysed by the Director, Central Food Laboratory. He has no right to call the Public Analyst as a defense witness, u/s 257, Code of Criminal Procedure, for testing the veracity of the

report.

(6) It may be relevant to point out that before the enactment of the Act by the Parliament, there were local enactments in force in various States for the prevention of adulteration of food articles and that at least one of those enactment gave the accused a right to summon the Public Analyst as a witness, vide section 16 of the Bombay Prevention of Food Adulteration Act, 1925. It is, further, relevant to point out that sub-section (2) of section 510, Code of Criminal Procedure, gives the right to an accused to summon as a witness the functionary whose report has been declared to be evidence in the case by sub-section (1) of that section. Had the Parliament intended to give the accused a right to summon the Public analyst as a witness in a case under the Act, it would have made a provision in the act for that purpose, like section 16 of the Bombay Prevention of Food Adulteration Act or sub-section (2) of section 610, Code of Criminal Procedure.

(7) It appears, however, necessary to make it clear that though the accused cannot, as a matter of right, summon the Public Analyst, as a defense witness, the Court has ample powers, u/s 540, Code of Criminal Procedure, to summon him as a witness at the request of the accused or of the prosecution or suo motu, if the Court considers that the evidence of the Public Analyst is necessary to enable it to arrive at the truth or otherwise of the facts under inquiry or for the just decision of the case. The aforesaid proposition was conceded by the learned counsel for the Municipal Corporation.

(8) In the present case, the petitioner had made an application to the Magistrate for summoning the Public Analyst as a witness u/s 540 of the Code of Criminal Procedure. It was stated, in the application, that the report of the Public Analyst was unreliable as he had defective vision. The Magistrate rejected the application with the remark that in order to show that the report of the Public Analyst was unreliable, the petitioner could get the part of the sample given to him analysed by the Director, Central Food Laboratory and it was unnecessary to summon the Public Analyst as a witness. In my opinion, the Magistrate rightly rejected the application. Their allegation that the Public Analyst had defective vision did not furnish a ground for summoning the Public Analyst as a witness u/s 540, Code of Criminal Procedure. It is clear from Rule 7 of the Prevention of Food Adulteration Rules and Form 3, appended to the Rules, that the Public Analyst can cause the sample analysed by his associates and assistants.

(9) The cases, cited by the learned counsel for the parties, may now be discussed. The point, whether the accused, in a case under the Act, has a right to summon the Public Analyst, as a defense witness, for showing that the report of the Public Analyst is incorrect, was considered in Criminal Revision No. 10-D of 1964 (Des Raj v. Municipal Corporation of Delhi). (1) After noticing the provisions of section 13 of the Act, Mr. Justice D.K. Mahajan, observed:-

In any case, there is sample safeguard provided in section 13 of the Act against

any incorrect report of the Public Analyst. Three samples are taken at the time when any food is taken by the food inspector for analysis. One sample is retained by the food inspector, the second is sent to the Public Analyst and the third is handed over to the dealer from whom the food is recovered. If the dealer is not satisfied with the report of the Public Analyst he has the right to get the sample with him sent for analysis to the Director of Central Food Laboratory. The Director then examines the sample and submits his report. His report has been made conclusive u/s 13(5) proviso. This clearly indicates that the only method in which the report of the Public Analyst can be challenged is one provided in section 13(2). The opinion of the Public Analyst, even if he is allowed to appear as a witness, is of no consequence."

(10) The aforesaid observations fully support the contention that the only manner in which the report of the Public Analyst can be challenged is the one provided in section 13(2) of the Act.

(11) In Criminal Revision No. 189 of 1967 (Municipal Corporation v. Ram Dayal) (2) the accused in a case under the Act had applied for summoning the Public Analyst as a witness u/s 510, Code of Criminal Procedure. That application was rejected on the ground that the Public Analyst was not one of the functionaries specified in sub-section(I) of section 510 and could not, Therefore, be summoned under sub-section (2). It was, further, observed by S.N. Shankar J. that:-

" Incase ,where the accused desired to challenge the report of the Public Analyst under the Act, he had to follow the Procedure provided in section 13. Sub-section (2) of section 13 provides that in such a case the accused-vendor should make an application to the Court for sending the part of the sample, delivered to him u/ s 11(1)(c), to the Director of the Central Food Laboratory for his examination and certificate, who, in turn, was bound to furnish a certificate to the Court in the prescribed form containing the result of his examination and such a certificate would operate to supersede the certificate of the Public Analyst."

(12) In Municipality Ambala v. Bakhsi Ram, a Division Bench had observed:-

It was open to the accused to challenge the report of the Analyst and for that purpose, procedure is prescribed in section 13(2). He can get the sample given to him sent for analysis to the Central Food Laboratory and the report of the Central Food Laboratory would override the report of the Public Analyst."

(13) The learned counsel for the petitioner placed strong reliance on the following observations, made by their Lordships of the Supreme Court, in Mangal Das v. Maharashtra State.:-

As regards the failure to examine the Public Analyst as a witness in the case no blame can be laid on the prosecution. The report of the Public Analyst was there and if either the Court or the appellant wanted him to be examined as a witness appropriate steps would have been taken."

(14) The learned counsel contended that the aforesaid observations supported

his contention that an accused, in a case under the Act, can summon the Public Analyst as a defense witness. Now, the observations, relied upon, were made in connection with the view expressed in *City Corporation Trivandrum v. Antony*, that the prosecution could have examined the Public Analyst as a witness. Their Lordships of the Supreme Court observed that the report of the Public Analyst was evidence of the facts stated therein and that it was unnecessary to produce him as a witness to prove the report. It was not the contention of the appellant, before their Lordships, that an accused, in a case under the Act, has the right to summon the Public Analyst as a defense witness. The observations of their Lordships are to be interpreted in the contest in which they were made. Their Lordships may have the provisions of section 540, Code of Criminal Procedure, in their mind, while observing that the appellant in that case would have taken appropriate steps to summon the Public Analyst. The observations of their Lordships cannot be interpreted to mean that an accused as a right to summon the Public Analyst as a defense witness.

(15) The other cases, *Municipal Corporation Delhi v. Jai Dayal Jawands Mal*, (6) and *Beckan v. State* (7) do not support the contention of the petitioner. In the Punjab case, it was recognised that the Court has ample powers to summon the Public Analyst as a witness. In the Allahabad case, the Court had made enquiries about the qualifications of the functionary who had actually analysed the sample. In none of the cases, cited, the point that an accused, in a case under the Act, has the right to summon the Public Analyst as a witness was raised or decided.

(16) For all the above reasons, I am of the view that the Magistrate was right in holding that the only way in which the petitioner could challenge the correctness of the report of the Public Analyst was to make an application u/s 13(2) of the Act and that the petitioner had no right to summon the Public Analyst as a defense witness. The view of the learned Additional Sessions that section 13(2) provides only for one of the modes in which the report of the Public Analyst can be challenged and that it does not bar the testing of the veracity of that report by producing other evidence or by summoning the Public Analyst, is not correct.

(17) The reference is rejected. The revision petition of the petitioner will stand dismissed.