
(2004) 09 OHC CK 0006
In the Orissa High Court
Case No : Criminal Revision No. 27 of 1996

Bhaba Sagar Panigrahi

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 28-09-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 401
Prevention of Food Adulteration Act, 1954 — Section 13(2)

Citation : (2005) CLT 69 (Suppl CrI) : (2005) CriLJ 778 : (2004) 29 OCR 646 :
(2005) OLR 69 (Suppl CrI) : (2004) 2 OLR 549

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Advocate : A.K. Nanda, S.K. Panda, M.K. Das and B.P. Das, for the Appellant;
Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

M.M. Das, J.—The petitioner in this Criminal Revision assails the judgment passed in Criminal Appeal No. 14/2 of 1993 by the learned Addl. Sessions Judge, Bolangir confirming the order of conviction and sentence passed by the learned S.D.J.M., Bolangir in 2(c) C.C. No. 75 of 1989/T. R. No. 919 of 1989. The petitioner has been convicted u/s 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as "the Act") and sentenced to undergo R.I. for six months and to pay a fine of Rs. 1000/- in default to undergo R.I. for further period of one month.

2. The prosecution case, in short, is that on receiving a complaint made by one Basanta Kumar Behera and others of Chantipadar, the Food Inspector proceeded to the said place with a peon of the office of the C.D.M.O. Bolangir, namely Antabal Majhi on 13-6-1989 and inspected the alleged shop where the petitioner was present. After revealing his identity to the petitioner and demanding the food licence, the petitioner could not produce the same and disclosed that the shop belongs to his son who was an accused in this case and has been acquitted

by the learned S.D.J.M., Bolangir. The Food Inspector, Bolangir thereafter served a notice in writing to the petitioner to get the food licence and In presence of witnesses, verified the food articles, stored for human consumption and suspecting the Besan and Mustard oil to be adulterated also served a notice in writing in Form VI of the Act disclosing his intention to take sample of Besan and Mustard oil for analysis and purchased 600 grams of Besan and 375 grams of Mustard Oil on making payment for which the petitioner granted money receipt. It is further alleged that as per the provisions of the Act, the said samples were sent for analysis to the Public Analyst and on receiving the said report, copies thereof were sent to the petitioner by the C.D.M.O., Bolangir and finding the sample of Besan to be adulterated, a prosecution report was lodged before the learned S.D.J.M, Bolangir. The learned trial Court on consideration of the materials available on record and after trial of the case, passed an order of conviction and sentence against the petitioner as stated earlier. The other co-accused was, however, acquitted.

3. The petitioner thereafter being aggrieved preferred Criminal Appeal No. 14/2 of 1993, which was heard and disposed of by the learned Addl. Sessions Judge, Bolangir by judgment dated 15-1-1996, confirming the conviction and sentence and dismissing the appeal.

4. Mr. Nanda, learned counsel for the petitioner submits that provisions of Section 13(2) of the Act and Rule 18 of the Rules framed under the Act have not been complied with by the prosecution and the said provisions are mandatory in nature. The petitioner is entitled to be acquitted from the charges against him for non-compliance of the said provisions. He has relied upon the decision reported in 80 (1995) CLT 498 (Gouranga Sahu v. State of Orissa) and the decision reported in (1996) 2 OCR 502 (Kirtan Bhoi v. State of Orissa) and contended that even though u/s 13(2) of the Act, it is incumbent upon the prosecution to prove that the report of the Public Analyst was sent to the accused and was received by him, in the instant case, the materials available on record clearly shows that the said report was never sent to the accused-petitioner. He further submits that the provisions of Section 13(2) of the Act are mandatory in nature and non-compliance of the same takes away a valuable right of the accused to get the food articles, analysed by the Central Food Laboratory under the Act. The report of the Central Food Laboratory supersedes the report of the Public Analyst and is conclusive in nature. Mr. Nanda has drawn the attention of the Court to the evidence of the Food Inspector, PW-1 and a peon of the office of the C.D.M.O., Bolangir, who has been examined as PW-3. He points out that though the Food Inspector, PW-1 has stated that the C.D.M.O. sent the report of the Public Analyst to the petitioner by registered post but the C.D.M.O., Bolangir has not been examined in this case nor any dispatch register showing that the letter was despatched to the petitioner containing the report of the Public Analyst has been produced. He further submits that though it is the case of the prosecution that the said report was sent by registered post but the same was admittedly sent to the Jarasingha Post Office and the village of the petitioner is not situated under

the said post office. PW-3, who is the peon of the office of the C.D.M.O., Bolangir has stated in his deposition that the accused has no shop in village Jarasingha nor does he have a house in that village. The report of the Superintendent of Post Office, Bolangir marked as Ext. 17 is given in a cydostyled form by scoring the phrases which were not applicable to the present case and in one sentence it states that the registered letter has been delivered to the addressee on 18-11-1999 at Jarasingha Post Office.

5. Mr. Padhi, learned Addl. Standing" Counsel submits that In view of the fact that it has been conclusive shown that the Public Analyst Report was sent by registered post to the petitioner and in view of the report of Superintendent of Post Office, Ext. 17, it is clear that there was due compliance of Section 13(2) of the Act and no fault can be found with the prosecution in that respect. On perusal of the impugned Judgments, I find that this aspect of the case I has not been dealt with by both the Courts - below. It is no more res Integra that Section 13(2) of the Act is mandatory in nature and non-compliance of the same takes away a valuable right of the accused. Though this is a revision u/s 401, Cr.P.C. in exercise of the revisional jurisdiction, not only correctness, legality and propriety of the proceeding can be examined, but in appropriate case the Court can consider the correctness of the conclusion arrived at by the Courts-below and if It finds that the same Is not based on evidence available on record or is based on erroneous inferences, the revisional Court can annul the same. It is true that the revisional Court cannot go into the question of sufficiency or insufficiency of evidence Justifying the conclusion, but it can examine whether the evidence on which the conclusion of the Courts-below are based is admissible in law or not.

6. On the above analysis, I find that the prosecution has failed to conclusively prove that the report of the Public Analyst was sent to the petitioner and the courts-below have committed illegality in relying on Ext. 17 to come to the finding that there was due compliance of the provisions of Section 13(2) of the Act. The petitioner is, therefore, entitled to be acquitted from the charges under Sections 16(1)(a)(i) of the Act. In view of the above, I do not feel any necessity to enter into the question as to whether the provisions of Rule 18 of the Rules framed under the Act have been complied with or not.

7. The Criminal Revision is, therefore allowed and the petitioner is found not guilty and is acquitted of the above charges. The bail bond given by the petitioner be treated to have been discharged.