

(1986) 07 OHC CK 0027

In the Orissa High Court

Case No : Criminal Revision No. 276 of 1982

Ch. Bhimraju Subudhi

APPELLANT

Vs

State (Food) Inspector, Sambalpur Municipality

RESPONDENT

Date of Decision : 29-07-1986

Acts Referred:

Prevention of Food Adulteration Rules, 1955 — Rule 9(1)

Citation : (1986) 62 CLT 340 : (1986) 2 OLR 238

Hon'ble Judges : G.B. Pattnaik, J

Bench : Single Bench

Advocate : B.L.N. Swamy, for the Appellant; A. Rath, A.S.C., for the Respondent

Final Decision : Dismissed

Judgement

G.B. Pattnaik, J.—Petitioner was convicted u/s 16(1)(a)(i) of the Prevention of Food Adulteration Act (hereinafter referred to as the "Act") and was sentenced to rigorous imprisonment for one year and a fine of Rs. 1,000/-, in default to undergo rigorous imprisonment for six months, by the Judicial Magistrate, First Class, Berhampur, on the finding that he had exposed adulterated ground-nut oil in his shop for sale for human consumption. On appeal, the conviction and sentence passed by the learned Magistrate have been upheld by the learned Additional Sessions Judge and hence the revision.

2. The Food Inspector (P. W. 1) along with P. W. 2 inspected the shop of the accused on 7. 11. 1976 and after disclosing his identity purchased sample from ground-nut oil which had been exposed for sale for human consumption. The due consideration for the same was paid and after dividing the sample into three equal parts, those were kept in three empty bottles and sealed properly. One of the bottles was handed over to the petitioner and another bottle was sent to the Public Analyst for analysis. The report of the Analyst disclosed that the sample was adulterated and not fit for human consumption. A copy of such report was furnished to the accused as prescribed under law and thereafter on receiving sanction, prosecution report was submitted against the petitioner.

3. The petitioner denied to be the owner of the shop and according to him he was merely sitting in the shop in his brother's absence. It is the further case that the oil from which the Food Inspector took sample was not meant for sale for human consumption, but was meant for their own consumption.

4. On the basis of the evidence adduced at the trial both the Courts have concurrently found that the oil in question was exposed for human consumption and was adulterated. They have, therefore, come to the conclusion that the petitioner has committed the offence within the ambit of Section 16(1)(a)(i) of the Act.

5. Mr. Swamy, the learned counsel for the petitioner in this revision does not challenge the conclusion of the two Courts below regarding the oil being adulterated and the same had been kept exposed for sale for human consumption. The only contention urged by him is that there has been violation of Rule 9(i) of the Prevention of Food Adulteration Rules (hereinafter referred to as the "Rules") and infraction of the said Rule has caused great prejudice and vitiates the trial. Rule 9(j), as it stood prior to its amendment and on the date of commission of the offence in question, is extracted hereunder for better appreciation of the point involved: .

"9. Duties of Food Inspector :

It shall be the duty of the food inspector-

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(j) to send by registered post, a copy of the report received in Form III from the public analyst to the person from whom the sample was taken within ten days of the receipt of the said report. However, in case the sample conforms to the provision of the Act or Rules made thereunder, then the person may be informed of the same and report need not be sent."

6. Whether Rule 9(j) is mandatory or not has been the subject-matter of consideration by different High Courts and there were divergent views on the point, but the matter has been set at rest by the Supreme Court in the case of Dalchand Vs. Municipal Corporation, Bhopal and Another, . The Supreme Court held :

"...There are no ready tests or invariable formula to determine whether a provision is mandatory or directory. The broad purpose of the statute is important. The object of the particular provision must be considered. The weighing of the consequence of holding a provision to be mandatory or directory is vital and, more often than most, determinative of the very question whether the provision is mandatory or directory Where the design of the statute is the avoidance or prevention of public mischief, but the enforcement of a particular provision literally to its letter will tend to defeat that design, the provision must be held to be directory, so that proof of prejudice in addition to non-compliance of the provision is necessary to invalidate the act complained of....."

The learned Judge further observed :

"...The period of 10 days was prescribed with a view to expedition and with the object of giving sufficient time to the person from whom the sample was taken to make such arrangements as he might like to challenge the Report of the Public Analyst, for example, by making a request to the Magistrate to send the other sample to the Director of the Central Food Laboratory for analysis. Where the effect of non-compliance with the rule was such as to wholly deprive the right of the person to challenge the Public Analyst's Report by obtaining the report of the Director of the Central Food Laboratory, there might be just cause for complaint, as prejudice would then be writ large. Where no prejudice was caused there could be no cause for complaint. I am clearly of the view that Rule 9(j) of the Prevention of Food Adulteration Rules was directory and not mandatory....."

In the aforesaid case, the Supreme Court was considering whether serving a copy of the report of the Public Analyst after ten days as prescribed in Rule 9(j) would vitiate the conviction or not and the Supreme Court answered it in the negative. In view of the aforesaid authoritative pronouncement of the Supreme Court, I am not called upon to discuss the various authorities cited by the counsel for both sides. Both the Courts below have come to a conclusion on the basis of Ext. 7 that a report of the Public Analyst was furnished to the accused with a letter of the Chief District Medical Officer under Ext. 7. Therefore, the fact remains that Rule 9(j) must be held to have been complied with so far as furnishing a copy of the report to the petitioner is concerned, though it was not so furnished within the period of ten days as contained in Rule 9(j) of the Rules. In view of the decision of the Supreme Court, referred to above, delay in furnishing the report would not constitute an infraction of the said provision particularly when the petitioner has not been able to show as to in what manner he was prejudiced thereby. In the circumstances, the contention of Mr. Swamy for the petitioner must be rejected.

7. In the ultimate result, therefore, I do not find any merits in this revision which is accordingly dismissed.