

(1991) 09 GUJ CK 0008
In the Gujarat High Court

Clemant Chhotlal Cristian

APPELLANT

Vs

Parshottam Savjibhai Parmar and Another

RESPONDENT

Date of Decision : 25-09-1991

Acts Referred:

Evidence Act, 1872 — Section 114

Prevention of Food Adulteration Act, 1954 — Section 13, 16(1), 16(1), 7

Prevention of Food Adulteration Rules, 1955 — Rule 4

Citation : (1992) 1 GLR 434

Hon'ble Judges : J.U. Mehta, J

Bench : Single Bench

Judgement

J.U. Mehta, J.—The petitioner who is the original accused in Criminal Case No. 318 of 1984 has approached this Court for quashing and setting aside the judgment and order of conviction dated 28-12-1984 passed by the Court of the learned Metropolitan Magistrate, Court No. 6, Ahmedabad and also the judgment and order of conviction confirmed in Appeal No. 15 of 1985 by the Court of the learned Addl. City Sessions Judge, Ahmedabad on 31-12-1985.

2. The short facts of the case are that the Food Inspector of Ahmedabad Municipal Corporation visited the shop of the accused on 29-9-1983 at 9-15 a.m., which was run in the name and style of "Samson General Stores". The Food Inspector was accompanied by one peon and in the presence of the Panchas, the ground-nut oil weighing 400 grams from the said shop was purchased for the purpose of analysis. The price was paid for the said oil purchased. The oil was divided into three bottles and the bottles were sealed as required under the provisions of law. One of the samples was sent to the Public Analyst and the same was found to have been adulterated by the Public Analyst inasmuch as castor oil test was found positive. The accused applied to the learned Metropolitan Magistrate for sending another bottle to the Central Food Laboratory, Pune and the same was sent by the Court and the Certificate of the Central Food Laboratory was received, wherein it was stated that the sample of ground-nut oil was found to be adulterated inasmuch as the castor-oil test was

positive.

3. The prosecution led evidence before the Court of the learned Metropolitan Magistrate, Court No. 6, Ahmedabad, who by his judgment and order dated 28-12-1984 convicted the accused for the offence punishable u/s 7 read with Section 16(1) of the Prevention of Food Adulteration Act and sentenced the present petitioner to suffer simple imprisonment for six months and fine of Rs. 1000/- and in default, to suffer simple imprisonment for three months.

4. Being aggrieved by the said judgment and order of conviction, the present petitioner filed an appeal!, being Appeal No. 15 of 1985 before the Court of the learned Addl. City Sessions Judge, Ahmedabad. After hearing both the sides, the learned Addl. City Sessions Judge confirmed the order of conviction and sentence passed by the trial Court and dismissed the appeal of the petitioner.

5. Being aggrieved by the said judgment and order of conviction and sentence passed by the Courts below, the present petitioner has approached this Court in revision.

6. Mr. Shethna, learned Advocate appearing on behalf of the petitioner submitted that in the present case Rule 4 of the Prevention of Food Adulteration Rules, 1955 is not observed by the Director of Central Food Laboratory in its true spirit and, therefore, it has prejudiced the accused. Mr. Shethna also contended that the evidentiary value of the Certificate issued by the Central Food Laboratory is affected and the conviction based on it cannot be sustained and, therefore, the judgment and order of conviction and sentence be quashed and set aside. He submitted that Sub-rule (3) of Rule 4 requires that 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. Sub-rule (4) of Rule 4 requires that on receipt of the packet, it shall be opened either by the Director or by an officer authorized in writing in that behalf by the Director, who shall record the condition of the seal on the container. He submitted that if we read Rule 4 as a whole, the provisions of Sub-rule (3) and Sub-rule (4) of Rule 4 are made in order to safeguard the interest of the person from whom the sample is taken and also to assure the authenticity by comparing the two seals and contended that the intention of the rule maker is that the seal affixed on the container must be identical with the specimen impression of the seal sent separately to the Director and if both tally, the Director can be confident about the authenticity of the sample sent for analysis. Thus, if from the impression seal of the Court sent separately to the Director it can be said that the seal on the container and the impression seal which was sent separately are the same, then the requirement of Rule 4 can certainly be said to have been complied with because it is a safeguard to vouchsafe the authenticity of the sample sent.

7. Mr. Champaneri, learned A.P.P. for the State submitted that the provisions of Rule 4 do not provide for comparison of the specimen impression of the seal sent to the Director with the seal applied on the container. According to Mr.

Champaneri, Sub-rule (4) only provides that on receipt of the packet, the same will be opened either by the Director or by an officer authorized in writing in that behalf by the Director and the person who opens the pocket shall record the condition of the seal on the container and, therefore, it is not required to be stated in the Certificate that the seal on the container is compared with the specimen impression of the seal sent separately by registered post to the Director. He submitted that comparison of both the seals is not the requirement envisaged by Rule 4. He also submitted that the presumption u/s 114 of the Evidence Act could be raised with regard to the comparison of the seal on the container with the impression seal sent by registered post separately. He further contended that the Director of Central Food Laboratory is undoubtedly expected to follow the procedure and in absence of direct or positive evidence in proof of the requirement, such acts must be presumed. He has relied upon the judgment of this High Court in the case of Kamleshkumar Babulal Patel Vs. State of Gujarat and Another, .

8. The main object of the Prevention of Food Adulteration Act and the Rules made thereunder is to control, curb and remedy the widespread malpractice of food adulteration in the country and to ensure supply of pure and wholesome food to the consumer. Various provisions found both in the Act and the Rules are presumed to be in furtherance of this main object. Some of these provisions which appear to be relevant may now be adverted to.

9. Section 2 of the Act inter alia, defines the terms "food", "adulterated", "mis-branded" and "sample" as used in the Act and the Rules. Section 7 prohibits the manufacture for sale, storage, sale or distribution of any adulterated food, mis-branded food, or any Article of food in contravention of any of the provisions of the Act and the Rules. Sections 8 and 9 empower both the Central and State Government to appoint persons of the prescribed qualifications to be Public Analysts and Food Inspectors respectively for such local areas as may be assigned to them. Section 10 defines the powers of the Food Inspectors which inter alia include the power to take sample of any Article of food from any person selling the same. The Food Inspectors have been further empowered to send such samples for analysis to the Public Analyst appointed for the relevant local areas. Section 11 provides the procedure to be followed by the Food Inspector while taking a sample for the purpose of analysis. Section 13 states with regard to the report of the Public Analyst conducting analysis of the sample sent to him by the Food Inspector. Where the Public Analyst opines that the sample is adulterated, prosecution may be launched against the concerned vendor, dealer or manufacturer as the case may be. It is also provided that when such prosecution is actually launched, the accused person is to be furnished a copy of the report of the Public Analyst and given the option that in case he is not satisfied with the report of the Public Analyst, he may apply to the Court that another part of the sample be sent to the Director, Central Food Laboratory for fresh analysis. It is provided in the Act that where the accused exercises such option, the report of the Director, Central Food Laboratory would supersede the

report of the Public Analyst. However, when the accused does not exercise such option, the report of the Public Analyst may be used as evidence against him of the facts stated therein without the same being formally proved by calling the Public Analyst and it may conclude the offence against the accused and also form the foundation of his conviction. Section 16 provides for deterrent penalties to be imposed on the person found violating the provisions of the Act and the Rules. Section 23 empowers the Central Government to make Rules to carry out the provisions of the Act. The Rules framed in exercise of this statutory power, inter alia, prescribe the qualifications of the Public Analysts and the Food Inspectors and also define their duties and powers. They also lay down the procedure to be followed by these authorities in the discharge of their functions assigned to them under the Act and the Rules.

10. Thus, it is obvious that the various provisions denning the powers and duties of the authorities entrusted with the job of administration of the Act and also laying down the procedure to be followed by these authorities, were intended to ensure successful prosecution of the persons indulging in the evil practice of food adulteration. At the same time it has taken care while enacting the aforesaid provisions of the Act and making the rules that the innocent persons may not be prosecuted and convicted on account of advertent or inadvertent acts of the authorities entrusted with the duties of administering the provisions of the Act.

11. It appears that it was, inter alia, to achieve this intention and to justify the sanctity and high value attached to the reports of the Public Analyst and Director of Central Food Laboratory that various provisions were made both in the Act and the Rules to ensure that the report of the Public Analyst not only reflected the correct analysis but also related to the very sample which had been picked up from the accused. This is sought to be done by ensuring that the sample had neither been deteriorated nor tampered with/replaced in the course of transit. Thus, it is required to rule out the possibility of the sample having lost its original quality and becoming sub-standard or its having been tampered with or replaced in the course of the transit. Thus, if we read Rule 4 as a whole, it requires that the Director of Central Food Laboratory or any person authorised by him in this behalf, before he proceeds to analyse the sample, must compare the seals on the container and the outer cover of the packet with the specimen impression of the seal received by him separately and to note the condition of the seal thereon. Comparison of the seal on the container and the outer cover of the packet with the specimen impression of the seal received by him may not be expressly provided in Sub-rule (4), but if we read Sub-rule (3) and Sub-rule (4), it appears clear that before the Director, Central Food Laboratory proceeds to analyse the sample, he must compare the seals on the container and the outer cover of the packet with the specimen impression of the seal received by him separately from the Court and to note the condition of the seal thereon. The only object to compare could be to ensure that the sample which the Director, Central Food Laboratory was required to analyse has not been tampered with and that the Director of Central Food Laboratory was satisfied that he was analysing the

correct sample. Non-comparison of the seals on the container and the outer cover of the packet with the specimen impression of the seal received by him, in my opinion, would result in non-compliance of Rule 4. In my opinion, in absence of such compliance, the sanctity and the value attached to the report of the Central Food Laboratory u/s 13 of the Act would lose all its significance and its Certificate cannot be used as evidence against the accused much less to form the foundation of his conviction.

12. It is to be noted here that what was implicit in Rule 4 regarding comparing the seals on the container and the outer cover with specimen impression is now made explicit by making amendment in the said Rule by the Notification dated 16-5-1988 wherein there is substitution of Sub-rule (4) of Rule 4 as under:

(4) On receipt of a package containing a sample for analysis, the Director or an officer authorised by him, shall compare the seals on the container and the outer cover with specimen impression received separately and shall note the condition of the seals thereon.

13. In the present case, there is no evidence on record to suggest that the Director of Central Food Laboratory had compared the seals on the container and the outer cover of the packet with the specimen impression of the seal received by him separately from the Court. In my opinion, no presumption u/s 114 of the Evidence Act can be drawn that the official act was followed because the true effect of Section 114 that if an official act was proved to have been done, it would be presumed to have been regularly done and it does not raise any presumption that an act was done of which there was no evidence and the proof or which is essential for the success of the prosecution. At any rate, the presumption u/s 114 of the Evidence Act is only optional. In a case of this nature fraught with serious consequence to a person, I am unable to presume that the Director of Central Food Laboratory compared the seals on the container and the outer cover of the packet with the specimen impression of the seal received by him separately from the Court. The requirement of separately sending the specimen impression of the seal to the Director is intended to show him the genuine seal of Court with which he is required to compare the seal which the container bears. Since there is much less likelihood of any interference with the seal on the container and the specimen impression of the seal sent separately, there is a greater protection or safeguard which has been conferred upon the accused by Sub-rule (3) of Rule 4. This special safeguard the accused will lose when the specimen impression of the seal sent to the Director separately is not compared by him before the analysis of the sample. Comparison of the seal assumes greater significance in cases under the Prevention of Food Adulteration Act because the fate of the accused depends upon the Certificate issued by the Director, the contents of which are final and conclusive evidence of the facts stated therein and which are not open to challenge by the accused in any manner whatsoever. Not only that he cannot challenge the contents of the Certificate by leading any other evidence, but he cannot also challenge the

contents by requiring the Director to be cross-examined by him. Once the Director issues the Certificate that the food sample sent to him was adulterated, the fate of the accused is sealed. It is not open to him even to ask the Court to get back the food sample analysed by the Director for further analysis by his own expert because the finality and conclusiveness is attributed to the Certificate issued by the Director and such Certificate produces such a far-reaching consequence. I have no doubt in my mind that all provisions of law which relate to it and which confer even the smallest safeguard on the accused must be construed strictly and not liberally. In my opinion, therefore, non-comparison of the seal as stated above has affected the evidentiary value of the Certificate issued by the Director, Central Food Laboratory and thus, the conviction based upon it cannot be sustained.

14. In the result, this Criminal Revision Application is allowed.

15. The judgment and order of conviction and sentence passed by the Court of the Metropolitan Magistrate, Court No. 6, Ahmedabad and confirmed in appeal by the learned Addl. City Sessions Judge, Ahmedabad are quashed and set aside and the accused is acquitted of the offence with which he was charged and convicted. The bail bonds of the accused stand cancelled. Fine, if paid by the accused is ordered to be refunded.