
(2000) 10 AP CK 0001

In the Andhra Pradesh High Court

Case No : Criminal A. No. 1157 of 1994

Food Inspector, Vizianagaram Municipality

APPELLANT

Vs

K. Suryaprakasa Rao

RESPONDENT

Date of Decision : 13-10-2000

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16(1), 2, 7(1)
Prevention of Food Adulteration Rules, 1955 — Rule 7, 7(1)

Citation : (2000) 2 ALD(Cri) 781 : (2001) 1 ALT(Cri) 120 : (2001) CriLJ 1101

Hon'ble Judges : Bilal Nazki, J

Bench : Single Bench

Advocate : The Public Prosecutor, for the Appellant; D. Ramalinga Swamy, for the Respondent

Final Decision : Allowed

Judgement

Bilal Nazki, J.

Crl. A. No. 1157 of 1994

1.This is an appeal against acquittal of the respondent in a case filed under Prevention of Food Adulteration act. The respondent is the owner and licence holder of a tea stall situated at Bus stand road, Vizianagaram. On 23-10-87 a sample of tea powder was taken by the Food Inspector and was sent for analysis. It was reported by the Public analyst that the sample was adulterated. Thereafter, prosecution was launched. During the trial, the respondent pleaded not guilty. He was acquitted only on one ground. The trial court found that there had been non-compliance of rule 7 of the Food Adulteration rules. The learned Public prosecutor has argued that there has not been any violation of rule 7 of the rules framed under Prevention of Food Adulteration Act. On the other hand the learned counsel for the respondent has argued that the trial court has rightly came to the conclusion that rule 7 was a mandatory rule and since it was not complied with the respondent deserved to be acquitted.

2. In the light of the arguments of the learned counsel for the parties, I am confining myself only to the question as to whether rule 7 was followed or not. Rule 7 of the Prevention of Food Adulteration Rules lays down the duties of the Public analyst. Sub-rule (1) of rule-7 which is relevant for the purpose of this case is reproduced:

"7. Duties of Public Analyst :- (1) On receipt of a package containing a sample for analysis from a Food Inspector or any other person, the Public Analyst 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 conditions of the seals thereon:

Provided that in case sample container received by the Public Analyst is found to be in broken condition or unfit for analysis he shall within a period of seven days from the date of receipt of such sample inform the local (Health) Authority about the same and send requisition to him for sending second part of the sample."

3. Now, in the light of this rule it will be profitable to see as to what was the observation of the public analyst on the report submitted. The Public Analyst recorded a note in the report in which she stated, "The specimen impression of seals were checked and compared by Sri MM Baig JSO who was authorised for this purpose under rule 7(1)". The import of rule 7(1) is that, it should be ensured that the sample reaches the public analyst in the same condition in which it is lifted. To avoid any tampering of the sample the Public Analyst is supposed to ensure that sample was received by him in the same condition in which it was lifted. Therefore rule 7(1) lays down that, on receipt of package containing the sample the Public Analyst or an officer authorised by him shall compare the seals on the container and outer cover with specimen impression received separately. So, what is required of the Public Analyst is to compare the seals on the container and the outer cover with the specimen impression. He can do it himself or he can get it done by an officer authorised by him. In the present case, it is contended that the note appended to the report does not show that the seals on container and outer cover were compared with the specimen impression. It is true that the note does not contain it in too many words, but all the same the meaning conveyed by the note is that the specimen impression of seals were compared and also were checked. That means, on comparison with specimen seals they were found correct and on checking of seals they were found intact. Had it not been so, the Public Analyst would have certainly said so. The only meaning which is possible to be given to the note is that, the Public Analyst authorised an Officer who had checked the seals and compared them with the specimen seals and he found them in order. The presumption is that, the seals were in order and on comparison with specimen seals they were found correct. It is not only this note which had been appended by the Public Analyst on the report but the certificate itself which is in conformity with Form-3 states that;

"I hereby certify that, I, S. Kusuma Kumari, M.Sc., A.I.C , Public Analyst for

Andhra Pradesh duly appointed under the provisions of the Prevention of Food Adulteration Act, 1954, received on the twenty sixth day of October, 1987 from the Food Inspector, Vizianagaram Municipality, a sample of TEA DUST bearing code No. and serial No. 248 q-410 (Two hundred forty eight q-four hundred ten) of the local (H) Authority for analysis, properly sealed and fastened, and that I found that seal intact and unbroken.

The seal fixed on the container and the outer cover of the sample tallied with the specimen impression of the seal separately sent by the food Inspector and the sample was in a condition fit for analysis."

4. If this is read with the note at the end of the report there remains no doubt that rule 7(1) of the rules was complied with.

5. However, the learned counsel for the respondent relies on a judgment of Karnataka High Court reported in Food Inspector, Mangalore Corpn. Vs. A.G. Suvarna (1). This judgment lays down;

"10. The provisions in the Rule are mandatory in nature and it is obligatory on the part of the Public Analyst or an Officer authorised by him to not only compare the seals on the container and the outer cover with the specimen impression received separately (under R.18) and to note the conditions of the seals thereon, but also cause the sample of the articles of food analysed and to deliver the report of the result of such analysis to the Local Health Authority within a period of forty-five days from the date of receipt of the sample. Although as provided under sub-sec. (1) of S. 13 of the Act r/w S. 23 of the Act it is left to the Central Government to make Rules to carry out the provisions of the Act generally and in particular for all or any of the matters provided in S. 23(1A) of the Act, including the manner in which the container of sample of food purchased for analysis shall be sealed and fastened up and the methods of analysis, there is no provision either in the Act or the Rules whereunder it is either permissible to the Public Analyst to make a report of his having compared the seals on the container and outer cover with the specimen impression received separately as required under R.7 of the Rules or whereby it is permissible to use as evidence the facts stated in the report in this behalf."

6. In view of what has been stated above, I am not able to persuade myself to accept the interpretation placed by Karnataka High Court over Rule 7, although it is not in doubt that rule-7 is a mandatory rule. The Judgment of the Karnataka High Court, in my view, is not laying down good law in view of the fact that the matter has been considered by the Supreme Court in Kassim Kunju Pookunju Vs. Ramakrishna Pillai (2). In the case before Supreme Court it was contended that, in the Public Analyst's report it was not furnished that specimen impression of the seal was compared with the seal on the packet of the sample therefore the trial had vitiated. The same argument had been made before the High Court which had rejected the argument on the ground that, the principle that the official acts must be presumed to have been regularly performed, would apply to

a certificate of the Public Analyst. The Supreme Court while upholding the judgment of the High Court stated;

"The contention which was pressed and which has been reiterated before us is that it is nowhere stated in Ex.P-9 that the Public Analyst had compared the specimen impression of the seal with the seal on the packet of the sample. The High Court relied on the principle that official acts must be presumed to have been regularly performed. Under Rule 7 the Public Analyst has to compare the seal on the container and the outer cover with the specimen impression received separately on receipt of the packet containing the sample for the analysis. The High Court considered that it must be presumed that the Public Analyst acted in accordance with the Rules and he must have compared the specimen impression received by him with the seal on the container."

7. The view taken by the Supreme Court in this case is the same view that was taken by Kerala High Court in Subbayyan Muthukumaran Vs. Sate of Kerala (3). Even the Rajasthan High Court in Shambhoo Narain Vs. Motilal (4) was of the view that, since the report of Public Analyst is admissible in evidence without any other proof, therefore, the presumption u/s 114 illustration (c) of the Indian Evidence Act would apply to the case and it has to be presumed that Public Analyst acted in accordance with rules though the presumption would be rebuttable.

8. In the light of these judgments, the facts of this case reveal that Rule 7(1) has been complied with and in case the respondent had any reservations about it, it was for him to disprove the correctness of the Public Analyst report.

9. For these reasons, I find that the respondent does not deserve acquittal. Hence, the appeal is allowed, the judgment of the trial court is set aside and respondent is convicted u/s 16(1)(a)(ii) r/w 7(1) and 2(ia)(a) of Prevention of Food Adulteration Act, 1954.

10. Now, on the question of sentence this Court is conscious of the fact that the sample was taken in 1987, thirteen years have already passed. Therefore, this Court is constrained to award him even the minimum punishment of six months imprisonment in terms of Section 16. I do not think that it will be fair to impose a sentence of six months after thirteen years of taking of the sample. Therefore, he is sentenced to one month simple imprisonment with a fine of Rs.5,000/-. In case of default in payment of fine, he shall have to undergo further simple imprisonment of one month. Bail bonds revoked. He shall surrender before the trial court for undergoing the sentence.