
(1974) 03 AP CK 0001
In the Andhra Pradesh High Court

Lakshminivas

APPELLANT

Vs

Commissioner of Police and Another

RESPONDENT

Date of Decision : 22-03-1974

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16, 2, 7

Citation : (1974) CriLJ 1419

Hon'ble Judges : Sambasiva Rao, J;Muktadar, J

Bench : Division Bench

Judgement

Muktadar, J.—By our order pro. Bounced: on 18th March, 1974 we directed that the detenu should be set at liberty forthwith as the detention was illegal. We now proceed to record our reasons in support of our order.

2. One Laxminivas who is the Managing Partner in the firm of Murari and Co., carries on business of whole sale dealers at Premises No. 15 1.52/1 Feelkhana, Hyderabad. He has been detained u/s 3 (1) (a) (iii), Maintenance of Internal Security Act by order of the Commissioner of Police, Hyderabad dated 3- 1-1971. He was taken into custody on. 4-1-1974, and the grounds of detention were served upon him on 7-1-1974. The only ground specified in the order of detention is that the detenu has been adulterating groundnut oil with an extraneous substance known as Argemone oil which is injurious to public health, and selling it to the public for consumption; as such, the detenu has contravened the provisions of the Prevention of Food Adulteration Act. 1954, and, therefore, he has been acting in a manner prejudicial to the maintenance of supplies and services essential to the community. A perusal of the grounds of detention would show that the detaining authority relied on the opinion of the public Analyst that the sample was adulterated with Argemone oil.

3. The detenu had once before filed a Writ Petition (W. P. No. 188/74) : reported in Goverdhan Lal Vs. The Commissioner of Police and Another, in this Court for the issue of a Writ of Habeas Corpus. He has challenged the grounds on the basis of vagueness. That petition was dismissed on 8-2-1974. by a Bench of this court.

4. The detenu who is also one of the accused in C. C. No. 13/14 on the file of the VII City Magistrate, Hyderabad, and is charged for having committed an offence punishable under sections 7(1) read with 2(1)(h)(a) and Section 16(l)(a)(l) of the Prevention of Food Adulteration Act 1954, (hereinafter referred to as the Act) moved that Court by filing a petition (Cri. M. P. No. 132 of 1974) on 28-1-1974 with a prayer to send the sample given to him by the Food Inspector to the Director of Central Food Laboratory, Calcutta for a certificate from him u/s 13 of the Act. The learned Magistrate, after complying with the formalities, appointed an advocate by name Mr. Yadgiri Rao as a messenger to take the sample to the Director of Central Food Laboratory. The sample was received intact by the Director who after testing the same gave a certificate that the sample did not contain Argemone oil and it was not adulterated. It is on the basis of this certificate of the Director, Central Food Laboratory, Calcutta, that the present writ petition has been filed,

5. It is now contended on behalf of the detenu that the ground of detention is nonexistent.

6. In order to substantiate the contention, Mr. Gururaja Rao, the learned advocate for the detenu, has taken us through the material record. His contentions are that when the premises of the detenu were raided on 23-12-1973 by the Food Inspector, Municipal Corporation, Hyderabad and other officials, they found groundnut oil in tanks as well as in open tins. The Food Inspector after complying with the formalities as envisaged in the Prevention of Food Adulteration Act, 1954, took samples from the tanks and handed over to the detenu one bottle of the sample by marking "Sample No. 154/ 73". The Food Inspector also took sample from an open tin, and after going through similar formalities handed over another bottle to the petitioner. This sample was marked as "sample No. 153/73". Therefore according to Mr. Gururaja Rao. Sample No. 154/73 was the sample taken from the tanks, and Sample No. 153/73 was the sample taken from the open tins. The Food Inspector sent both the samples to the Public Analyst who, after testing, opined that Sample No. 153/73 (taken from the tins) was unadulterated but Sample No. 154/73 taken from the tanks contained Argemone Oil which is dangerous to public health and is, therefore, adulterated. The detenu and the other accused in C.C. No. 13/1974 on the file of the VII City Magistrate, Hyderabad, filed Cri. M. P. No. 132 of 1974 on 23-1-1971 with a prayer to send the sample to the Director of Central Food Laboratory for a certificate as provided in Section 13 of the Prevention of Food Adulteration Act. The learned Magistrate, after hearing the parties, and inspecting the sample, found that it was in order, and therefore by his order dated 29-1-74 appointed an advocate to act as a messenger to take the bottle to the concerned Director, It is the contention of the learned Advocate that this order was passed in the presence of the Food Inspector who had also inspected the sample and did not object either to its condition or to its sending to the Director. According to Mr. Gururaja Rao, the necessity for sending the sample through a messenger was to see that it did not get damaged on route and also to obtain the certificate expeditiously. He

further submitted that it was sample No. 154/73 which was actually sent, and no other: because the court, in view of the provisions of Section 13 of the Act would not have sent any other sample but sample No. 154 of 1973, nor sending any other, sample would have been of any advantage to the petitioners in the Magistrate Court since the concerned Director has found that the sample received by him was intact and had given a certificate that the sample of the oil did not contain argemone oil and, therefore unadulterated. The learned Advocate submits that according to Section 13 (3) of the Act, the report of the Public Analyst has been superseded by the certificate of the Director and this is conclusive evidence that sample No. 154/73 is pure and therefore the grounds of detention are non-existent and the detention is illegal.

7. Mr. P. Ramachandra Reddy, the learned Advocate General contends that the finality or conclusiveness of the certificate given by the Director of Central Food Laboratory, Calcutta. could only be upheld when it is found that the provisions of Rule 4 of the Rules framed under the Prevention of Food Adulteration Act, 1954, have been fully complied with, leaving no scope for suspicion. According to the learned Advocate General, in the instant case not only Rule 4 (3) had not been complied with, but also it is not known from the order dated 29-1-1974 of the VII City Magistrate. Hyderabad, or in Cr. M. P. No. 132/74, or in the certificate of the Director of the Central Food Laboratory that it was "sample No. 154/ 73" that was sent to the concerned Director for analysis. The learned Advocate General contends that under Rule 4 (3) of the Rules framed under the said Act it was incumbent on the Magistrate to send a copy of the memorandum and the specimen impression of the seal used to seal the container separately by registered post to the Director and non-compliance of the mandatory provisions of the rule would affect the finality and the conclusiveness of the certificate of the concerned Director. According to him, a perusal of the order of the VII City Magistrate and the warrant to the Advocate, messenger dated 30-1-1974 and the covering letter in Form No. 1 dated 30-1-1974 as well as the certificate of the Director of the Central Food Laboratory would show that they are completely silent as to whether it was Sample No. 154/73 or whether it was sample No. 153/73 or any other sample that was sent. Mr. Ramachandra Reddy submits that according to Rule 4 (3) the memorandum and the specimen seals should have been separately sent by registered post and not through a messenger and this has not been done in the instant case. That apart, the report of the Director is also silent about the test which he has adopted and further it is not known as to whether the sample contained only ground-nut oil or whether it was refined ground-nut oil. Therefore he submits that these are the infirmities for which the certificate of the concerned director cannot be considered as conclusive evidence. All these infirmities necessitate an inquiry which would be done by the criminal Court. It would thus be seen that the only point for consideration is whether the certificate of the Director, Central Food Laboratory, Calcutta is final and conclusive evidence is the circumstances of the case and therefore the ground on which the detenu is detained is non-existent. Before we proceed to go into the

merits of the case, in the light of the arguments advanced by the learned Advocateates, it would be appreciated to consider the position of law on the aforesaid aspects of the case.

8. A Food Inspector is a statutory authority under the Act. He is required to follow a particular procedure as detailed in Section 11 when he takes a sample of food for analysis. In the first instance, he is required to give a notice in writing then and there of his intention to have the sample analysed. This notice is given to the person from whom he takes a sample. He is then required to divide the sample into three parts and mark and seal or fasten each part and then deliver one of the parts to the person from whom the sample is taken, and send another part to the public analyst for analysis. He is also required to retain one part with himself to be produced in Court in case legal proceedings are initiated or for purposes of sending it to the Director. Central Food Laboratories u/s 13 (2) of the Act.

9. Public Analyst is also a statutory authority under the Act. u/s 13, Public Analyst is required to deliver a report in a prescribed form to the Food Inspector informing him of the result of the analysis carried out by him on the article of food sent to him by the Food Inspector u/s 11 (1) (c) (ii) or Section 11 (3).

10. Section 13 (2) provides that in case a prosecution is initiated against the accused-vendor, he or the Food Inspector as the complainant, may, on payment of the prescribed fee, make an application to the Court for sending the part of the sample mentioned in Section 11 (1) (c) (i) or (ii) of the Act to the Director of Central Food Laboratory for certificate. A duty is cast upon the Court before making an order to ascertain that the mark and seal or fastening as provided in Section 11(1) (b) are in tact. If it is satisfied, the Court may, then despatch the part of the sample under its own seal to the Director of the Central Food Laboratory who would thereupon send a certificate to the Court in the prescribed form within one month from the date of receipt of the sample specifying the result of the analysis.

11. u/s 13 (3) the certificate of the Director of the Central Food Laboratory supersedes the report of the Public Analyst given under Sub-section (1) of Section 13. u/s 13 (5), the report of the Public

Analyst holds the field until it is superseded by the certificate of the Director of the Central Food Laboratory which is final and conclusive evidence of the facts stated therein.

12. Keeping in view the contention of the learned Advocate General a peep into Rule 4 of the Rules framed under the Act would show that the sample of food for analysis u/s 13 (2) could be sent either through a messenger or by registered post in a sealed packet, enclosed together with a memorandum of Form I in an outer cover addressed to the director. The container as well as the outer covering of the packet should be marked with a distinguishing number. However, Rule 4 (3) provides that a copy of the memorandum and a specimen impression

of the seal used to seal the container and the cover should be sent separately by registered post to the Director.

13. On its receipt, the packet should be opened by the Director himself or by an officer authorised in writing in that behalf by the Director, who shall record the condition of the seal on the container. After analysis of the sample, a certificate thereof signed by the Director should be supplied to the sender in Form II.

14. This, to our mind, is the position of law relevant to the facts of this case. There is no dispute with regard to the taking of samples by the Food Inspector u/s 11 of the Act. The only dispute centres around the sending of the sample by the Court to the Director of Central Food Laboratory. The learned Advocate General strenuously contended that the Court is empowered to send the sample to the Director of Central Food Laboratory either through a messenger or registered post; but under Rule 4 (3) the court has no discretion but to send by registered post a copy of the memorandum and a specimen of impression of the seal used to seal the container and the cover. These provisions, according to the learned Advocate General, are mandatory and are provided to safeguard against any malpractices which could take place during the transit of the parcel to the Director of Central Food Laboratory. He submits that the Court had not adhered to Rule 4 (3) and had send the copy of the memorandum and the specimen impression of the seal through the messenger. The learned Advocate General endeavoured to reinforce his contention by drawing an analogy from the provisions of rule 18. He submits that when a copy of the memorandum and specimen impression of the seal are sent to a public Analyst, Rule 13 provides for two modes of transmission i.e. by registered post or personal delivery, and this alternative mod is lacking in Rule 4 (3). We regret we cannot accede to this contention. Rule 18, before its amendment, was similar to Rule 4 (3) in so far as sending of the copy of memorandum and a specimen impression of the seal by registered post only was concerned. Realising the unpracticability of the mode of transit by registered post only, Rule 18 was amended to include the alternative mode of delivery by person. That apart, the jurisdiction of the Public Analyst is confined to the boundaries of the State and the distance from the places where the sample is taken to the laboratory of the public analyst would not be so long as the distance to the office of the Director, Central Food Laboratory which, we are informed, is in Calcutta. Therefore, the necessity of sanding the copy of the memorandum and specimen impression of the seal by personal delivery was felt and the amendment carried out in Rule 18. We see no justifiable reason to hold that since the mode of personal delivery is absent in Rule 4 (3), the Court had no option but to send the copy of the memorandum and the specimen impression of the seal by registered post only. That apart, by any stretch of imagination, it cannot be postulated that the Legislature specifically limited in Rule 4 (3) the mode of transmission to the Director of Central Food Laboratory only by registered post to safeguard against any malpractices during transit, when the sample itself, which is the main thing, is being permitted to be sent through a messenger. From the use of the word "shall" in Rule 4 (3), it cannot be concluded

that the Rule is mandatory. The use of the words "shall" or "may" does not conclude the matter. The intention of the Legislature would have to be deduced from the objects of the Act and whether the intention would be defeated by interpreting the Rule as directory or mandatory. We are, therefore, of the opinion that Rule 4 (3) is not at all mandatory but only directory, If the Court has sent the memorandum and a specimen of the impression of the seal through the messenger, it would not affect the conclusive-ness and finality of the certificate of the Director provided the other provisions detailed above have been complied with.

15. The learned Advocate General had also brought Certain rulings to our notice in support of his contention stated above. These are Delhi Municipality v. Jai Dayal AIR 1964 Punj 520 : 1964) 2 Cri L J 723; State of Gujarat Vs. Shantaben, ; Belgaum Borough Muni-Cipality v. S. Shankar AIR 1968 Mys 196 : 1968 Ori L J 952 and Gela Hira Rabari Vs. S.V. Pandya and Another, . We are of the opinion that these rulings are not at all relevant to the facts of this case.

16. We would now proceed to see whether there was any flaw in the proceedings in the criminal Court culminating in the certificate of the Director of Central food Laboratory. In Cri. M. P. No. 132 of 1974 the petitioner moved the Court to send the sample taken by the Food Inspector from the shop of the petitioner therein to the Director of Central Food Laboratory for testing it with reference to the presence of Argemone oil in the said sample and submit his certificate as per the provisions of the Act and the Rules. The petitioner had categorically stated that the Food Inspector had left a sealed bottle of the sample with the accused who are challenging the report of the public analyst. On this petition) the Court heard the parties and passed the order on 29-1-1974. In the order; the court specifically pointed out:

The advocate for the accused produced the sample bottle given to him by Food Inspector as contemplated u/s 11 (I)

(c) (ii) P. F. A. Act. I found the mark and seal on the bottle as provided in Section 11

(1) (b) of the Act intact except that the two middle seals are broken to same extent.

17. The Court then appointed Sri Yadgiri Rao, Advocate as messenger to take the sample. The Court further POUND:

I also find the sample bottle produced wrapped in a sealed packet properly fastened. The container produced by the accused is wrapped in an outer covering and is duly sealed and packed by the Food Inspector in my presence.

The contentions of the learned Advocate General that the Food Inspector was not at all given notice of this petition and he had no opportunity to file the counter, are not tenable because the order itself shows that the Food Inspector was present and had duly sealed and packed the outer container. The further

contention that it is not known either from the petition or the order that it was sample No. 154/73 that was sent, is equally without substance because the Food Inspector would have definitely objected that the sample which was being sent was not 154/73 but 153/73 or some other sample. That apart, Section 13 (2) casts a duty on the Court to first ascertain that the mark and seal or fastening as provided in Clause (b) of Sub-section (1) of Section 11 of the Act are intact. Only when the Court is satisfied it would then send the sample to the Director of Central Food Laboratory. We are, therefore, convinced that it was sample No. 154/73 that was sent and not sample No. 153/73. That apart, the advocate for the detenu had produced sample No. 153/73 before us. and we had carefully inspected it and found that the sample produced before us was marked "Sample No. 153/73." The fact that the Director received the sample and "the seals on the container and outer cover were intact" is evidenced by a memorandum dated 2-2-1974 signed by the; Director. Moreover, in Form No. 1 sent by the Court to the Director on 30-1-1971, it i.e. specifically stated, "Copy of this memo and a specimen impression of the seal used to seal the container and cover is sent separately in a sealed cover." We also found this to be in order and according to Form No. 1 prescribed in the Rule. Finally, the certificate of the Director Central Food Laboratory dated 8-2-1974 is in accordance with Form No. II. He testifies that the sample was in a condition fit for analysis and has been tested analysed and it was opined that the sample of groundnut oil was not adulterated, since the test for Argemone oil was in the negative.

18. In such circumstances, we fail to see how this certificate of the Director of the central Food Laboratory should not be considered as final and conclusive evidence. We are, therefore, of the opinion that the report of the Public Analyst has been superseded by the certificate of the Director of General Food Laboratory and this certificate is final and conclusive evidence that the groundnut oil did not contain Argemone oil and was, therefore, unadulterated. Hence it could safely be concluded that the ground of detention is nonexistent and therefore, the detention of the detenu is illegal. We, therefore, allow this writ petition and quash the order of detention.

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