

(1986) 04 CAL CK 0037
In the Calcutta High Court
Case No : Criminal Rev. No. 517 of 1985

M/s. Asoka Traders

APPELLANT

Vs

P.K. Sur

RESPONDENT

Date of Decision : 23-04-1986

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 245(2)
Prevention of Food Adulteration Act, 1954 — Section 13(2), 13(5)

Citation : 91 CWN 311

Hon'ble Judges : Sudhangsu Sekhar Ganguly, J

Bench : Single Bench

Advocate : T.K. Banerjee and Amal Chatterjee, for the Appellant; Sekhar Bose for the Opposite Party and Samir Chatterjee for the State, for the Respondent

Judgement

Sudhangsu Sekhar Ganguly, J.—This rule is directed against an order dated 20th February, 1985 passed by Shri S. P. Mitra, learned Metropolitan Magistrate, 4th Court, Calcutta in case No. 93-D of 1981 rejecting the prayer of the accused persons for their discharge u/s 245(2) Cr.P.C.

2. It appears that in this case the sample of Mustard Oil was seized from the petitioner's shop on 20/2/79. The petitioner received a report of the Public Analyst on 9/3/79 yet the petition of complaint was filed on 22/7/81. In the circumstances stated it is urged from the side of the petitioner that the long delay in lodging the complaint has caused great prejudice to the petitioner. It is urged that this long delay must have decomposed the sample of Mustard Oil seized and that it has now become unfit for analysis by the Central Food Laboratory under the provisions of section 13(5) of the Prevention of Food Adulteration Act, 1954. In this connection the learned Advocate for the petitioner cites *Satrughna v. Municipality of Puri* 68, Cri.L.J. 128, *Municipal Corporation of Delhi Vs. Ghisa Ram*, and *Y.M. Koli, Food Inspector Vs. Dhavlu Ajaba Kokani and Another*, .

3. The first and the 3rd decision cited concerned samples of milk. It was

observed by the Hon''ble Court which delivered those judgment that the milk seized must have become decomposed due to the lapse of time and that as such the petitioner was deprived of his valuable right of having the samples examined by the Director of Central Food Laboratory. The 2nd decision which is a judgment of the Hon''ble Supreme Court was with regard to sample of curd seized by the authority. The sample seized in this case was of Mustard Oil and it is well known that Mustard Oil does not get spoiled so soon as milk, as it has been observed in State of U.P. Vs. Gauri Shanker, . It is not for this Court to opine as to whether due to passage of time the Mustard Oil seized in this case had really deteriorated to such an extent as to make it unfit for examination.

4. Besides, under the provisions of section 13(2) of the Prevention of Food Adulteration Act, 1954 the time limit for making an application for having the sample analysed by the Central Laboratory is 10 days from the date of receipt of the copy of the report of the Public Analyst, admittedly the petitioner received the report of the Public Analyst on 9/3/79. It is not his case that he filed any application within a period of 10 days from that day for having the sample examined by the Central Laboratory. In that view of the matter he now cannot be heard to say that he has been greatly prejudiced by the delay in filing this complaint as it has been held in Babulal Hargovind Das v. State of Gujarat, All India Prevention of Food Adulteration Journal, 1980 at Page 40, Raja Ram Vs. State of U.P., and Ajit Prasad Ramkishan Singh Vs. The State of Maharashtra, .

5. In the circumstances stated it must be concluded that there is no merit in the grievances made from the side of the petitioner in this regard for lodging a complaint a long time after the taking of the sample.

6. It is urged next is that the marginal difference in this case was very little, hardly 1% and that being the case the petitioner should not be allowed to face prosecution in this case. The difference in this case may have been very little but in the opinion of the Public Analyst the Oil was adulterated. It can not be said, therefore, that the circumstances in this case did not make out a case on the basis of which prosecution could lodge a complaint against the present petitioner. There is therefore no material in this ground also.

Considering all the circumstances I am of the view that the petitioner has failed to make out any ground for intervention by this Court and the present petition must therefore be rejected. The rule therefore is hereby discharged. Send the case records back to the learned lower court immediately.

Rule discharged.