
(1965) 04 P&H CK 0032

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 251-D of 1965

Municipal Corporation of Delhi

APPELLANT

Vs

Niranian Kumar and Others

RESPONDENT

Date of Decision : 01-04-1965

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 417

Citation : (1965) 04 P&H CK 0032

Hon'ble Judges : S. Kapur, J;Falshaw, J

Bench : Division Bench

Advocate : T.C.B.M. Lal, for the Appellant; Kishan Lal Sethi, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Kapur, J.—This is an application by Delhi Municipal Corporation u/s 417, Criminal Procedure Code, for grant of special leave to appeal from the order of acquittal dated the 24th December, 1963 passed by Shri R. C. Misra Magistrate 1st Class Delhi.

Briefly the facts of the case are that on 10th of August 1962 a sample of pure ghee was taken by the Food Inspector Shri Tandon from shop No. 47, Mir Dard Market, Minto Road, Delhi, The report of the Public Analyst was obtained and according to the said report the ghee was adulterated due to 10 8. deficiency in reichert value. The report of the Public Analyst showed the reichert value at 17.2. against a minimum of 28 required by rule 11.14 of the Prevention of Food Adulteration Rules 1955. On 10th June 1963 the accused applied to the Court that they wanted the third sample bottle lying with the Food Inspector to be sent to the Central Food Laboratory Calcutta, for analysis. It was accordingly sent to the Director Central Food Laboratory, Calcutta and his report dated 1st July 1963 obtained. According to the said report the reichert value was 30.1 per cent that is more than the minimum required under rule 21.14. The said report, however showed that vegetable colour was present in the sample and the same was, therefore adulterated. One more fact that need be printed out is that Kishan.

Chand respondent also took up the position that the ship where the sample was seized belonged to his son Naranjan Kumar and that he had nothing to do with the shop. The learned Magistrate basing his decision on a judgment of this Court in *Tara Singh v. The State* Cr. R. No. 280 of 1962 (Criminal Revision No. 250 of 1963 decided on the 25th of July 1932 acquitted the accused because there was a discrepancy between the reports of the Public Analyst and of the Central Food Laboratory. In that case the Public Analyst, Punjab, had in his report found that there was adulteration of 10 per cent water in the Milk. Whereas the report of the Director of Food Laboratory showed an adulteration to the extent of 25 per cent of water. In those circumstances Mehar Singh J. took the view that there could not be so much difference between the two reports unless either the Analyst had not done the job carefully or there had been some further change in the composition of the sample that was sent to the Analyst at Calcutta, in these circumstances the learned Judge gave the benefit of the doubt to the accused and acquitted him. It has been contended by the learned counsel for the petitioner that under sub-section (3) of section 13 the certificate issued by the Director of the Central Food Laboratory had the effect of superseding the report given by the Public Analyst u/s 13(1) and under proviso to sub-section (1) of section 13 the document purporting to be a certificate signed by the Director of the Central Food Laboratory was final and conclusive evidence of the facts stated therein.

2. In view of the above provisions contends the learned counsel the question of any discrepancy between the two reports had no significance as the report of the Central Food Laboratory alone was to be considered for determining whether the item in question was adulterated or not. Under sub-section (2) of section 13 a right has been given to both the accused and the complainant to make an application to the Court for sending the part of the sample mentioned in sub-clause (iii) of clause (c) of sub-section (1) of Section 11 to the Director of Central Food Laboratory for a certificate. On receipt of said application the court has to ascertain that the mark and seal of fastening as provided in clause (b) of subsection (1) of section 11 are intact and may then dispatch the part of the sample under its own seal to the Director of the Central Food Laboratory. This right was exercised by the accused in this case and the sample was accordingly sent to the Central Food Laboratory, who sent a certificate to the Court in the prescribed form. In the circumstances the certificate of the Public Analyst stood superseded and the certificate of the Central Food Laboratory became final and conclusive evidence of the facts stated therein. The matter had, therefore to be judged from the report of the Central Food Laboratory and the discrepancy in the two reports, as rightly pointed out by the learned counsel for the petitioner had no significance, the learned Magistrate was clearly in error, therefore in basing the acquittal on the discrepancy between the two reports. We would like to clarify that finality and conclusiveness has been attached only to the facts stated in the report of the Central Food Laboratory. It is not, however, conclusive as to any other matter and it may still have to be ascertained whether adulteration as disclosed in the report of the Central Food Laboratory was due to certain factors

for which an accused could not be held responsible. In short the finality and conclusiveness is only to the extent that the sample as sent to the Central Food Laboratory contained what the report disclosed. But so far as the present case is concerned the learned Magistrate proceeded entirely on the wrong premises in comparing the two reports. This was clearly in violation of section 13 (3) and proviso to sub-section (5) of section 13 that, however is not the end of the matter. In this case the complaint against the accused was that the product was adulterated due to 10-8 deficiency in reichert value. As we have pointed out earlier no such deficiency has been disclosed in the report of the Central Food Laboratory.

3. Faced with this situation the learned counsel for the petitioner contended that according to the report of the Central Food Laboratory the sample was adulterated because of the presence of colouring matter. But that was not the complaint against the accused. Secondly there was no satisfactory evidence showing that Kishan Chand had any connection with the shop. In the circumstances the acquittal of the accused was correct and consequently the application for leave to file an appeal cannot be granted. With these observations we dismiss the application.

Falshaw, C.J.

4. I agree.