
(2000) 11 AHC CK 0017
In the Allahabad High Court
Case No : Criminal Appeal No. 3392 of 1978

Nagar Swasthya Adhikari	Vs	APPELLANT
Raghuraj Singh		RESPONDENT

Date of Decision : 29-11-2000

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 10(7), 13(2), 14A, 16(1), 20

Citation : (2001) CriLJ 2075

Hon'ble Judges : Virendra Saran, J

Bench : Single Bench

Advocate : A.G.A. and P.N. Mehrotra, for the Appellant; B.N. Upadhaya, for the Respondent

Final Decision : Dismissed

Judgement

Virendra Saran, J.—Respondent Raghuraj Singh was prosecuted for the offences punishable under Section 7(1)/16(1)(a)(I) of the Prevention of Food Adulteration Act, 1954, (hereinafter referred to as the Act). The learned Special Judicial Magistrate, Allahabad by his order dated 24-10-1977 acquitted the respondent. Feeling aggrieved by the acquittal this appeal against acquittal has been filed in this Court.

2. The appeal was taken up today in the revised list but none appeared on behalf of appellant Nagar Swasthya Adhikari Allahabad. This is an appeal of 1978 and hence it was not considered proper to adjourn the appeal. I have gone through the entire evidence on the record as well as the judgment of the trial Court with the help of learned State counsel who has argued the case at length.

3. The prosecution case against the respondent is that on 19-12-1974 Sri K.C. Mishra, Food Inspector collected a sample of buffalo milk from the respondent from near a place known as Lipton Company, Naini. The sample was divided into three parts and one part was sent to the public analyst who received the same on 27-12-1974. According to the report of the public analyst dated 7-12-1975,

the milk contained 5% milk fat and 5.5.% of milk solids other than fat. The non-fatty solids being below the prescribed standard the applicant was prosecuted.

4. The defence of the respondent was that he was not selling milk, and on the other hand, there was a feast at the place of his relative Fateh Bahadur Singh and the respondent after procuring milk from Rani Sajiwan DW 1 was going to the place of Fateh Bahadur Singh when the sample was taken from him. The further plea of the respondent was that copy of the report of public analyst was not sent to him as required to Rule 9J framed under the Act and hence he was deprived of his valuable right u/s 13(2) of the Act to get the sample analysed by the Central Food Laboratory.

5. The learned trial Magistrate has recorded acquittal of the respondent on two grounds. First that there was non-compliance of mandatory provisions of Section 13(2) of the Act as well as the Rule 9J, which has resulted in prejudice to the respondent and further that there was undue delay in launching prosecution against the respondent which in turn prejudiced the case of the respondent because by long lapse of time the contents of milk were bound to be affected and thereby the milk could not be analysed again by the Central Food Laboratory. The second ground on which the learned Magistrate acquitted the respondent was that Nagar Swasthya Adhikari did not apply his mind while granting sanction of prosecution u/s 20 of the Act and everything was not well with the complainant too. However, the learned Magistrate did not accept the defence case that the respondent was carrying milk to the place of Fateh Bahadur Singh and the milk was not for sale.

6. I have carefully gone through the evidence produced by the prosecution as well as the defence. I am of the view that the learned trial Magistrate was not right in brushing aside the defence evidence of the respondent DW 1 Ram Sajiwan stated that the respondent did not carry on the profession of selling milk but was engaged in his own cultivation. He further stated that the respondent approached him for procuring cow milk and he did supply the milk to the respondent. The prosecution could not elicit anything material in the cross-examination of the witnesses and did not even suggest to the witnesses that what he was telling was false or incorrect. There is four line cross-examination of DW 1 which is not even worth the paper on which it is written. Similarly, DW 2 Fateh Bahadur Singh has supported the defence case by stating that he had requested the respondent to bring milk for personal use. The only thing elicited in cross-examination of this witness was that he happened to be a cousin of the respondent. Even to DW 2 the prosecution did not suggest that he was deposing falsely. The judgment of the learned Magistrate is not clear on what grounds he brushed aside the evidence of DW 2 Fateh Bahadur Singh. The only reason which prevailed upon the learned trial Magistrate was that DW 2 was a relation of the respondent and that the accused did not make complaint to the higher authorities against the wrong action of the Food Inspector in taking sample from him even though the same was not for sale. The reasons given by the learned

trial Magistrate are not at all tenable. The defence case itself is that the respondent was carrying milk to help the relation where there was a feast. To reject the defence evidence on the ground that he is relation on the face of it is unreasonable. After all when there is a function or feast people in countryside and in small towns do take help of their relatives to bring foodstuffs and the like. Unlike big towns there is still warmth in the hearts of people living in small towns and villages and it would indeed be a sad day when people will not offer help to each other. It is every body's experience that on occasions such as marriages and other ceremonies relations do extend their helping hand and that is how the lives of those who are not so well off goes on. The second reason given by the learned trial Magistrate to reject the defence evidence is that the respondent did not make complaint to the higher authorities is also unrealistic. It is common knowledge that usually, no action is taken on such complaints and the respondent might have chosen to make his grievance in Court in case he was prosecuted. The trial Court also did not question the respondent whether he made any complaint to any higher authority. There being no infirmity in the defence evidence. I am of the view that the defence evidence adduced by the respondent is worthy of credence. On the other hand, the prosecution case rests on the ipse dixit of the Food Inspector. In cross-examination the Food Inspector stated that he cannot show anything to satisfy the Court that the place from where he collected the sample was within his jurisdiction. He added that no member of the public was ready to be a witness. This explanation of the Food Inspector is an afterthought because in the memo there is no mention that the Food Inspector called any member of the public to be a witness of taking the sample. Even in form 6 prepared on the spot there is not even a whisper of the presence of any witness. That being so, the prosecution case suffers from another flaw as there has been non-compliance of mandatory provisions of Section 10(7) of the Act. I am not inclined to believe the belated explanation given for the first time at the trial that no member of the public was ready to be a witness in this case. The provisions of Section 10(7) of the Act have been held to be mandatory. [Shri Ram Labhaya Vs. Municipal Corporation of Delhi and Another,

7. The learned trial Magistrate has also rightly held that the respondent was deprived of his valuable right u/s 13(2) of the Act. In this case there has been enormous delay in launching the prosecution. As mentioned earlier, the sample was collected from the respondent on 19-12-1974 and the report of the public analyst is dated 7-2-1975. The Nagar Swasthya Adhikari sanctioned the prosecution on 19-4-1975. It is unfortunate that they complaint was filed as late as 17-12-1975 after one year of the taking of the sample from the respondent. In such long lapse of time the quality of the milk was bound to deteriorate. In a large number of cases this Court has taken the view that long delay in launching the prosecution, causes prejudice to the accused because by lapse of time there is qualitative change in Articles of food. Even though the article may not be totally decomposed but further analysis would not be of any worth. I agree with

the learned counsel that the respondent has been greatly prejudiced because of unexplained delay of about one year in launching the prosecution.

8. Yet another plank of the defence of the respondent was that he did not receive any copy of the report of public analyst after launching of the prosecution and hence he was deprived of his valuable right to get the sample analysed by the Central Food Laboratory. Section 13(2) of the Act states :

Section 13(2) :

On receipt of the report of the result of the analysis under sub-section (1) to the effect that the article of food is adulterated the Local (Health) Authority shall after the institution of prosecution against persons from whom the sample of the article of food was taken and the persons, if any, whose name, address and other particulars have been disclosed u/s 14A, forward in such manner as may be prescribed a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both of them may make an application to the Court within a period of ten days from the date of receipt of the copy of the report to get the sample of the Article of kept by the Local (Health) Authority analysed by the Central Food Laboratory.

(Emphasis supplied)

9. The provisions of Section 13(2) of the Act are mandatory and after institution of the prosecution a copy of the report of public analyst along with required information has to be sent to the accused so that he can exercise his right to send the sample to the Central Food Laboratory for analysis. The law is very clear that it is after institution of the prosecution that the report of the Public Analyst along with the required information has to be sent to the accused. In the instant case, the complaint was filed in Court on 17-12-1975. According to the evidence of PW 2 S.C. Srivastava the report of the Public Analyst was sent to the respondent on 26-6-1975, i.e. about six months prior to the institution of the prosecution of the respondent. PW 2 S.C. Srivastava does not say even a word that along with the report of the Public Analyst, he sent the required information to the respondent that the respondent may exercise the option to get the sample analysed by the Central Food Laboratory. Considering the totality of the scheme of the Act and Section 13(2) in particular, the legal requirement is that the accused should be informed of his right to get the sample analysed by the Central Food Laboratory and the absence of the required information would be fatal to the prosecution. Another shortcoming may also be taken note of. As has been observed above, the report of the Public Analyst was sent to the respondent about six months prior to the institution of the prosecution against him. The mandate of law is that the report should be sent after the institution of the prosecution in Court and not to it for the obvious reason that the accused has only ten days time under the law to make an application u/s 13(2) of the Act in Court. Since the report was sent prior to the institution of the prosecution, the

respondent was not in a position to make an application within the period of ten days from the date of the receipt of the copy of report of the Public Analyst as no proceedings were pending in Court. Accordingly, I am of the opinion that the mandatory provisions of Section 13(2) of the Act have been cast to winds (sic) in the instant case and the acquittal of the respondent cannot be interfered with.

10. Adverting to another point which has prevailed upon the learned Magistrate to acquit the respondent, I may refer to the observations of the learned Magistrate which are as follows :

Besides the above facts it is noticed that in ordering the prosecution of the accused the N.S.A. has not it seems (sic) applied his mind in doing so u/s 20 of the Act. The provision about the punishment for the offence alleged to have been committed by the applicant are drastic inasmuch as the law provides a minimum rigorous imprisonment for six months together with a minimum of fine in a sum of Rs. 1000/-. In regard to an offence considered so serious by the legislature the authorities on whom the duty to accord sanction is cast are expected to pay more attention than appears to have been paid by the officer concerned to the present case. Prosecution sanction has been awarded in this case by the N.S.A. on 19-12-1975 Ex. Ka-4 on the P.A.'s report itself Ex. Ka-3. The word "abhikyo chalo" has been written by the Food Clerk below which he has written N.S.A. in Hindi too and then put his initials and the date all his hand writing N.S.A. has merely appended his signature and has not even put date under the signatures in his own hand. This particular order bears another signature purported to be those of the successor of the N.S.A. who had already signed and ordered prosecution. The wisdom of appending another signature or so to say getting order of another N.S.A. is not understood nor has been explained by any evidence on record. It is very clear that both the officers have merely rubber stamped their respective signatures without applying their minds to the facts and circumstances of the case and without looking into the documents of the case which may have been placed below him. The position in the complaint sheet is exactly similar and it cannot be said which of the two signatures is the real authority at the time of signing. It is amusing that even on the application purporting to be the application for exemption of the complainant from attendance of the Court during the proceedings of the case bears signature of two authorities. From these facts, no other conclusion can be drawn except that the authority empowered to grant prosecution and launch complaint merely put his signature without applying its mind to the facts and circumstances of the case. This cannot be deemed to be a proper prosecution order in the eye of law and knocks out the very bottom of the prosecution case and hits it fatally. No conviction of the accused can be ordered on such an authority.

11. The above reasons of the learned trial Magistrate are sound and cogent.

12. Accordingly, this appeal fails and is dismissed.