
(1978) 03 BOM CK 0048

In the Bombay High Court

Case No : Criminal Revision Application No. 586 of 1977

Narayan Rajaram Wani

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 23-03-1978

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 243
Penal Code, 1860 (IPC) — Section 272, 273, 274, 275, 276
Prevention of Food Adulteration Act, 1954 — Section 13, 16, 7

Citation : (1978) 80 BOMLR 356 : (1978) MhLj 679

Hon'ble Judges : Naik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Naik, J.—This revision application raises an interesting point of law under the Prevention of Food Adulteration Act, 1954. It arises under the following circumstances : The first two revision petitioners-original accused Nos. 1 and 2 are partners of a firm called "M/s. Avinash Narayan and Co." revision petitioner No. 3-original accused No. 3, carrying on business in grocery at Dhule. The food inspector of Dhule Municipal council went to the said shop on November 29, 1975 and he purchased 600 gms. of eliachi for analysis. The sample was sent to the public analyst, Poona. The public analyst as appears from his report was of opinion that the sample contained volatile oil v/w less than 1.0 per cent, and that it did not conform to the standards of Badi eliachi seeds as per the Rules under the Act and, it was, therefore, adulterated. It is on these facts that the accused were prosecuted for an offence u/s 7(i) read with Section 16 of the Prevention of Food Adulteration Act, 1954.

2. The food inspector was examined before charge and among other documents he also produced the report of the public analyst which was exhibited. The charge being framed the accused pleaded not guilty to the charge and the case was posted for cross-examination of the food inspector after charge. In the

course of such cross-examination after charge, the food inspector was questioned on behalf of the accused as to whether he knew that eliachi dana is produced in cold weather and as to whether he knew from which States, Maharashtra State imports eliachi dana and whether he knew the effect of hot weather on oily substance of eliachi dana and as to whether he knew the difference between organic extraneous matter. To all these questions the food inspector's stock reply was that he did not know. That is precisely why the learned advocate for the accused filed an application on October 15, 1977 requesting the Court that the public analyst, Poona be summoned and be offered to the defence for cross-examination. It was further stated in the application that the defence did not admit the report of the public analyst and hence he should be summoned for being subjected to cross-examination by the defence. That application was strongly objected to by the prosecution. The learned Public Prosecutor submitted that after the report of the public analyst was already exhibited and the same was admissible u/s 13 of the Act and therefore, he pointed out that the prosecution did not want to examine the public analyst. It was further pointed out that the examination of the prosecution witnesses is always in the discretion of the prosecution and the accused could not compel the prosecution to examine the prosecution witnesses. In particular, it was contended that the application of the accused is not tenable under any law or under the provisions of the Code of Criminal Procedure. The Public Prosecutor concluded his objections by pointing out that if the accused wanted to examine the public analyst he may examine him as a defence witness at his own costs.

3. The learned Magistrate rejected the application of the accused by observing as under:

Under Section 13(5) of the P.F.A. Act, any document purporting to be a report signed by a Public Analyst, may be used as evidence of the facts stated therein. The report of Public Analyst is already exhibited, subject to objection of the defence. When the facts of the report can be used in evidence, the application is rejected.

4. The legality and propriety of the said order is challenged by the accused by filing this revision application.

5. Mr, Kotwal, learned advocate for the accused has assailed the order of the learned Magistrate and has pointed out that in the circumstances of this case, particularly having regard to the evidence of the food inspector which shows that the food inspector could not enlighten the Court on various technical points which were put to him, the Court ought to have exercised its discretion in favour of the accused by granting the application of the accused. He relied on the decision of the Supreme Court reported in Ram Dayal Vs. Municipal Corporation of Delhi and Another, , in support of his submission. Mr. Hudlikar, learned Public Prosecutor expressed his inability to support the reasoning of the learned Magistrate inasmuch as it is too cryptic.

In my opinion, the point raised, in this revision application is fully covered by the decision of the Supreme Court, in Ram Dayal's case. Section 13(5) of the Act provides that

Any document purporting to be a report signed by a public analyst, unless it has been superseded under Sub-section (3), or any document purporting to be a certificate signed by the Director of the Central Food Laboratory, may be used as evidence of the facts stated therein in any proceeding under this Act or under Sections 272 to 276 of the Indian Penal Code;

6. There is also a proviso to that sub-section which provides that.

Provided that any document purporting to be a certificate signed by the Director of the Central Food Laboratory shall be final and conclusive evidence of the facts stated therein.

7. It would therefore appear that whereas the certificate issued by the public analyst may be used as evidence of the facts stated therein, it is not conclusive of the evidence of the facts stated therein as is the case in respect of the certificate issued by the Director of the Central Food Laboratory. Reading Section 13 of the Act, one may get the impression that if the accused is interested in disputing the findings of the public analyst his only remedy is to move the Court for securing the certificate of the Director of the Central Food Laboratory. But then Section 13 is not a complete code in itself. We cannot ignore the fact that under Sub-section (2) of Section 243 of the Criminal Procedure Code, 1973, if the accused after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing.

8. There is also a proviso to that sub-section which provides that, when the accused has cross-examined or had the opportunity of cross-examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that is necessary for the ends of justice.

9. That proviso does not apply to the facts of our case. Therefore under Sub-section (2) of Section 243, the Magistrate has every power to issue a process to a witness at the instance of the accused for cross-examination by the accused and the only ground on which such request of the accused could be turned down is that the request is made for the purpose of vexation or delay or for defeating the ends of justice. It is nobody's case that in the instant case the accused had made the application either for the purpose of vexation or delay or for defeating the ends of justice. We might mention here that identical provision could be found in Section 257 of the Code of Criminal Procedure, 1898. In Ram Dayal's

case the Supreme Court after examining the provisions of Section 13 of the Prevention of Food Adulteration Act, has observed that nothing contained in those sub-sections relating to certificate of the Director of the Central Food Laboratory in any way limits the right of the accused u/s 257 of the Code of Criminal Procedure to require the public analyst to be produced. The Supreme Court further observed that the Court may reject the prayer for good and sufficient reasons such as for instance where it is made for the purpose of vexation or delay or for defeating the ends of justice. Having regard to this authoritative pronouncement of the law by the Supreme Court and the fact that the provisions of Section 257 of the Code of Criminal Procedure, 1898 are identical with the provisions of Sub-section (2) of Section 243 of the Code of Criminal Procedure, 1973, it would appear that in a given case the Court has every discretion to grant such an application.

10. In the instant case as I have pointed out having regard to the fact that the food inspector was unable to enlighten the Court on certain material points the defence was perfectly justified in making a request to the Court to better summon the public analyst, Poona, to submit himself to cross-examination. Evidently it was assumed by the learned Public Prosecutor and the Court below that such a request cannot be granted either under the provisions of the Prevention of Food Adulteration Act or under the Code of Criminal Procedure. As I have pointed out, Sub-section (2) of Section 243 of the Code of Criminal Procedure, 1973, is the requisite provision which could be invoked by the accused in this case. As there is no reason to refuse that request, it would follow that the order of the learned Magistrate must be quashed and the application should be granted. I order accordingly. Rule is made absolute.