

(1986) 03 MP CK 0044

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 27 of 1986

Narendra Kumar

APPELLANT

Vs

Municipal Corporation Indore

RESPONDENT

Date of Decision : 25-03-1986

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 13(2)

Citation : (1986) JLJ 745

Hon'ble Judges : K.L. Shrivastava, J

Bench : Single Bench

Advocate : S.L. Garg with R.S. Garg, for the Appellant; S.J. Dhanji, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Shrivastava, J.—This revision petition is directed against the order dated 6-1-1986 passed by the I Addl. Chief Judicial Magistrate Indore in Cri, Case No. 834 of 1985 whereby he has ordered that the third sample be sent to the Director Central Food Laboratory for certificate treating the sample as one of item No. A-18-11 of Appendix B of the Prevention of Food Adulteration Rules 1955 (for short "the Rules").

2. The circumstances giving rise to this revision petition are these : The applicant manufactures and sells what he terms as "Gold Finger". It is prepared with Maida, salt, Papadkhar and colour. It is to be consumed after being tried. A Sample of the article was purchased from him by the Food Inspector. On analysis, the Public Analyst found that the sample was adulterated. The applicant was accordingly prosecuted.

3. As provided u/s 13 (2) of the Prevention of Food Adulteration Act 1954 (for short "the Act") the applicant applied for getting the sample examined by the Director Central Food Laboratory who has issued the certificate dated 18-10-85 that the sample was not adulterated. The report is silent as to whether or not it

was analysed as "Macaroni Products".

4. It was on 7-11-1985 that the non-applicant Corporation filed an application stating that the Central Food Laboratory analysed the sample as "prepared food", whereas it should have been analysed as "Macaroni Products" and, therefore, the third sample be sent to the Director, Central Food Laboratory for fresh analysis. The application was opposed by the petitioner on the ground that the sample was not of "Macaroni Products" but of "prepared food" and, therefore test of "Macaroni Products" cannot be applied.

5. The learned trial Magistrate, without deciding the controversy as to whether the sample was of "prepared food" or of "Macaroni Products" has allowed the application.

6. Learned counsel for the petitioner urges that under law the certificate of the Director is final and that there is no provision for third sample being sent for analysis and fresh certificate from the Director Central Food Laboratory, and it was wrong on the part of the learned trial Magistrate to direct that it be analysed with reference to the standard act for "Macaroni Products" which it is certainly not. In support of the submission reliance was placed on several decisions including those in *Chetumol v. State of M, P*, AIR 1981 SC 387, *Ram Prakash v. State of Himanchal Pradesh* 1978 FAJ 465 *Majod Mal v. State of Rajasthan* 1980 FAJ 761 and *Lekhraj v. State* 1980 FAJ 281.

7. Learned counsel for the non-applicant contends that provisions of the Act have to be construed to achieve the purpose for which it has been brought on the statute book. According to the learned counsel, finality attaches to the certificate by the Director Central Food Laboratory only when it is such that it can be acted upon without further clarification and the Supreme Court decision in *Chetumal*" s case (supra) involved the question of prejudice to the accused and is not an authority for the proposition that the third sample can, in no circumstances, be sent for- fresh analysis and that such a prohibition cannot, be read in the provisions. In support of his contention he has placed reliance on the decision in the *State of Kerala v. Mommum Musaliar etc.* 1975 FAJ 13. In that decision it has been pointed out that if there is room for any doubt in the mind of the Court about the correctness of the report delivered by the Analyst or the certificate issued by the Director, the Analyst or the Director, as the case may be, could be summoned and examined to elicit clarification. Where the reliability of result declared in Analyst's report or the Director's certificate is in doubt, the Court has a right and duty to do this and the short cut of acquittal of the accused rejecting the analyst's report for want of what is purported to be the necessary particulars, without, resorting to such course certainly is not the safe route to be pursued by it.

8. The point for consideration is whether the impugned order deserves to be set aside.

9. From a combined reading of the provisions embodied in section 13 (2-B) of

the Act and the proviso to section 13 (5) of the Act it is clear that the certificate signed by the Director of the Central Food Laboratory sent to the Court in prescribed form specifying the result of the analysis is final and constitutes conclusive evidence of the facts stated (as distinguished from the opinion) therein. In the decision in Mohanlal's case AIR 1962 Raj. 44 it has been pointed out that there are two limitations to the finality or conclusiveness of the Doctor's certificate;

(i) that it is governed by the standards laid down by the Rules, and

(ii) that it is merely final and conclusive as regards the test or analysis.

It is ultimately for the Court to decide whether the article of food is adulterated or not. u/s 13 (2-C) after receipt of the certificate, the remaining part of the sample has to be destroyed. The proviso to section 13 (2 C) however lays down that where the part of the sample sent by the Court to the Director is lost or damaged"" the third sample may be sent to the Director for certificate being sent by him. The proviso clearly points out that in certain contingencies remaining sample can again be sent to the Director.

10. In the decision in Chetumal's case (supra) in the certificate of the Director it was stated that the article of food was adulterated but his report also disclosed that there was tampering of seals. in the aforesaid circumstances, there the supreme Court held that the certificate superseded the report of the Public Analyst and the certificate itself could not be used due to tampering of seals and, therefore, was no evidence left with the Court on which conviction could be sustained. It was held that the appellant was deprived of the opportunity to which he was entitled for no fault of his. The decision cannot therefore be relied upon as an authority for the proposition that the remaining or the third sample cannot be sent to the Director.

11. In the full Bench decision in Food Inspector Mandsaur v. Devilal 1985 J LJ 195 (FB) the decision in Dalchand Vs. Municipal Corporation, Bhopal and Another, has been referred to and it has been held that section 13 (2) of the Act and rule 9-A of the Rules are directory. In the aforesaid Supreme Court decision it has been observed as under:-

"The negligence of these to whom public duties are entrusted cannot by statutory interpretation be allowed to promote public mischief and cause public inconvenience and defeat the main object of the statute".

Pointing out that every prescription of period for an act is not the prescript of a period of limitation, it has been held that where, however, in addition to non-compliance with the provision, the accused proves prejudice to him he must succeed. The decision in M. Narayanan Nambiar Vs. State of Kerala, which is on Prevention of corruption Act 1947, may also be usefully perused.

12. In the decision in State of Maharashtra Vs. Mohd. Yakub and Others, , which relates to Customs Act 1962 and other allied Acts, the question was as to the

import of the word "attempt", the Supreme Court delivered itself thus :

"It is important to bear in mind that the penal provisions with which we are concerned have been enacted to suppress the civil of smuggling precious metal out of India Smuggling is an anti social activity which adversely affects the public revenue the earning of foreign exchange, the financial stability and the economy of the country. A narrow interpretation of the word "attempt" therefore, in these penal provisions which will impair their efficiency as instruments for combating this baneful activity has to be eschewed. These provisions should be construed in a manner which would suppress the mischief promote their object, prevent their subtle evection and foil the grateful circumvention".

13. It is true that in Ram Prakash's case (supra) the certificate of the Director was that the sample was decomposed. It was held that it was final and the Magistrate's order for fresh analysis of the third sample was quashed. In the decision in Rajod Mal's case 1980 II FAC 76 the Director was unable to compare the seals for want of specimen impression and it was held that the third sample could not be sent for a second certificate. With respect, i find myself unable to subscribe to the view taken in these decisions for the reasons given below. It may also be pointed out that a view contrary to the one in Ram Prakash's case (supra) has been taken in Rajender Chopra's case, 1935 I FAC 43. In the light of the observations of the Supreme Court in the decision in Dalchand's case and Mohommed Yakub's case (supra) and in the context of section 13 (2 C) of the Act, I am of the view that any interpretation of the provisions as implicitly prohibiting the sending of the remaining sample to the Director even where it is found that the certificate already sent is not clear on the controversy or does not help the Court in determining the controversy as viewed by it, must not be permitted to prevail.

14. The decision in Rajender Chopra's case (supra) points out that loss or damage may be due to nature, it may be even due to decomposition of the sample or it may be even due to human error, the Director may fail to examine the sample for all its contents or as required by law and the sample might get damaged. It must be remembered that the Court exist for dispensation of justice to the contending parties and while dispensing justice it must be left in no manner of doubt as to the guilt or otherwise of the petitioner. Technicalities of law must not be permitted to prevail over justice. The legislative intent could never be to put fetters on the power of the Court to take steps to ensure justice. Legislature could not envitage the variety of circumstances in which fresh certificate from the Director might be required. The proviso may even be taken as only illustrative of the cases in which the power to get the remaining or the third sample analysed may be exercised. In the aforesaid decision, the Director had failed to examine the sample of ice candy for sugar content and had issued certificate stating that it Was not adulterated. In the decision in Narauti v. State 1978 FAJ 485 it has been held that the report of the Public Analyst can be superseded only on receipt of legally provable report of the Director. To my mind,

the certificate to which the law attaches finality is one which serve the purpose of the Court for determining the controversy before it.

15. In the decision in *Lakhraj v. State of Punjab* 1980 I FAC 166 it was held that what was sold was "fruit cream" and the standard prescribed for "ice cream" could not be applied. No conviction, it was observed, was possible both on principle or precedent. In the instant case, the question whether or not the standard prescribed for "Macaroni Products" can be applied to the article of food in question has expressly been left open by the learned trial Magistrate and even after the receipt of the second certificate by the Director, the petitioner is free to make his submission on the question and there is no question of any prejudice to him. As pointed out in *Rajendrd's case* (supra) the petition can have no reason to offer any resistance and it is in exercise of his statutory right that the Court required to get the remaining sample examined. There is no question of any prejudice to the petitioner.

16. It may be pointed out that in the decision in *Bhim Sen Vs. The State of Punjab*, the appellant was the manufacturer of aerated water which he sold under the name "Fresh Cola". It was held that according to the standard of quality prescribed for aerated water, it may or may not contain sugar and, therefore, even when it contained some percent of sucrose, it could not be held to be adulterated by treating it as "sweetened aerated water" which required prescribed percent of sucrose.

17. In the ultimate analysis, I find that the impugned order does not merit interference in exercise of the discretionary revisional jurisdiction.

18. For the foregoing reasons, the revision petition fails and is dismissed.