

(1993) 08 GAU CK 0043

In the Gauhati High Court

Case No : Criminal Revision No. 432 of 1986

Om Prakash Sharma

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 13-08-1993

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 13, 16(1), 7

Citation : (1993) 2 GLR 298

Hon'ble Judges : W.A. Shishak, J;S.N. Phukan, J

Bench : Division Bench

Advocate : S.S. Sarma, D.K. Bhatra and B.K. Jain, for the Appellant; B.B. Nazary, Addl. Sr. Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

S.N. Phukan, J.—This revision petition is directed against the judgment and order passed by the learned Sessions Judge, Kamrup, at Guwahati in Case No. C.A. 13 (K-3)/84. By the said judgment, the learned lower appellate court found accused Sita Ram Sharma not guilty and accordingly he was acquitted. It may be stated that accused Sitaram according to prosecution was the owner of M/s. Kailash Mistanna Bhandar, Silpukhuri, Guwahati and accused Om Prakash Sharma was the Manager. The learned lower appellate court maintained the conviction of accused Om Prakash Sharma, Manager. He was convicted by the learned Chief Judicial Magistrate, Kamrup in Case No. 2008 of 1978 u/s 16(1)(a)(i) read with Section 7 of the Prevention of Food Adulteration Act and sentenced him to undergo R.I. for 6 month and a fine of Rs. 1,000/-.

2. On 24.8.77, the Food Inspector purchased for analysis sample of cow's milk from accused Om Prakash Sharma, Manager of the above Kailash Mistanna Bhandar which according to prosecution was kept for selling. The samples after taken was sent to Public Analyst and it was found adulterated. Thereafter, the accused exercised the option u/s 13 of the Act and at his request it was sent to the Director of Central Food Laboratory. The Director also found the sample sub-

standard and a complaint petition was filed after obtaining appropriate necessary sanction. Exhibit-2 is the report of the Public Analyst and exhibit-16 is the report of the Director of Central Food Laboratory.

3. Heard Mr. S.S. Sarma, learned Counsel for the accused-Petitioner and Mr. Narzary, learned Public Prosecutor.

4. Following dates are important and the said dates are the sample was lifted from the shop on 24.8.77. It was received by the Public Analyst on 25.8.77 who examined it on 5.10.77 and the complaint petition was filed on 3.10.78. The accused persons appeared before the court on 16.10.78 and on the same date application was filed for sending a part of the sample to the Director of Central Food Laboratory. The order was passed allowing the prayer on the same day, but the sample was produced before the court only on 30.10.78 though according to legal provision, it has to be produced within 5 days. The sample was sent to the Director, Central Food Laboratory on 7.11.78 which was received by him on 7.11.78 and analysed on 22.11.78.

5. From the said two reports, we find that according to Public Analyst milk fat was deficient by 95% and milk solid not fat was deficient by 27%. The Public Analyst also found added water 3.2% The Director of Central Food Laboratory did not find any water as it has not been indicated in the report. He found milk fat deficient by 7% and milk solid not fat deficient by 7%.

6. The first point urged by Mr. Sarma is that the complaint petition was filed by the Food Inspector after one year of receiving the report from the Public Analyst and the delay has caused prejudice inasmuch as during passing of time, the fat contents of the milk is bound to deteriorate. On the other hand Mr. Narzary has urged that there is no time limit fixed for filing a complaint petition and accordingly this delay is not fatal for the prosecution. In support learned Public Prosecutor has placed reliance in a decision of the Rajasthan High Court in *Kansingh Parohit v. State of Rajasthan* 1978 FAJ 302.

7. It is true that delay in filing a complaint petition may not be fatal for the prosecution, but we may state here that under the new Code of Criminal Procedure, a new provision has been incorporated regarding time limit for filing of charge-sheet of petty offences. In other words, there is step forward for applying law of limitation in criminal proceeding. It is also expected that the public servant should act promptly and more particularly in case of such nature. We only record our dissatisfaction for the delay in filing the complaint petition. We hope and trust that the officers of the department would be vigilant in future if they are sincere in bringing culprits to book.

8. From the above dates, it is clear that the Director of Central Food Laboratory analysed the sample after 15 months. In this connection, Mr. Sarma has placed reliance in a decision of the Apex Court in *Municipal Corporation of Delhi v. Ghisa Ram* 1975(1) FAC 186. The learned Counsel has placed reliance in two other decisions, namely, *Municipal Corporation of Delhi v. Om Prakash* 1975(1) FAC

104, which is a decision of the Delhi High Court and the decision of the Andhra Pradesh High Court in M.A. Axees v. State 1992 F.A.J. 205.

9. On the other hand Mr. Narzary has placed reliance in a decision of the Allahabad High Court in Babboo Vs. State,

10. In Municipal Corporation, Delhi v. Ghisa Ram (supra), in paragraph 6 of the judgment, the Apex Court after considering the evidence of the expert Dr. Sat Prakash observed that in the case of a food article like curd, it starts undergoing changes after a week if kept at room temperature, without a preservative, but remains fit for analysis for another 10 days thereafter and on the other hand, if the sample is kept in a refrigerator, it will preserve its fat and non-fatty solid contents for purposes of analysis for a total period of four weeks. The Apex Court also noted that if a preservative is added and the sample is kept at room temperature, the percentage of fat and non-fatty solids contents for purposes of analysis will be retained for about 4 months, and in case it is kept in a refrigerator after adding the preservative, the total period which may be available for making analysis, without decomposition, will be six months.

11. Relying the above decision of the Apex Court both Delhi High Court and Allahabad High Court decided the cases in accordance with the above observations.

12. Regarding Babboo (supra) we have perused the judgment and we are not in a position to appreciate what was the earlier judgment of that court on the basis of which the learned Single Judge decided the case it. Babboo (supra). That apart, as there is a clear decision of the Apex Court which is based on evidence on expert, we are bound by the above decision. We may add here that in case of Babboo (supra) there was delay of about 10 months, but in the case in hand, the delay was about 15 months. Therefore, the above ratio on which the learned Public Prosecutor has placed reliance is not applicable.

13. Even assuming that the sample was kept after adding chemicals in the refrigerator in the case in hand sample is bound to deteriorate after six months as laid down by the Apex Court. Mr. Sharma has rightly pointed out that for the period from the date when the sample produced before the court and sent to Public Analyst if was not kept in the refrigerator.

14. In view of the above facts, we are constrained to hold that the sample is bound to deteriorate, for keeping it for such a long period of 15 months and as such that fat contents is bound to be less.

15. In Municipal Corporation, Delhi v. Om Prakash (supra) the Delhi High Court has also held that in cases where the difference is slight and marginal, even in addition to the factor of passage of time, there is room for doubt and as such the accused is entitled to get the benefit. We have already stated that deficiency found by the Director, Central Food Laboratory and this deficiency is absolutely marginal. On this count also the accused is entitled to get the benefit.

16. Mr. Sarma has urged that sample was not taken in such a manner that it was the representative character and in this connection learned Counsel has placed reliance on various decisions including two decisions of this Court. We need not examine this aspect of the matter in view of what has been stated above.

This petition came up before the learned Single Bench and by order dated 29.3.93, the matter was referred to a larger Bench on the ground as to whether after receipt of the certificate from the Central Food Laboratory, fresh sanction for prosecution is necessary. It has been stated at the Bar that this point has already been decided that fresh sanction is not necessary by a Division Bench of this Court. Therefore, we hold that fresh sanction is not necessary after certificate is received from the Director of Central Food Laboratory.

For the reasons stated above, the petition is allowed by setting aside the impugned conviction and sentence and the accused person is discharged from the liability of the bail bond.