
(1983) 11 MAD CK 0020

In the Madras High Court

Case No : Criminal R.C. No. 516 of 1981 (Cr. R.P. 505 of 1981)

P. Ponnu Reddiar

APPELLANT

Vs

Food Inspector, Madurai Corporation

RESPONDENT

Date of Decision : 18-11-1983

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Citation : (1983) 11 MAD CK 0020

Hon'ble Judges : K.M. Natarajan, J

Bench : Single Bench

Advocate : Calvin Jacob, for the Appellant; Padmini Jesudurai, Asst. Public Prosecutor, for the Respondent

Judgement

1. This revision is directed against the judgment of the learned Additional Sessions. Judge, Madurai, confirming the conviction of the petitioner

under sections 7(1) and 16(a)(1) read with S. 2(ia)(g) and (m) of the Prevention of, Food Adulteration Act (hereinafter referred to as the Act) and

R. 5 of the Rules framed under the Act, but modifying the sentence of six months" R.I. into one of three months" R.I. while retaining the fine of Rs.

1000/- with default sentence.

2. The brief facts of the case are as follows. The petitioner is running a maligai shop at door No. 46 Tirupparankundram Road, Madurai : On 29-

11-1979 at about 9 a.m. the Food Inspector of Madurai Corporation (P.W. 1) went to the malgai shop of the petitioner, purchased 800 ml. of

gingelly oil on payment of Rs. 9.60 for the purpose of analysis after serving form VI Notice (Ex. P. 2), and obtained a cash receipt (Ex. P. 1). The

gingelly oil purchased by P.W. 1 was divided into three equal parts and poured into three separate, clean and dry bottles equally and they were

sealed and packed tightly as per rules. The signature of the petitioner was also obtained in the slip pasted to the sample bottle and P.W. 1 obtained

the statement (Ex P. 3) from the petitioner. One of the sample bottles was sent to public analyst along with form VIII notice, which is marked as

Ex. P. 6. The public analyst sent his report Ex. P. 11 to the effect that the sample contains free fatty acids in excess of the maximum permitted limit

to the extent of 80%. P.W. 1 filed the complaint dt. 25-12-1979 against the petitioner and it was received by the Magistrate on 3-1-1980. After

the filing of the complaint, a copy of the public analyst's report along with the intimation under S. 13(2) of the Act was sent to the petitioner and it

was acknowledged by him 8-1-1980 and it was marked as Ex. P. 13.

3. The petitioner when examined under S. 313 Cr.P.C. with reference to the prosecution evidence, denied the same and has stated that at the time

of taking sample there was rain and the same was also taken outside the premises of the shop and that one of the sample bottles was big in size.

He examined, one witness to support his plea as D.W. 1.

4. Though a number of points had been raised before the courts below, Mr. Calvin Jacob, learned counsel for the petitioner, confines his

arguments to one point and contended that the complaint dt. 25-12-1979 against the petitioner was launched before the trial court on 3-1-1980,

but notice as required under S. 13(2) was served on the petitioner only on 8-1-1980, which is contrary to the provisions of law.

5. S. 13(2) read with R. 9-A of the Rules framed under the Act clearly points out that immediately after the institution of prosecution, the Local

(Health) Authority shall forward a copy of the report of the result of the analysis in form III and deliver under sub-rule (3) of R. 7 by registered

post or by hand to the person from whom the sample of article was taken by the Food Inspector. According to the learned counsel for the revision

petitioner, after launching the complaint on 3-1-1980, the report of the Public Analyst along with the notice under S. 13(2) was not served on the

petitioner immediately as required under S. 13(2) of the Act read with R. 9-A of the Rules, but on the other hand, notice was served on the

petitioner in person only on 8-1-1980 after a delay of five days which is against the mandatory provision of law. The learned counsel in support of

his contention cited before me the decision in Sebastian v. State 1982 Mad LJ

194 : 1982 Cri LJ 1359, Wherein M. N. Moorthy J. while dealing

with the relevant provisions of the Act and the decision reported in Perumal and Another Vs. Kumbakonam Municipality, , observed as follows -

The word "immediately" under R. 9-A of the Rules would mean at once or without delay or forthwith. Whatever action is sought to be taken, it

should be taken speedily and promptly. The word would connote "reasonably quick and prompt time". It certainly implies that whatever has to be

done should be done with all possible speed. A day or two can be taken as "immediately". If the Local (Health) Authority complies with the

provisions of S. 13(2) read with R. 9-A within a day or two, it cannot be said to be violative of the tenor of R. 9-A and the pith and substance of

the word "immediately". This of course is a question of fact and is to be determined taking into consideration all the circumstances in a given case.

For instance, in a case for the first one or two days if a holiday intervenes, then three days may be taken as "immediately". Because of lack of

specific provision, it has become susceptible to varied interpretations.

6. In the instant case, there is a delay of five days and no explanation whatsoever was given by the prosecution and in fact, the person who served

the notice on the petitioner personally, was also not examined, and hence, the delay is contrary to the provisions of R. 9-A.

7. In the result, the conviction and sentence imposed on the petitioner by the courts below are set aside and the petitioner is acquitted. The revision

is allowed. The bail bond shall stand cancelled. The fine amount if paid, shall be refunded to the petitioner forthwith.

8. Revision allowed.