

(1982) 03 MAD CK 0030

In the Madras High Court

Case No : Criminal Revision Case No. 216 of 1979 and Criminal Revision
Petition No. 213 of 1979

P. Rathinaswami

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 29-03-1982

Acts Referred:

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

Citation : (1982) 03 MAD CK 0030

Hon'ble Judges : M.N. Moorthy, J

Bench : Single Bench

Advocate : B. Kumar, for the Appellant; A.K. Rajan, for the Respondent

Judgement

1. P. Rathinaswami, the petitioner herein, was convicted by the Sub-Divisional Judicial Magistrate, Thanjavur in C.C. No. 657 of 1978 for an offence under Sections 7(1) and 16(1)(a)(i) read with Section 2(ia) and (j) of the the Prevention of Food Adulteration Act, hereinafter referred to as the "Act" and was sentenced thereunder to suffer rigorous imprisonment for one year and to pay a fine of Rs. 2,000/- in default to undergo rigorous imprisonment for six months. Against the said conviction and sentence an appeal was preferred by him in C.A. No. 242 of 1978 before the learned Sessions Judge, West Tanjavur Division, Tanjavur and the lower Appellate Court dismissed the appeal confirming the conviction and sentence. Against the dismissal of the appeal the present revision has been preferred by the petitioner-accused.

2. The case, in short, for the prosecution is as follows :-

P.W. 1 is the Food Inspector of Ayyampet Town Panchayat. On 22-6-1978 at 4.45 p.m. he went to the bakery of the petitioner at No. 2, Mela

Salai Street, Ayyampet. After serving the Form VI notice, which is marked as Ex. P. 1, P.W. 1 purchased 600 grams of mixture of cake and

biscuit on payment of Rs. 3.21. The receipt. Ex. P. 2 was given to him. After following the usual procedure, one sample packet was sent for

analysis with Form VII notice, a copy of which is marked as Ex. P. 3. Another Form VII notice with sample seal was sent to the analyst by

separate post. The remaining two sample packets were sent to the Local (Health) Authority. Ex. P. 4 is the report of the Analyst to the effect that

the orange colour biscuits of the sample contained coal-tar dye which was not permitted for use in any food and hence, it was adulterated. A copy

if the Analyst's report in Form No. III was served on the petitioner under Ex. P. 5, Ex. P. 6 is the copy of the notice u/s 13(2) of the Act and Ex.

P. 7 is the acknowledgment from having received the said notice.

3. When the petitioner was examined he denied having committed any offence. He examined two witnesses on this behalf, D.W. 1 stated, that the

petitioner has stored biscuits and 2 or 3 kinds of cakes in a vessel for the betrothal ceremony of his daughter and P.W. 1 had taken sample only

from that mixture intended for private use. D.W. 2, who attested Ex. P. 1 and Ex. P. 2 supported the version of D.W. 1.

4. The Courts below have rejected the version of the defence and accepting the prosecution case convicted the petitioner and sentenced him as

stated supra.

5. A number of points have been raised by the learned counsel appearing for the petitioner before me. But the only point which needs consideration

by me is this : The Analyst's report is dated 10-7-1978. The complaint against the petitioner in this case was filed on 17-7-1978. The notice u/s

13(2) of the Act read with Rule 9-A of the Rules framed thereunder, was served on the petitioner on 27-7-1978. Thus, there is a delay of ten days

in serving the notice u/s 13(2) of the Act on the petitioner after the initiation of the prosecution on 17-7-1978. This according to the learned

counsel, is fatal to the prosecution case. In support of this contention he relied on two decisions, one by Sathar Sayeed, J. in Perumal and Another

Vs. Kumbakonam Municipality, and, another by Rathnavel Pandian, J. in Abdul Majeed v. State by Food Inspector (1981) Mad LW 305. The

ratio of these two decisions is that a plain reading of Section 13(2) of the Act and

Rule 9-A of the Rules framed there undershows that there is a statutory duty on the Local (Health) Authority to forward a copy of the Analyst's report with a memo of intimation to the accused person, thereby conferring a right of liberty to challenge the report of the Public Analyst, if he so desires, ""immediately"" after the institution of the prosecution and the annotation of the term ""immediately"". In this case, there is a delay of ten days forwarding the copy of the Analyst's report to the petitioner after the initiation of the prosecution. This in my view, accepting the principles as laid down by the two decisions cited above, does not conform to the requirements of Section 13(2) of the Act read with Rule 9-A of the Rules framed thereunder. Accordingly, this revision is allowed, the conviction and sentence passed on the petitioner are set aside and the fine amount, if already collected, will be refunded to the petitioner.

6. Revision allowed.