
(1985) 01 DEL CK 0025

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 59 of 1983

Rajinder Chopra

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 14-01-1985

Acts Referred:

Citation : (1985) 27 DLT 273 : (1985) 8 DRJ 166 : (1985) 2 RCR(Criminal) 192

Hon'ble Judges : M. Sharief-ud-din, J

Bench : Single Bench

Advocate : O.P. Soni and Kamlesh Dutt, for the Appellant;

Judgement

Malik Sharief-Ud-Din, J.

(1) This petition calls for an examination of the scope of proviso to Sub-section (2)(c), Sub-section (3) and proviso to Sub-section (5) of Section 13 of the Prevention of Food Adulteration Act.

(2) I need not detail the facts elaborately for the reason that undisputably a sample of ice candy was taken by the Food Inspector for analysis from the petitioner on 28th May 1982 and the report received from the public Analyst was that the sample was adulterated in as much as it contained sucrose 7.88% against the minimum prescribed limit of 10%. This standard came to be laid down with effect from 11-2-82 vide G.S.R. 57 (E). There is no dispute about the sampling having been done as prescribed by the statute.

(3) On receipt of the result of analysis that the food article was found adulterated the local (Health) authority instituted prosecution u/s 7/16 P.F.A. Act against the petitioner and a copy of the result of the analysis was forwarded to him, informing the petitioner that if he so desires he may make an application to the court within the statutory period of 10 days from the date of receipt of the copy of the report to get the sample of the article of food kept by local (Health) authority analysed by the Central Food Laboratory. This right was exercised by the petitioner and after the learned Magistrate performed the statutory

formalities one of the sample called from the (Health) Authority was sent to GFL . The report of the analysis received was that the sample was not adulterated. After receiving the report the learned Magistrate Shri S.M. Chopra, heard the parties and found that the report of the Director Food Laboratory was incomplete in as much as he had failed to examine the sample for the presence of sugar content This conclusion, it is believed, was drawn by him on the basis of the report of the analysis of the Director wherein he seems to have tested it for two things, mainly for presence of colour and dulcin. The Seamed Magistrate felt, that in all probability, it has escaped the notice of the Director, C.F.L. that by virtue of amendment which came into effect from 11-2-82 vide G.S.R. 57(E) the minimum standard for the presence of sugar in the ice candy was fixed at 10%.

(4) The contention of the petitioner before the court below was that under Sub-section (3) of Section 13, this report supersedes the report of public analyst and under proviso to Sub-section (5) of Section 13 this certificate of the Director C F.L. has to be treated as final and conclusive evidence of the facts stated therein and, Therefore, the petitioner was entitled to seek dismissal of the case. The learned Magistrate, however, declined to accept the contention declaring that since the sample has been damaged by its having been opened and subjected to incomplete test, he ordered a spare sample from the local (health) Authority and directed it to be sent to the Director C.F.L. for analysing it for the presence of sugar content. This order was passed on 20-1-1983 and it is this order which has actually been impugned before me.

(5) Now after considering the arguments advanced by the learned counsel for the parties, the real controversy seems to be centered round the report of the Director, C F L. The question that arises for determination is as to whether it supersedes the report of the public analyst as envisaged by Sub-section (3) and whether it is final and conclusive evidence of the facts stated therein as provided by proviso to Sub-section (5) of Section 13. The position at law is very clear that, this report does supersede the report of public analyst and is final and conclusive evidence of the facts stated therein. I would, however, like to make it clear that this report of the Director, C.F.L. will supersede the report of the public analyst only to the extent of the tests carried out by the Director. It would be seen that the public analyst has examined the sample for the presence of sucrose content and has found it less by 2.12% as prescribed by rules. The Director has not examined the content for the presence of sucrose. It is true that the legislature in its wisdom has desired that the report of the Director is entitled to more respect than that of the public analyst. But it can by no stretch of imagination be said that if the Director choses not to examine the sample for all its contents then the report of the public analyst, which is elaborate, shall stand superseded. From my point of view, Therefore, the report of the public analyst will be superseded only on points of analysis carried out by the Director and not in respect of the analysis that was not carried out by the Director which in the present case is for the presence of sucrose content. The report of the Director further will be final and conclusive evidence of the facts strictly stated therein.

(6) The contention of Mr. Soni, learned counsel for the petitioner is that the Director is an expert in his own right and it cannot be said that he has not examined the sample for the presence of sucrose content. I do not agree with the contention for the simple reason that, the certificate of the Director itself shows that he has not examined the sample for the presence of sucrose. It was further urged before me that as far back as 10th February 1983. Mr. B.T. Singh learned counsel for the respondent had made a statement in the court that he will obtain a certificate from the Director to the effect that there has been a mistake in the analysis by ignoring the latest standard of ice candy. This is so said, to indicate that the respondent has failed to obtain such certificate as the Director presumably did not oblige them and would not say that he has not examined the sample for the presence of sucrose. Mr. B T. Singh submitted at the bar that he reminded the Director a number of times but he has not received a reply. This to my mind appears to be understandable because a highly placed officer for being accused of a lapse would be reluctant to come forward and state so. I am, Therefore, of the view that the report of the Director, C.F.L. is final and conclusive evidence only to the extent of facts mentioned therein and it can in no way supersede the report of the public analyst that the sample was found to contain sucrose content less by 2.7%.

(7) This brings me to the examination of the proviso to sub-section (2) (c) of section 13 and to the examination of the question as to whether the learned Magistrate on the construction of the expression "loss of damage" was justified in directing that another available sample should be forwarded to the Director, G F.L. for analysis of the sucrose content in the sample. The learned Magistrate felt that because of the lapse of Director, C.F.L. the sample got damaged, in as much as, it was opened and subjected to analysis. This would come within the ambit of the expression "loss or damage" used in the proviso to sub-section 2 (c). After giving my careful consideration to the point at issue I am of the opinion that even though the expression "loss or damage" are to be given literal meaning, its scope cannot be restricted to the loss or damage caused in a particular manner. The loss or damage may be due to nature, it may be due to the decomposition of the sample or it may even be due to human error, a situation which is being faced in the present case. The basic object of the provision is to enable the accused to get the sample examined by a better expert such as the Director, C.F.L. so that the court while dispensing justice is left in no manner of doubt.

(8) The court is faced with a unique situation in as much as after failing to examine the sample for all its contents as law and justice required from the Director, the sample got damaged. In a situation, such as this, the court, from my point of view, would be justified in seeking yet another available sample and pass it on to the Director for proper analysis. The legislature could not envisage a situation such as this and, while laying down law, the idea of the legislature could never be to put fetters on the powers of the court in such a situation, as it is the basic responsibility of the court to dispense justice. The only restriction on the power of the Magistrate to act under the proviso to sub-section 2 (c) is that the

sample must be damaged after it is sent to the Director C.F.L. That exactly is what has happened in the present case. I am, Therefore, of the view that the order impugned is sustainable at law.

(9) Mr. O.P. Soni has urged that the sample dates back to 28th May 1982 and, we are in January 1985 and, it is possible that the remaining available sample may have been decomposed and may, not be fit for analysis and, that no useful purpose would be served by protracting the litigation any further, and that the learned Magistrate should act on the report of the Director. I do not agree. The accused has a right u/s 13 and what the court is actually doing is to act in conformity with that statutory light and there is no reason for the accused petitioner to offer any resistance. If the sample is incapable of analysis that would be an end of the matter but then the court is very well within its competence in requiring the Director to examine the sample for presence of sucrose which he had failed to do earlier. With these observations I find no force in the petition. It is dismissed.