
(1999) 05 DEL CK 0042
In the Delhi High Court
Case No : Criminal R.No.121/99

Ram Saran

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 17-05-1999

Acts Referred:

Citation : (1999) 4 AD 163 : (2000) CriLJ 2656 : (1999) 79 DLT 701 : (2000) 54 DRJ 203

Hon'ble Judges : S.N. Kapoor, J

Bench : Single Bench

Advocate : Mr. Dinesh Mathur and Mr. Mohit Mathur, Advocat, for the Appellant;

Judgement

S.N. Kapoor, J.—This revision petition is directed against conviction of the accused for offence punishable u/s 7 read with Section 2(ia), (i), (f), (h), (j), (m) punishable u/s 16(i), (ia) of the Prevention of Food Adulteration Act (hereinafter called the "Act" for short) and for violation of Rule 5(i) of the Prevention of Food Adulteration Rules (hereinafter called the "Rules" for short).The accused has been ordered to undergo rigorous imprisonment for one year and to pay a fine of Rs.2,000/- and in default to pay the fine and further undergo simple imprisonment for three months. In appeal the conviction as well as the sentence has been confirmed.

2. Feeling aggrieved by the impugned judgment, the petitioner has filed this revision petition on three grounds: firstly ,there was violation of Section 13(2) of the Act for non-supply of the report of the Public Analyst in time; secondly, the defense led by the accused has not been properly appreciated; and thirdly, that some of the exhibited documents have not been signed by the presiding Officer.

3.1. In so far as the first point is undisputedly concerned, sample of the adulterated article was lifted on 21st August, 1989. Report of the Public Analyst is dated 5th September, 1989. Complaint does not disclose anything about supply of the copy of the report and requisite intimation either by registered post

or by hand. It is submitted that Ex. PW1/F is meaningless. Thus, the right of the accused has been violated u/s 13(2).

3.2. For proper appreciation of the submission Section 13(2) of the Act is reproduced as under:

"13.Report of the public analyst.

[(1) ...

(2) On receipt of the report of the result of the analysis under Sub-section (1) to the effect that the article of food is adulterated, the Local (Health) Authority shall, after institution of prosecution against the person from whom the sample of the article of food was taken and the person, if any, whose name, address and other particulars have been disclosed u/s 14A, forward in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both of them may make an application to the court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory.

3.3. In terms of Section 13(2), the Local (Health) Authority is supposed (i) to send copy of report of the result of analysis after institution of prosecution to concerned persons(s) in prescribed manner; and (ii) to inform concerned person(s) that if it is so desired, either of them or both of them may make an application within a period of ten days from the date of receipt of the copy of the report to get the sample kept by the Authority analysed by the Central Food Laboratory. Concerned persons are the vendor who gives the sample and the supplier/manufacturer whose particulars have been given u/s 14A. It may be mentioned that the exercise of the right u/s 13(2) by the accused depends on the obligation or duties cast upon the Local (Health) Authority in supplying the copy of the report of the Public Analyst and informing the concerned person about his right to send the sample with Local (Health) Authority for analysis within ten days from the date of receipt of the report and such information.

3.4. Before proceeding further it is desirable to see the method prescribed for sending the report under the Rules. What was earlier Rule 9-A, now after subsequent amendment in 1995. in Rules has just been re-numbered as 9-B without modifying its language. Erstwhile Rule 9-A and present Rule 9-B of the Rules read as under:

"9-A (9-B) Local (Health) Authority to send report to person concerned.

The Local(Health) Authority shall within a period of ten days after the institution of prosecution forward a copy of the report of the result of analysis in Form III delivered to him under Sub rule (3) of Rule 7 by registered post or by hand as may be appropriate, to the person from who the sample of the article was taken by the Food Inspector, and simultaneously also to the person if any, whose

name, address and other particulars have been disclosed u/s 14-A of the Act:

Provided that where the sample conforms to the provisions of the Act or the rules made thereunder, and no prosecution is intended under Sub-section(2) or no action is intended under Sub-section (2-E) of Section 13 of the Act, the Local (Health) Authority shall intimate the result of the Vendor from whom the sample has been taken and also to the person, whose name, address and other particulars have been disclosed u/s 14A of the act, within 10 days from the receipt of the report from the Public Analyst."

3.5. It is notable that in terms of Rule 9-A (now Rule 9-B) of the Rules made under the Act, the Local (Health) Authority is supposed to forward a copy of the report of the result of the analysis in Form III within a period of ten days after the institution of prosecution, by registered post or by hand, as may be appropriate to the person from whom the sample was taken, and simultaneously also to the person, if any, whose name, address and other particulars have been disclosed u/s 14-A of the Act.

3.6. Thus, a conjoint reading of Section 13(2) and Rule 9-B makes it clear that copy of the report of the result of analysis is to be send within ten days after the institution of prosecution by registered post or by hand.

3.7. From the order sheet it appears that prosecution was instituted on 13th December, 1998.

3.8. PW-1 Gopal Singh stated in this regard in examination-in-chief as under:

"After institution of the complaint the intimation letter along with copy of the PA's report was sent to the accused by registered post and the said documents were also sent to the accused through the concerned F.I. The copy of the intimation letter is Ex.PW1/E;as the F.I. could not find out the accused for the service of the intimation letter and copy of the PA report, I intimated the fact before the Hon"ble court vide my application Ex.PW1/E."

He further stated:

"...I have brought with me the postal receipts vide which the registered letter containing PA report and intimation letter was sent to the accused at his residential as well as commercial address, the said postal receipts are Ex.P1 and P2 (objected to as mode of proof)."

In cross-examination he also stated that:

"The PA report and intimation were sent by registered post and were not received back, so we presumed that these have been served on the accuse."

3.9. The postal receipts have been exhibited as P-1 and P-2 and bear the signatures of the concerned Metropolitan Magistrate. However, the application of the Local (Health) Authority dated 14th March, 1990 has been marked as Ex.P1/ F but not signed by the learned Metropolitan Magistrate. The postal receipt Ex.

P1 indicates that the registered letter containing PA report and intimation letter was sent to residential address of Sh.Ram Saran s/o Sh. Sunder Dass, resident of 3993, Gali Sang, Pahar Ganj, New Delhi. Second postal receipt Ex.P2 relates to the report and intimation sent to other address of Sh.Ram Saran s/o Sh. Sunder Dass at Bag House, 5025, 6Tuti, Pahar Ganj, New Delhi. The address given on Ex.PW2 tallies with the address given by the petitioner in his revision petition. The same is the address given on acknowledgement of sale of sample vide duly vide Ex.PW2/B duly proved and signed by Metropolitan Magistrate on 26th May, 1992.

3.10. These postal receipts Ex.P1 and P2 are dated 15th December, 1989. The case was instituted on 13th December, 1994. Thus, it is crystal clear that appropriate intimation and the report of the Public Analyst have been sent within the stipulated period of ten days after the institution of the case by registered post.

3.11. However, it appears undisputed that the accused denies the receipt and acknowledgement of the registered post letters, for the prosecution witness did not state that the acknowledgement thereof has been received. Ex.PW1/F, the application dated 14th March, 1990 itself indicates that copy of report etc., send for delivery by hand, could not be delivered. The prosecution is just presuming that the copy of the report and requisite intimation has been received by the accused otherwise in ordinary course, it would have been received back. How far such a presumption is justified, is required to be seen.

3.12. Section 27 of the General Clauses Act is relevant here in so far as the service of the intimation and report of the Public Analyst by registered post is concerned Section 27 of the General Clauses Act reads as under:

"Meaning of service by post_ Where any [Central Act] or

Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

3.13. Since the report of the Public Analyst and the requisite intimation has been sent by registered post on 15th December, 1989, in view of Section 27 of the General Clauses Act the service shall be deemed to have been effected at the time at which the letter would be delivered in the ordinary course of post in absence of any proof contrary to the above-said presumption. Excepting a bald denial of the accused, in statement u/s 313 Cr.P.C. that he did not receive any such letter, there is nothing to rebut the said presumption u/s 27 of the General Clauses Act. There does not appear any sound reason to accept the bald denial

that requisite intimation and the report of the Public Analyst was not received by the accused/petitioner. Consequently, it has rightly been believed that he received the copy of the receipt and requisite intimation.

3.14. Once due compliance of Section 13(2) read with Rule 9-A has been made by the prosecution, the State cannot be blamed for defeating the right of the accused u/s 13(2) and (2-A). Besides, the sample of red chilli could have been sent for test by making an application before the Court when he appeared u/s 13(2-A) of the Act. He did not move any such application. Rather he evaded to appear in Court for nearly two months from 2nd January, 1990 to 1st March, 1992.

3.15. Before the amendment of the erstwhile Rule 9-A (and now Rule 9-B since 24.8.1995) in the year 1984 and substitution of the phrase "within a period of ten days" in place of word "immediately", the Supreme Court in *Rajendra and Others Vs. State of Madhya Pradesh*, observed on the authority of *Tulsiram Vs. State of Madhya Pradesh*, 1985 SC 299 as under:

"5....So far as the Local Health Authority being required to "immediately" after the institution of prosecution send a copy of the report of the result of the analysis in Form III, its failure to do so instantly was held to be of no consequence, relying on a judgment of this Court in *Tulsiram Vs. State of Madhya Pradesh*, wherein the word "imme "immediately" was interpreted to convey "reasonable dispatch and promptitude" intending to convey a sense of continuity rather than urgency. This Court then ruled at page 497 (of S): (at p. 305 of AIR) as follows:

"The real question is, was the Public Analyst's report sent to the accused sufficiently early to enable him to properly defend himself by giving him an opportunity at the outset to apply to the Court to send one of the samples to the Central Food Laboratory for analysis. If after receiving the Public Analyst's report he never sought to apply to the Court to have the sample sent to the Central Food Laboratory, as in the present case, he may not be heard to complain of the delay in the receipt of the report by him, unless, of course, he is able to establish some other prejudice . Our conclusions on this question are The expression "immediately " in R.9-A is intended to convey a sense of continuity rather than urgency. What must be done is to forward the report at the earliest opportunity, so as to facilitate the exercise of the statutory right under S.13(2) in good and sufficient time before the prosecution commences leading evidence. Non-compliance with Rule 9-A is not fatal. It is a question of prejudice."

Tulsiram's case was thus a complete answer to the contention to contrary."

3.16. As regards the submission of the learned counsel relating to Ex.PW-1/F dated 14th March, 1990, it is correct that it is not signed by Ld. Metropolitan Magistrate, but it does not contradict the sending of the report and requisite intimation, for Para 3 and 4 definitely indicate as under:

"3. That after the institution of the aforesaid case, I Gopal Singh, Local(Health) Authority in accordance with the Rule 9-A of the PFA Rules 1955 sent intimation letter Along with a copy of the P.A.'s report to the said vendor through registered post as contemplated under aforesaid rule.

4. That the registered letter sent through post was not returned back till today."

3.17. There does not appear any contradiction in between the statement of Gopal Singh and Ex.PW-1/F in so far as sending of the report and intimation required is concerned. Incidentally, it maybe mentioned what was earlier Rule 9-A is now Rule 9-B since 24.8.1995 By PW-1/F it was mentioned that the concerned Food Inspector Sh. S. K. Nagpal was also deputed to deliver the Public Analyst's report to Sh.Ram Saran but the vendor was not found there. So the intimation letter and the Public Analyst's report could not be served on him. This relates only to personal service sent through Food Inspector Sh. S. K. Nagpal and not to the requisite intimation and the report sent by registered post. Consequently, there does not appear any reason to accept the submission of the learned counsel that right of the accused u/s 13(2)(a) has been defeated by the prosecution.

4. Coming to the second contention that the complaint dated 13th December, 1989, the sanction from prosecution Ex.P1/C, report by Public Analyst PW1/B, PW1/F, PW1/B, PW1/E though exhibited but were not initialled by the learned Metropolitan Magistrate is to be seen in light of the statement of the witnesses. It may be mentioned that neither exhibiting of any of these documents was disputed at any stage nor it was objected to at any stage. Moreover, it is neither submitted by the learned counsel for the accused that these documents were not those documents which were exhibited, nor it is submitted that copies of some other documents were supplied to the accused. There can be no doubt that the learned Metropolitan Magistrate should have initialled these exhibited documents the day they were exhibited and the learned Metropolitan Magistrate should not have given any occasion to such an argument at any stage. But in view of the statement of the witnesses, it is not possible to accept the submission of the learned counsel for the petitioner and one could not be oblivious to the circumstances in which these Metropolitan Magistrates are working in Delhi. Though this Court cannot approve such irregularities, since such an omission has not caused any prejudice to the accused, I reject this contention.

5. The third point raised by the learned counsel for the petitioner is that the defense of the accused has not been appreciated and the statement of DW-1 has been cursorily rejected.

5.2. In the statement of the accused/petitioner about lifting of the sample there is simple denial. However, the accused stated that he had written a letter to the Director, PFA mentioning all the facts on the next day of vide his representation "Mark-A" under postal certificate vide Ex.PW-1 He claimed to be innocent.

5.3. It may be mentioned incidentally that all statutory documents, vendor's

receipt (PW2/A), Form-6 (PW2/B), Panchanama (Ex.P2/C) and other documents as well bear signatures of the accused Ram Saran. The signatures thereon are not disputed by the accused. It may be mentioned that FI had also placed on record the photocopy of the ration card which was collected from the accused at the time of proceedings relating to taking of the sample. This indicates that sample proceedings were held peacefully. Signing of the document and production of the ration card by the accused falsifies the contention that the "Rehri" belonged to Satish Kumar and he had no concern whatsoever with the "Rehri". While the petitioner himself did not claim that he had got his trunk shop by the name of Happy Trunk House, 6, Tuti Pahar Ganj, New Delhi and he had nothing to do with the "Rehri", but the witness stated so. No document has been filed to indicate that the accused was a partner only or a tenant or owner of the shop or was running the business in the name of Happy Trunk House at 6, Tuti, Pahar Ganj, New Delhi. The number of premises is not mentioned in the statement to locate it and to believe that the accused Ram Saran was sitting inside the shop and he was called outside the shop by the Food Inspector and other official.

5.4. Besides, DW-1 Rajan Sobti claimed that Satish Kumar used to keep some important document with him, for Satish Kumar was not having appropriate arrangement to keep the documents etc., while producing Ex.D3 in token of prosecution of Satish Kumar under Delhi Police Act for plying "Rehri" on Ram Dwara Road. This does not refer to 6, Tuti, Pahar Ganj, New Delhi. Moreover, if Satish Kumar used to keep the documents with him and he was plying "Rehri" at that very place for the last 8 to 10 years he would have purchased pulses from Satish Kumar, might be having visiting terms with Satish Kumar and at least he must have known particulars his residential address, his father's name and any other particulars. In cross-examination Rajan Sobti pleaded ignorance about his residential address as well as his father's name etc. apart from stating that he was not on visiting terms. He had not purchased pulses from Satish Kumar though he was keeping documents with the witness. The matter of falsely implicating Ram Saran by lifting sample from the "Rehri" of Satish Kumar has not been taken up through the association of shopkeepers by meeting any authority in person. No motive or enmity has been suggested to the prosecution witnesses to justify that the accused has been falsely implicated.

5.5. In the such circumstances, the learned Metropolitan Magistrate as well as the learned Addl. Sessions Judge, who dismissed the appeal were absolutely justified in rejecting the testimony of DW1 Rajan Sobti.

6. No other point has been raised before me.

7. For the aforesaid reasons, I do not find any force in this revision petition and it is dismissed accordingly.