
(1990) 07 SHI CK 0023
In the High Court Of Himachal Pradesh
Case No : C.R. No. 20 of 1985

Rattan Lal

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 19-07-1990

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 13(2), 16(1), 20, 20(1), 7

Citation : (1991) CriLJ 2875 : (1990) 2 ILR HP 1004 : (1992) 1 RCR(Criminal) 36

Hon'ble Judges : V.P. Bhatnagar, J

Bench : Single Bench

Advocate : K.D. Sood, for the Appellant; M.L. Chauhan, Assistant A.G., for the Respondent

Final Decision : Allowed

Judgement

V.P. Bhatnagar, J.—A milk sample was collected by the Food Inspector from accused Rattan Lal on March 9, 1982, after completing all formalities prescribed by the law and the Rules. One portion of the sample was sent to the Public Analyst who found milk-fat contents therein to be only 2.6% against the minimum prescribed limit of 3.5%. In other words, milk-fat was deficient by 29%. This resulted in the conviction of the accused by the learned Chief Judicial Magistrate, Bilaspur, u/s 7 read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as "the Act"). He was sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs. 1,000/- The learned Sessions Judge, Shimla, upheld the order of conviction and sentence by his judgment dated March 22, 1985, which has been challenged before this Court by way of the present criminal revision.

2. After the report of the Public Analyst was received, its notice was sent to the accused who applied for the second sample collected from him to be sent to the Director of the Central Food Laboratory for analysis and report. According to the report of the Director, milk-fat contents were found to be 2.6% which are exactly the same as were found by the Public Analyst but non-fat solids were found to be

6.6% against the minimum prescribed limit of 8.5%. It may be noticed here that the Public Analyst had found non-fat solids to be 9.6% in the milk sample sent to him for analysis. On the above facts a reference was made in this case as also in another criminal revision, numbering 104 of 1986 (Mehtar Chand v. State of Himachal Pradesh) for constituting a larger Bench to consider the question whether fresh written consent within the ambit of Section 20(1) of the Act was required after the receipt of the report made by the Director of the Central Food Laboratory for continuing the trial against the accused.

3. The matter was ultimately listed before a Full Bench of this Court which framed the question for decision as follows :--

"Can the Court proceed with a case in which it had taken cognizance of the offence on the basis of a complaint instituted with a valid written consent u/s 20(1) of the Act in respect of a sample of food found to be adulterated by the Public Analyst for certain reasons, without there being a fresh written consent, in regard to the nature of adulteration, later found in the sample by the Director of Central Food Laboratory, which is different from that found earlier by the Public Analyst.

The above question was answered by the Full Bench by its judgment pronounced on August 16, 1989. This judgment has been reported in *Rattan Lal v. State* (1990) 1 HP LC 126 and also forms part of the file of this case. Its ratio leaves no scope for doubt that a fresh written consent of the sanctioning authority u/s 20 is required where the Public Analyst finds adulteration of one kind (species) and the Director, Central Food Laboratory, finds adulteration of a different kind (species). It would, however, be noticed that in the present case the Public Analyst as well as the Director, Central Food Laboratory, in their respective reports, have come to the conclusion that the milk-fat contents in the sample sent to them were 2.6%. Their findings with respect to non-fat solid contents, however, differ widely inasmuch as the Public Analyst has given it as 9.6% where according to the Director, Central Food Laboratory, it is 6.6%. There has been no explanation from the side of the prosecution about such a vast difference in two parts of the sample collected at the same time from one place. The possibility of this difference being attributed to some basic difficulties in collecting the sample cannot be altogether over-ruled and this was one of the aspects which the sanctioning authority u/s 20(1) of the Act would be required to consider before certifying the case to be fit for prosecution. To put it somewhat differently, it is clear that adulteration pertaining to deficiency in milk-fat is of same species but even then the vast difference in non-fat solids could have a bearing on overall suitability of the case for being sent to a court of law for prosecution of the accused. In such a case, therefore it was incumbent on the prosecution to have obtained fresh written consent before proceeding with the case in the court of law.

4. There is yet another infirmity which goes to the very root of the case. The milk sample as stated earlier was collected on March 9, 1982. It was sent to the

Public Analyst on March 11, 1982. It was received by him and analysed on March 15, 1982 but the prosecution sanction was accorded by the competent authority after as many as eight months on November 8, 1982. The prosecution was then actually launched on November 23, 1982 and a notice was issued about the report of the Public Analyst to the accused on November 24, 1982 but this notice was received back undelivered. Another notice was, therefore, issued on January 11, 1983. It was received by the accused on January 17, 1983 and he applied for the other sample to be got tested from the Director, Central Food Laboratory, on January 22, 1983. Surprisingly, the Director received this sample after about four months, that is, on May 28, 1983. It was analysed by him on May 31, 1983. It means that the milk sample was ultimately analysed by the Director after the lapse of one year two months and 21 days. It has been forcefully urged by Shri K. D. Sood, learned counsel for the petitioner, that the constituents of the sample must have deteriorated after lapse of such a long period even though the sample was found fit for analysis by the Director. In support of his aforesaid contention Mr. Sood seeks reliance from *Shiv Dayal Vs. The State of Madhya Pradesh*, *Des Raj v. State of U.P.* (1985) FAC 135 : LJ 1985 All 361 *Gopi Ram v. State of Haryana* 1987 FAJ 442 *Lallu Vs. The State*, and two decisions of this Court in (1989) 2 FAC 3 *State of Himachal Pradesh v. Umar Din* and Criminal Revision No. 77 of 1986 *Ramesh Chand v. State* decided on April 25, 1989. The above authorities, when read together, clearly say that various time limits laid down in the Act and Rules framed thereunder are directive in nature and not mandatory and further that the said periods are not to be equated with period of limitation. All the same, it is incumbent upon the authorities concerned to have the samples analysed and the prosecutions launched with utmost despatch and that inordinate delay in making available to the accused his right to get the sample re-tested from the Director of Central Food Laboratory would tantamount to denial of his valuable and mandatory right u/s 13(2) of the Act. A delay of eight months has been considered to be fatal to the prosecution case.

5. It has been vehemently urged by Mr. M. L. Chauhan, learned Asstt. Advocate General, that the case relied upon by the learned counsel on the opposite side does not constitute good law keeping in view the fact that the Director, Central Food Laboratory, did opine that the sample was fit for analysis which means that it had neither degenerated nor decomposed in any manner. He has sought support for his argument from *Horilal Thewar v. State of Madhya Pradesh* (1987) 2 FAC 35 as also from *Food Inspector, Trichur Municipality v. Varghese* (1986) 1 FAC 118. These authorities undoubtedly are diametrically opposite to those cited on behalf of the petitioner but with all respects it appears to me that too much delay in such matters against the express directory provisions made in law and the Rules have to be treated with full defence and cannot be given a go -- by in a light-hearted fashion. It also appears to me that a sample of milk, inspite of the fact that formalin or other preservative is added to it, would certainly deteriorate in quality if the time lag is inordinately long. In the present case, the delay involved is of one year two months and 21 days and such delay cannot but be

regarded as denial of the mandatory right vested in the accused u/s 13(2) of the Act. This, in turn is positively fatal to the prosecution case.

6. Eight years have passed since the milk sample was collected. All this time, the accused has been arrayed before a court of law and must be assumed to have undergone considerable rigour and suffering. It is, therefore, not a proper case where another opportunity could be thought of for the appropriate authority to apply its mind once again and give fresh written consent, if it thought fit. Also, the other infirmity which has been dealt with at length obviates taking recourse to the above line of action. As a result, this revision petition is allowed and the order of conviction and sentence passed against the accused quashed. It is directed that he be set-forth at liberty forthwith. His bail bonds are cancelled.