

(1995) 04 AHC CK 0009
In the Allahabad High Court
Case No : Criminal Revision No. 395 of 1984

Satrohan Lal (In Jail)

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 19-04-1995

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16 , 7

Citation : (1996) 20 ACR 569

Hon'ble Judges : O.P. Pradhan, J

Bench : Single Bench

Advocate : R.P. Srivastava, for the Appellant; G.A., for the Respondent

Judgement

O.P. Pradhan, J.—This revision by convict is directed against the judgment and order dated 12.7.1984 rendered by learned Sessions Judge, Sitapur in Criminal Appeal No. 37 of 1984 whereunder he affirmed the conviction and sentence awarded to the revisionist by the learned Magistrate in connection with an offence u/s 7/16 of the Prevention of Food Adulteration Act, 1954 (the Act).

2. In brief, the relevant facts are that on 22.10.81 at about 8 a.m. Chief Food Inspector, Sitapur found the revisionist in possession of about 18 litres of cows' milk which was kept for sale in two canes on a bicycle. He purchased 750 ml. of milk from the revisionist on payment of Rs. 1.50. After observing the necessary formalities as required by law, one phial of the sample was sent to the Public Analyst who reported deficiency of 71% in milk fat and 34% in non-fatty solids. After obtaining the requisite sanction for prosecution the Food Inspector instituted a complaint against the revisionist in the competent court. The learned Magistrate after trial found the revisionist guilty and sentenced him u/s 7(i)/16(1) (a)(i) of the Act to undergo six months' R.I. and fine of Rs. 1.000 and in default to undergo three months' more R.I. The appeal against this order of conviction and sentence met with failure. Hence this revision.

3. I have heard the learned Counsel for the revisionist as also learned Addl.

Government Advocate and perused the lower court record.

4. The learned Counsel for the revisionist contended that there has been non-compliance of Section 13(2) of the Act read with Rule 9A inasmuch as the copy of the P.A.'s report was not received by the revisionist and he was accordingly deprived of the opportunity to get the sample re-analysed at the Central Food Laboratory. The learned Counsel in this behalf relied upon the case of *State of Punjab v. Ashok Kumar* 1991 (2) EFR 531.

5. In the instant case, the copy of the P.A.'s report was sent to the revisionist from the office of the Local Health Authority, Sitapur with a covering letter dated 8.2.1982 as per Ex. Ka-8. The Food Inspector, A.K. Gupta, P.W. 1 was examined by the prosecution in this behalf to say that the said letter was sent by registered post and its postal receipt dated 10.2.1982 was affixed on the Stamp Register of the Office of the Local Health Authority. In this cross-examination, this witness had to concede that whatever statement he has given with regard to the compliance of Section 13(2) of the Act is based upon the copy of letter ex. Ka-8 which he received from the Office of the Local Health Authority. It, therefore, follows that the Food Inspector A.K. Gupta had no personal knowledge regarding the despatch of letter dated 8.2.1982 by registered post to the revisionist. The revisionist has denied the receipt of P.A.'s report. The prosecution has also not placed on record the postal receipt whereunder the said letter was sent to the revisionist by registered post. Likewise there is no cogent evidence on record to establish that the copy of the P.A.'s report was actually sent together with letter Ex. Ka. 8. Mere forwarding of the copy of the report of the Public Analyst by registered post is not enough. It is further to be established that copy of the report of the Public Analyst was received by the accused. Moreover, full and clear description of the Court should also be mentioned in the covering letter so that the accused may, if so advised, exercise his right of getting the sample re-analysed at the Central Food Laboratory. In the letter as per Ex. Ka. 8, it has been simply stated that he may apply to the court concerned for re-analysis by the Central Food Laboratory, if so desired. In my view, this leaves much to be desired. The accused had to be clearly told that he could apply in the Court of Special Judicial Magistrate, Sitapur for re-analysis of the sample at the Central Food Laboratory, if so desired.

6. It may also be pointed out that the prosecution did not adduce any evidence to indicate that the letter Ex. Ka. 8 which was ultimately sent by registered post to the revisionist had not been received back undelivered. The presumption of service would arise under law if the prosecution had shown that the letter Ex. Ka. 8 had been despatched by registered post at the correct address of the revisionist and further that it has not been received back undelivered. In the instant case, both these requirements have not been fulfilled by the prosecution.

7. For what has been stated above, it has to be found that the copy of P.A.'s report was not furnished to the accused-revisionist in accordance with Section 13(2) read with Rule 9A. It has resulted accordingly in material prejudice to the

accused-revisionist inasmuch as he had been deprived of the opportunity to get the sample re-analysed at the Central Food Laboratory.

8. In the result, the revision is allowed and the order of conviction and sentence recorded against the revisionist by the Court below is hereby set aside. The revisionist is acquitted of the offence u/s 7/16 of the Act. The revisionist is on bail, granted by this Court. He need not surrender to the bail bonds which are hereby cancelled and sureties discharged. Fine, if paid, will be refunded.