

(1973) 11 PAT CK 0015
In the Patna High Court
Case No : Criminal Rev. No. 9 of 1972 (R)

Shankarlal and Another

APPELLANT

Vs

Jamshedpur Notified Area Committee

RESPONDENT

Date of Decision : 22-11-1973

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 11(1)(c)(iii), 13(2), 16

Citation : (1974) PLJR 279

Hon'ble Judges : Lalit Mohan Sharma, J

Bench : Single Bench

Advocate : N.N. Roy and D.K. Sarkar, for the Appellant; L.K. Choudhury and S.K. Choudhuri, for the Respondent

Judgement

Lalit Mohan Sharma, J.—The petitioners have been convicted u/s 16 of the Prevention of Food Adulteration Act (hereinafter referred to as "the Act") and sentenced to undergo rigorous imprisonment for two months and have been further directed to pay a fine of Rs. 500/- each in default to undergo simple imprisonment for one month. Petitioner no. 2 is the proprietor of a grocery shop in the town of Jamshedpur and petitioner no. 1 is his salesman. On the 4th July, 1969, Shri U.N. Sinha, Food Inspector, went to the shop and purchased 348 grams of mustard oil from petitioner no. 1 and divided the same in three bottles as required by law and complied with the other details prescribed by rules. One bottle was delivered to the petitioner, the second bottle was sent to the Public Analyst and the third one was retained as required by Section 11(1)(c)(iii) of the Act. The report received from the Public Analyst disclosed that the mustard oil was adulterated with linseed oil. A complaint was filed on behalf of opposite party thereafter and the petitioners were summoned. The petitioners appeared in the case and made a prayer u/s 13(2) of the Act requesting the court to send the third bottle to the Director of Central Food Laboratory, Calcutta, for a certificate and the court allowed the prayer. The third bottle was sent to the aforesaid Director at Calcutta. The Director sent a report to the court stating that the material contained in the bottle had leaked out and was not available for analysis

and, therefore, no opinion could be given by him. The court, thereafter, relying upon the report of the Public Analyst, which has been marked as Ext. 7, in the case, convicted and sentenced the petitioners as stated above. The petitioners filed an appeal which was dismissed by the court below. He has now come up to this Court by way of this criminal revision application.

2. Mr. N.N. Roy, appearing for the petitioners, contended that the petitioners having been given a valuable right u/s 13 of the Act which has been denied in this case on account of non-availability of the certificate from the Director, Central Food Laboratory, Calcutta, is entitled to be acquitted. He has relied upon the decisions reported in (1) Nagar Swasthya Adhikari, Municipal Board Vs. Gopi Chand, and in (2) V. Jayavelu and Another Vs. Food Inspector, Corporation of Madras, . In the first instance, he argued that, if the report of the Director, referred to in Section 13(2) of the Act is not available to the trial court for any reason, the accused must get the benefit of the situation and should be acquitted. In the case of (1) Nagar Swasthya Adhikari, Municipal Board, Agra, relied upon by Mr. Roy, the accused applied u/s 13(2) of the Act for sending the sample given to him to the Director for analysis and this sample phial sent for the report of the Director got smashed in transit. The counsel for the prosecution produced the third sample retained u/s 11(1)(c)(iii) of the Act and stated that, if the accused wanted this sample to be sent to the Director, he could do so. The accused refused to have that phial sent on his behalf. Allahabad High Court accepted the contention of the accused and acquitted him. With great respect to the learned Judge, I do not agree that, the accused can get the benefit of such a situation wherein the third sample retained for the purpose of analysis by the Director was available. However, in the present case, it is not necessary to pointedly decide the question which fell for decision in the Allahabad case. I do not agree with Mr. Roy that the accused is entitled to acquittal in all circumstances when the report of the Director is not available. This question came up for decision before the Supreme Court in a case reported in (3) Municipal Corporation of Delhi Vs. Ghisa Ram, . The right conferred by Section 13(2) of the Act on the vendor was held to be a valuable right because the certificate of the Director supersedes the report of the Public Analyst and is treated as conclusive evidence and it was also held therein that, in a case where there is denial of this right on account of any fault on behalf of the prosecution as a result of which a certificate of the Director cannot be made available, the vendor must be presumed to be seriously prejudiced and should be entitled to acquittal. But, at the same time, in paragraph 8 of the judgment, it is said that it should not be understood as laying down, that, in every case where the right of the vendor to have the sample tested by the Director is frustrated, the vendor has to be acquitted. The Supreme Court categorically laid down that the principle must be applied to cases where the conduct of the prosecution has resulted in the denial to the vendor of any opportunity to exercise the right u/s 13(2) of the Act and "different considerations may arise if the right gets frustrated for reasons for which the prosecution is not responsible."

3. Testing the situation in the present case in the light of the decision of the Supreme Court in the above mentioned case, it appears that the petitioners should be given the benefit of the principle. It was the duty of the Food Inspector to properly seal the bottle in which the third part of the sample taken was put in. There is no material on the record of the case to indicate as to the reason of the leakage of the materials from the bottle which was sent to the Director and, in the circumstances, it is to be presumed that the Food Inspector could not seal the bottle properly. I, therefore, infer that the leakage of the contents of the bottle was due to the negligence on the part of the prosecution. In such circumstances, there has been a denial of the valuable right of the petitioners granted u/s 13(2) of the Act and the petitioners are for that reason entitled to their acquittal.

4. In this regard, it may be mentioned that the first sample given to the petitioners u/s 11 of the Act had been lost before they made an application before the trial court for sending the third sample to the Director and this prayer had already, as stated above, been granted. The language in Section 11(1)(c)(iii) indicates that the third part has to be retained for the purpose of analysis by the Director under Sub-section (2) of Section 13 and, therefore, it cannot be suggested that the petitioners cannot get advantage of the situation as they had lost the sample given to them by their own negligence. They were entitled to ask for the third part for being sent to the Director and as is clearly indicated by the language of the section itself.

5. The court below has rejected the plea on behalf of the accused on the ground that the prayer on their behalf for sending the third bottle to the Director was made before the court after considerable delay. It is not suggested on behalf of opposite party that any chemical change takes place in mustard oil or in linseed oil on account of the delay of about a year which could affect the result of the chemical analysis. The delay has been considered as a material factor in certain cases in which milk or curd or some other similar food stuff has been involved which undergoes serious chemical changes on account of efflux of time. That principle has no application to the present case. I do not, therefore, agree with the court below that the petitioners have to suffer on account of about one year's delay in making the prayer before the court which was allowed. I think the decision of the Madras High Court in (2) V. Jayavelu and Another Vs. Food Inspector, Corporation of Madras, applies to the present case. I am in respectful agreement with the principle laid down therein and I hold that the prosecution cannot press for conviction or the petitioners on the basis of the report of the public Analyst in the present case. In the result, this application succeeds, the order of conviction and sentence passed by the courts below is set aside and the petitioners are acquitted. If the petitioners have already deposited the fine, the same will be refunded.