

(2011) 04 GAU CK 0037

In the Gauhati High Court

Case No : Criminal Revision Petition No. 174 of 2004

Sri Indradev Yadav and Sri Ramanand Paswan

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 27-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 397, 411
Prevention of Food Adulteration Act, 1954 — Section 13(2), 16, 7(1)
Prevention of Food Adulteration Rules, 1955 — Rule 9B

Citation : (2011) 4 GLR 807 : (2011) 3 GLT 96

Hon'ble Judges : C.R. Sharma, J

Bench : Single Bench

Advocate : N. Ahmed, for the Appellant; K. Munir, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

C.R. Sarma, J.—Heard Mr. N. Ahmed, learned Counsel appearing for the Petitioners. Also heard Mr. K. Munir, learned Addl. Public Prosecutor appearing for the Respondent.

2. The short question, involved in this criminal revision, preferred u/s 397 read with Section 411 Code of Criminal Procedure, challenging the judgment and order, dated 31-12-2003, passed by the learned Addl. Sessions Judge, (ad hoc), Kamrup, Guwahati, in Criminal Appeal No. 15 of 2000, thereby upholding the conviction and sentence recorded by the learned Addl. Chief Judicial Magistrate, Kamrup, Guwahati, u/s 7(1)/16 of the Prevention of Food Adulteration Act, (hereinafter called, "the Act") in C.R. case No. 434 c of 1994, is as to whether the statutory requirement, as provided by Section 13(2) of the Act has been complied with in the case in hand.

3. The brief facts of the case, as may be necessary for disposal of this revision are as follows:

On 3-12-93, the Food Inspector, along with his Peon, inspected the premises of "M/S Durga Brand Dalmut and Bhujia Company" owned by the revision Petitioners and while checking the articles of food stuff, kept therein, for preparation of prepared food and for sale (for human consumption) found chilly power, which was kept for preparation of prepared food (sale). Suspecting the said chilly powder to be adulterated item, the Inspector of Food, after observing all the necessary formalities, took sample and sent the same for examination to the Public Analyst. As per report of the Public Analyst, received vide report No. PP/G/171/93 dated 4-1-94, the sample of the chilly power was found to be adulterated. Accordingly, the Food Inspector, after obtaining necessary sanction etc, launched prosecution against the Petitioners. Notice u/s 13(2) of the Act was issued to the Petitioners by registered post. The learned Judicial Magistrate, First Class took cognizance of the offence u/s 7(1)/16 of the Act and issued summons to the Petitioners. On their appearance, particulars of offence under Sections 7(1)/16 of the Act was explained to the Petitioners, who pleaded not guilty and claimed to be tried. The prosecution examined the Food Inspector and the Peon, who accompanied him, as PW 1 and PW 2 respectively. At the close of the prosecution evidence, the accused persons were examined u/s 313 Code of Criminal Procedure. They denied the allegation brought against them. The accused persons declined to adduce any defense evidence. The learned Magistrate, considering the evidence on record, held the accused persons guilty of the offence under Sections 7(1)/16 of the Act and, accordingly, sentenced each of them to undergo rigorous imprisonment for six months and pay fine of Rs. 1,000/- each, in default, suffer rigorous imprisonment for another period of one month each. Aggrieved by the said conviction and sentence, the Petitioners preferred an appeal before the learned Addl. Sessions Judge and the learned Addl. Sessions Judge (ad hoc), while dismissing the appeal, upheld and affirmed the impugned conviction and sentence aforesaid.

4. Dissatisfied with the said judgment and order of the courts below, the revision Petitioners have come up with this revision on the grounds, amongst others, that the provisions of Section 13(2) read with Rule 9(B) of the Act were not complied with and that such non-compliance of the statutory provision caused much prejudice and injustice to the Petitioners.

5. Mr. Ahmed, learned Counsel, appearing for the Petitioners, has submitted that under the provisions of Section 13(2) of the Act, the Local (Health) Authority, after the institution of prosecution against the accused persons, from whom the sample of the article of food was taken, is required to forward a copy of the report of the Public Analyst 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, analyzed by the Central Food Laboratory. Relying on the decision of the Supreme Court in the case of State of Orissa Vs. Gouranga Sahu, and the case of Shymal Nag Vs. State of Assam, the learned Counsel,

appearing for the Petitioners, have submitted that issuance of a registered letter/ notice, by post, is not sufficient compliance of the statutory provisions of Section 13(2) read with Rule 9 B of the Act. The learned Counsel has submitted that, in view of the law laid down by the Supreme Court and the decision rendered by this Court, it is the statutory requirement that the prosecution must prove that the report, so dispatched, has been actually received by the accused. The learned Counsel, drawing the attention of this Court to Exbts.13 and 14 i.e the postal receipt and the impugned judgment, has submitted that the prosecution, except proving the post receipts with regard to issuance of the report, has done nothing to establish that the report was received by the Petitioners. In view of the above, it is submitted that the statutory provisions of Section 13(2) of the Act, not being duly complied, with the conviction and sentence, recorded against the Petitioners, was bad in the eye of law, in as much as the failure of the prosecution to furnish a copy of the report as provided by Section 13(2) of the Act caused much prejudice to the Petitioners in getting justice.

6. Refuting the said argument, the learned Addl. Public Prosecutor, has submitted that Exbts. 13 and 14 sufficiently indicate that the reports were duly sent by registered ad post and that these were received by the Petitioners. The learned Addl. Public Prosecutor has submitted that the requirement, as provided by Section 13(2) of the Act, has been duly complied with and that the impugned judgment needs no interference by this Court.

7. Having heard the learned Counsel for both the parties, I have carefully perused the impugned judgment and order and the evidence on record. The learned Addl. CJM, in his judgment, observed that the Local (Health) Authority sent the letters separately to the accused persons, along with a coy of the report of the Public Analyst, u/s 13(2) of the Act and that Exbts.11 and 12 are the copies of the letters while the Exbts. 13 and 14 are the postal receipts. The learned Magistrate further observed that from Exbts 13 and 14, it was found that notice u/s 13(2) of the Act was served on the accused persons by registered post. From the above, it transpires that the learned trial court, solely relying on the postal receipts, concluded that the statutory notice as required by Section 13(2) of the Act was served on the accused persons or that they had received the same. No receipt or acknowledgment in respect of the said notice has been proved to show that the notice u/s 13(2) of the Act was served on the Petitioners. There is not an iota of evidence, on record, to show that the notice was, in fact, received by the Petitioners. In appeal also, the learned Addl. Sessions Judge, relying on the said postal receipts i.e Exbts 13 and 14 came to the finding that the notices were sent to the accused persons by the registered post. The learned Addl. Sessions Judge further observed that the accused-Appellants failed to establish that the requirement of Section 13(2) and Rule 9 B of the Act have not been complied with and that they also failed to prove that any prejudice was caused to them.

8. It is settled law that in a criminal trial, the prosecution is required to establish

its case beyond all reasonable doubt and the duty to comply with the statutory provisions of law u/s 13(2) of the Act is a burden to be discharged by the prosecution. Therefore, it is the bounden duty of the prosecution to establish firstly, that the said notice was sent and secondly, that the same was, in fact, received by the person from whom the sample was collected. Such burden cannot be shifted on the accused persons. That apart, there cannot be any dispute that failure to comply with the statutory requirements, as provided by Section 13(2) of the Act certainly causes prejudice to the accused persons. Because non-compliance of the requirement, as prescribed by Section 13(2), deprives the accused persons from getting the other part of the sample of the article of food, kept by the Local (Health) Authority analyzed by the Central Food Laboratory to substantiate, if any, that the report of the Public Analyst was not correct. Therefore, in my considered opinion, the findings of the learned trial Judge that the accused person failed to establish the non-compliance of the requirement of Section 13(2) of the Act and also to show that prejudice was caused to them are erroneous in the eye of law. The Supreme Court in the case of State of Orissa (*supra*) observed that

It is argued on behalf of the accused that mere dispatch of the report is not enough; and that the prosecution is further obliged to prove that the letter so dispatched had reached the addressee, i.e, the accused. We agree with this submission, as we believe that forwarding a copy of the report is not only a ritual, but a statutory requirement to be mandatory observed in all the cases. Dispatch of such a report is intended to inform the accused of his valuable right to get the other sample analyzed from the Central Food Laboratory. However, in this case, the two Courts on facts had found that the copy of the report, in fact, had been dispatched and was received by the accused person.

In the above referred case, it has been established that not only the notice was dispatched by registered post, but also, the accused persons had received the same. In the case of Shyamlal Nag (*supra*) a copy of the notice issued u/s 13(2) of the Act was marked as Exbt.X in the evidence. The said copy of the notice was accepted by the trial court as well as the appellate court. This was challenged before the High Court. The learned Single Judge of this Court, relying on the decision in the case of State of Orissa (*supra*), while allowing the revision preferred against the conviction and sentence recorded by the trial court, as well as the appellate court set aside the impugned conviction and sentence.

9. In the light of the above referred decisions and the statutory provisions prescribed by the Act, it stands settled that it is the duty of the prosecution to establish by adducing sufficient evidence that the notice as required by Section 13(2) of the Act was duly served on the accused person(s) or, that he/they had received the same. Failure to do so amounts to infringement of the statutory right, conferred on the accused person and such denial constitutes prejudice to the accused person(s).

10. It is the plea of the Petitioners (accused persons) that the notice u/s 13(2) of

the Act was not received by them and that they were deprived from exercising the valuable right conferred by the statute. There can be no dispute that non-compliance of the said requirement amounts to taking away the valuable right of the accused person facing trial under the Act.

11. In view of the above, I have no hesitation in holding that the prosecution failed to prove that notice u/s 13(2) of the Act was served on the Petitioners. Therefore, I find sufficient force in the contention advanced on behalf of the Petitioners that the notice u/s 13(2) of the Act was not received by the Petitioners and that they were deprived from exercising their right to get the other part of the sample examined by the Central Food Laboratory, which was a valuable right conferred on them by the statute. This lapse on the part of the prosecution caused much prejudice and injustice to the accused persons, entitling them to get acquittal.

12. In view of what has been discussed above, I find sufficient merit in this revision requiring interference with the impugned conviction and sentence, which cannot stand the scrutiny of law.

13. Accordingly, this revision is allowed. The impugned conviction and the sentence are set aside and quashed. Return the Lower court records.