

(1994) 07 MP CK 0053

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 388 of 1986

State of Madhya Pradesh

APPELLANT

Vs

Ramdeo Bichhalal Agrawal and Another

RESPONDENT

Date of Decision : 13-07-1994

Acts Referred:

General Clauses Act, 1897 — Section 27

Prevention of Food Adulteration Rules, 1955 — Rule 9A

Citation : (1994) 2 MPJR 99 : (1995) 40 MPLJ 197 : (1995) MPLJ 197

Hon'ble Judges : D.P.S. Chouhan, J

Bench : Single Bench

Advocate : D.D. Bhargava, for the Appellant; S.C. Datt, for the Respondent

Judgement

D.P.S. Chouhan, J.

The respondents-accused were prosecuted u/s 7/16 of the Prevention of Food Adulteration Act, 1954 (for short hereinafter referred to as "the Act"). The sample of groundnut oil was taken from the shop of Ramdev Agrawal, who was running a business of General Merchandise and the respondent No. 2 was prosecuted as tin was sealed in his firm and it was purchaser and supplier. After the report of the Chemical Analyst, the Food Inspector filed a complaint before the Chief Judicial Magistrate, Ambikapur, District Surguja.

The trial Court acquitted the respondent No. 2 on the ground that the prosecution has failed to establish that the Shyam Brand Oil was manufactured by the Firm known as "Poonam Oil Industries" and further that the same was given to respondent No. 1 Ram Dev Agrawal for sale. In the absence of evidence on record, the respondent No. 2 was acquitted. Ramdev Agrawal was also acquitted by the trial Court vide its judgment and order dated 14-5-1985. The present appeal is filed against the order of acquittal.

Heard the learned Panel Lawyer Shri D. D. Bhargava and Shri S. C. Datt, learned counsel for the respondents.

Learned counsel for the State invited attention of the Court to Paragraph 9 of the order of acquittal and submitted that the acquittal has been done on the ground of non-compliance of sub-section (2) of Section 13 of the Act. Sub-section (2) of Section 13 of the Act reads as :-

"13. Report of public analyst :

x x x x x x x x x

(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 the institution of prosecution against the persons 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."

The said provisions provide that after institution of prosecution against the persons from whom the sample of the article of food was taken for forwarding the report of public analyst in such manner as may be prescribed.

The manner is prescribed under Rule 9A framed under the Act, which is as extracted below :-

"9A 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 analyst 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 whom 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 14A of the Act".

Rule 9A prescribes the manner and the mode as required under sub-section (2) of Section 13 of the Act and the mode prescribed is by registered post or by hand.

Learned counsel for the State relying on the said rule submitted that there has been sufficient compliance from the side of the State of Section 13(2) of the Act as well as of the Rule 9A of the Rules framed under the Act. He invited attention of the Court to the postal receipt marked as Ex. P/19, whereby the report of the Chemical Examiner was sent to Ramdev by registered post. He also invited attention of the Court to the letter dated 28-11-1984 (Ex. P/21) where through the report of the Chemical Analyst was sent. The prosecution examined PW 3 Basant Kumar Channe in this regard, who stated that the report of Public Analyst

was sent by registered post and the acknowledgment due and the postal receipts were produced as Exs. P/19 and P/20.

The question for consideration involved is whether the prosecution has discharged its burden by sending the Public Analyst's report along with covering letter by dispatching the registered post letter.

Learned counsel for the respondent No. 1 submitted that the burden is on the prosecution to establish that the letter by registered post was sent and was received by the person concerned as the registered post letter was dispatched with acknowledgment due and the purpose of the acknowledgment due is to ensure the delivery and in the present case since no acknowledgment due is on record and the same is not proved, therefore, the prosecution has failed to discharge its burden.

At the outset the submission is attractive but on analysis it has no substance as words "by registered post" have been incorporated. The requirement of law is to send the letter only by registered post and not that it should be sent with acknowledgment due and as such, if any excess has been done beyond the requirement of law that will not affect the legal position as stands under the law.

So far as despatch of the letter is concerned, it is established by evidence on record. The question is only whether the dispatch is sufficient or not. In this connection it is relevant to have a look into Section 27 of the General Clauses Act, 1897, which is as extracted below :-

"27. 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."

It says that where Central Act or Regulation authorizes or requires any document to be served by post, then the service would 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.

In the present case, the Act is the Central Act and as such the provision of Section 27 of the General Clauses Act, 1897 would be attracted. In view of the aforesaid provision, the impasse relating to non-compliance of the requirement of provisions of sub-section (2) of Section 13 of the Act read with Rule 9-A of the Rules framed under the Act is resolved. The service is accordingly deemed to have been effected. The burden lies on the defence to establish non-delivery.

Since u/s 27 of the General Clauses Act, 1897 it is open to the concerned person to establish the non-delivery of such a registered post letter, I consider it proper while allowing the appeal against the respondent No. 1 Ramdev and setting aside the judgment and order appealed against acquittal to remand the matter to the concerned Magistrate to deal with it on merit after giving proper opportunity to the parties.

In the result, the appeal is partly allowed. So far as the respondent No. 1 Ramdev Agrawal is concerned, the judgment and order of acquittal is set aside but as against the respondent No. 2 Poonamchand son of Ramkumar it has become final and the appeal against him fails.