

(1985) 08 AHC CK 0011

In the Allahabad High Court

Case No : Government Appeal No. 1701 of 1978

State of U.P.

APPELLANT

Vs

Prem Chandra

RESPONDENT

Date of Decision : 17-08-1985

Acts Referred:

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

Citation : (1985) AWC 970

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

Bench : Single Bench

Advocate : A.D. Prabhakar, for the Appellant;

Final Decision : Allowed

Judgement

V.P. Mathur, J.—This appeal is directed against the judgment and order dated 2-12-1977 passed by Mr. Bahar Hussain, the then Munsif Magistrate, Saharanpur in Criminal Case No. 104 of 1977 u/s 7/16 of Prevention of Food Adulteration Act. The learned Magistrate acquitted the accused holding that no case was made out.

2. The main basis for the judgment of the learned Munsif Magistrate was reliance on the case of Rajaldas Gurunamal Pamanani Vs. The State of Maharashtra, , where it was held that non-compliance with the quantity to be supplied for analysis not only caused infraction of the provisions but also injustice. The law does not permit shortage of quantity for analysis to be sent. This dictum held Rule 22 of the rules framed under the Prevention of Food Adulteration Act mandatory. This law was, however, overruled by a five Judges' Bench decision of the Supreme Court. It was considering three cases namely (1) the State of Kerala v. Alassray Mohammad (ii) State of Maharashtra v. Shantilal Kalidas Gujrati and (iii) State of Kerala and Others Vs. Alasserry Mohammed and Others, . Two points were made out; (i) Rule 22 is directory and not mandatory; (ii) If the quantity sent to the Public Analyst even though it is less than that prescribed, is sufficient and enables him to make a correct analysis, then merely because the quantity that was sent was not in strict compliance with the rule, it will not result

in nullification of the report nor obliterate its evidentiary value. A note of caution was also appended and it was mentioned that it however does not mean that it is open to the Food Inspector to violate the rule. He should always be cautious in complying with the rules as far as possible and should not send lesser quantity of sample than what is prescribed unless there is sufficient reason for it.

3. In the present case the learned Munsif Magistrate has not considered the Public Analyst's report at all. The report shows that the Public Analyst inspite of the lesser quantity of the sample, was still in a position to give a report and record his finding. As the Rule 22 is directory and not mandatory on the basis of its non compliance the case could not be thrown out. The 2nd point which the learned Magistrate appears to be convinced of is that the only witness in support of the prosecution case, in addition to the Food Inspector, namely Devendra Pal Singh was perhaps not present on the spot. He has come to this conclusion on the basis of the fact that while the signatures of Devendra Pal Singh appear on Ext. Ka-2 which is the receipt, his signatures do not appear on Form No. 6 (Ext. Ka-9). He says that there is no explanation of the absence of these signatures. The forms of receipt and other documents are prescribed by the rules and while in the receipt there is mention of the names of three-witnesses, there is no such column in any other documents. Therefore, there was no explanation due from the prosecution side for not taking the signatures of the witnesses on the notice or any other paper except the receipt. The premise on which the learned Magistrates has proceeded, is not called for and is against the rules and there can be no presumption that because the witness has not signed the notice, hence his presence can at all be doubtful. I have perused the statement of this witness with the help of the Learned Counsel for the opposite party and I am of the view that he proved his presence on the spot undoubtedly. There is a further indication of his presence from a suggestion that was put to him and in reply of which his answer was elicited in the 3rd paragraph from the bottom of his statement. He was asked a question and his reply was that on the same date a sample of oil from this accused was also taken and he signed along with one Channa Ram as a witness. This thing was elicited during cross-examination and the consequences are obvious. This proves the presence of the witnesses not only at the time of the taking of the sample of oil but also at the time of the taking of the sample of heaving which fact is also not disputed and is thus conceded. This being so, I do not agree with the learned Magistrate that the presence of this witness was doubtful.

4. In the result, it will be necessary to send back the case by way of remand for re-disposal according to law. The learned Magistrate shall proceed with the trial of the case from the stage of arguments. Evidence that is already on the record, will be considered along with the report of the Analyst then the case shall be disposed of.

5. The appeal is allowed.

6. In the light of these observations, the case shall go back to the Chief Judicial

Magistrate, Saharanpur who may either dispose of the case himself or transfer it for disposal to one of his competent Magistrates.