

(1985) 03 GAU CK 0015
In the Gauhati High Court
Case No : Govt. Criminal Appeal No. 6/78

The State of Assam

APPELLANT

Vs

Shri Anukul Ch. Dey and Another

RESPONDENT

Date of Decision : 27-03-1985

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 13(2), 16, 7

Citation : (1985) 1 GLR 521

Hon'ble Judges : S. Haque, J; R.K. Manisana Singh, J

Bench : Division Bench

Advocate : N. Zaman, PP, for the Appellant; D.K. Bhattacharjee and S. Ali, for the Respondent

Final Decision : Dismissed

Judgement

S. Haque, J

1. The State has impugned the judgment and order of acquittal dated 3.8.77 passed by the Chief Judicial Magistrate Gauhati in CR Case No. 511 of 1977. The two Respondents have faced the trial for the charges u/s 7/16 of the Prevention of Food Adulteration Act. The allegation was that they sold adulterated Ghee on 24.8.76 to the Food Inspector.

2. The Food Inspector took the sample of Ghee on 24.8.76 from M/s. Bably Restaurant situated at Dispur, Gauhati by observing the formalities. The public analyst opined that the sample of Ghee was adulterated on account of presence of 19.6% (approx.) of Vanaspati. After obtaining requisite sanction, the Respondents were prosecuted. They pleaded not guilty to the charge. On perusal of evidence on record, the Magistrate came to the finding that the Ghee in question was not meant for sale. He acquitted the Respondents. We do not propose to scrutinise if too Magistrate had duly appreciated the evidence, because we like to confine on law point.

3. The Respondents took the plea at the trial that the copy of the report of the

result of the analysis was not served on them in compliance With the provision of Section 13(2) of the P.F.A. Act. The Food Inspector (P.W. 1) was cross examined on that point. He could not give satisfactory evidence to prove the fact of serving copy of the report on the Respondents. He could not produce the A/D receipt nor the postal receipt even to show that such report was posted to the Respondents. There is no material whatsoever In the out records the trial court to show that copy of such report was sent or served on the Respondents. The Magistrate did not touch this legal point In his judgment.

4. Learned Public Prosecutor Mr. N. Zaman submits that noncompliance of the provision u/s 13(2) is a technical error and the trial will not vitiate for the same. Learned Counsel Mr. D.K. Bhattacharjee for the Respondents submits that non-compliance of Section 13(2) caused serious prejudice to the Respondents and vitiated the trial. We cannot agree with the Public Prosecutor. There is force in the argument of Mr. Bhattacharjee.

5. With the institution of prosecution, it is obligatory on the part of the local (Health) Authority u/s 19(2) to serve a copy of the report of the result of the analysis to the accused informing him/them to make an application to the court, if so desire, 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. Invariably copy of the report should be served on the accused without delay, after institution of the prosecution, so that the accused may, if so desires, send the sample to the Central Food Laboratory so as to reach there in a state fit for analysts. Thus Section 13(2) confers a valuable right on the accused to have the sample analysed by a superior expert whose certificate is to be accepted by the court as conclusive superseding the report of public analyst. It is expected that prosecution will proceed In such a manner that it right right is not "killed to the accused. If the right is deliberately denied by the prosecution, then it causes serious prejudice to the accused entitling for acquittal, In the instant case the Respondents were deprived of the opportunity of exercising their right to have the sample examined by the Central Food Laboratory due to deliberate non-compliance of the provision of Suction 13(2) by the prosecuting authority. They have been highly prejudiced. The Respondents were entitled to acquittal on this score alone.

6. As the Section 13(2) of the P.F.A. Act by itself confers: right on the accused for adopting recourse of proper defence, therefore, the provision directing the prosecuting authority to serve the copy of the report of analysis to accused, after Instituting the prosecution, is mandatory and non-compliance of the same will vitiate the trial.

7. In the result, the appeal must fail and the same is dismissed.