

(1990) 10 BOM CK 0024

In the Bombay High Court

Case No : Criminal Application No's. 1354, 1461 and 1462 of 1986

Ulhas Ramchandra Kulkarni and another

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 23-10-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 246, 482
Prevention of Food Adulteration Act, 1954 — Section 13, 14A, 20

Citation : (1991) 1 BomCR 557 : (1991) 93 BOMLR 542 : (1991) CriLJ 763 :
(1991) 1 MhLj 176 : (1991) MhLj 176

Hon'ble Judges : R.G. Sindhakar, J

Bench : Single Bench

Advocate : V.B. Ganatra, for the Appellant; Y.V. Patil, Public Prosecutor, for the Respondent

Judgement

1. These three petitions arise out of orders passed in two criminal cases bearing Nos. 1823 and 1824 of 1984 on the file of the Chief Judicial Magistrate, Nasik. By these orders he directed framing of charges against accused Nos. 1 and 4 u/S. 246 of the Code of Criminal Procedure as he was of the view that prima facie case was made out against them. He discharged accused Nos. 2 and 3. It is these orders of directing framing of charge that are impugned in these applications u/S. 482 of the Code of Criminal Procedure.

2. The facts of the case, briefly stated, would be as follows :-

3. On 13th January 1982 Mr. Acharya, Food Inspector went to the factory manufacturing biscuits at Nasik and Shri Acharya took 7 samples. Sample Nos. 1, 5, 6 and 7 are samples of biscuits while sample Nos. 2, 3 and 4 are samples of material that went into the production of biscuits. Sample No. 2 being maida, sample No. 3 being sugar and sample No. 4 being bakery shortening. The Food Inspector followed the required procedure; divided the samples into 3 equal parts. He sent two parts to the public health authority. One part was sent to the public analyst. Pune for analysis. The Public Analyst on 3rd February 1982

reported that the samples were up to the standard prescribed. On this report the Food Inspector made an application to the Chief Judicial Magistrate, Nasik for release of those tins (720 in number) seized on 13-1-1982. The tins as well as the documents were accordingly returned to the accused No. 1 who was at the material time the factory manager.

4. On 28th February 1982 the Public Health Authority Shri Patil, had some doubts about the correctness of the report of the public analyst Pune and he, therefore, opened one of the samples retained with him and sent it to the Public Analyst Bombay for analysis. The Public Analyst Bombay on Analysis of biscuits found positive bacilli present. He was of the opinion that the said sample was found to be unfit for human consumption as the fat used in the preparation of biscuits was rancid. On 16th June 1982 papers were forwarded to the Asst. Commissioner for obtaining sanction to prosecute. These papers were received on 26th June 1982 in that office and on 26th September 1984 sanction has been accorded u/S. 20 of the Prevention of Food Adulteration Act, 1954. Pursuant to this on 28th November 1984 a complaint came to be filed. One more development which may be mentioned here is the application made by the accused No. 1 for calling for 3rd part of the samples from the Public Health Authority in the Court which came to be rejected.

5. As many as 6 witnesses have been examined and cross-examined and they included Mr. Patil, local public health authority, Food Inspector Shri Acharya and the sanctioning authority Shri Deshmukh. One more development which needs to be noted is the letter issued by the Asst. Commissioner, Food and Drugs Administration, Nasik at Exh. 16 to the original accused No. 1. This letter was issued after the report of the Public Analyst, Pune was received and it has been mentioned therein that on analysis it was found to be in accordance with the standard prescribed. The said letter is dated 11-2-1982.

6. The learned counsel for the petitioners Shri Ganatra, submits that once action has been taken under R. 9A of the Rules framed under the provisions of the Prevention of Food Adulteration Act, it was not open to the prosecution to call for another report from the Analyst at Bombay and launch a prosecution. He therefore seeks quashing of the proceedings before the learned Chief Judicial Magistrate and consequential quashing of orders directing framing of charges against the accused. On behalf of the State I have heard Shri Patil, learned Addl. Public Prosecutor.

7. It is an admitted position that the Food Inspector visited the factory on 13-1-1982 and took 7 samples. Sample Nos. 1 and 5 were of biscuits while sample Nos. 2, 3 and 4 were of material that went into the production of the biscuits in the factory. It is also an admitted position that on 3rd February 1982 a report was received from the Public Analyst Pune clearing all the products and on the basis of this report a letter was issued by the Asstt. Commissioner Food and Drugs Administration, Nasik. It is further an admitted position that an admission is found to be made in the deposition of Shri Patil, that this letter was issued

under the provisions of R. 9A proviso of the Rules framed under the said Act. R. 9A reads thus :

"9A - Local (Health) Authority to send report to person concerned. - The Local (Health) Authority shall immediately after the institution of prosecution forward a copy of the report of the result of analysis in Form III delivered to him under sub-s.(3) of R. 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;

Provided that where the sample conforms to the provisions of the Act or the rules made thereunder, and no prosecution is intended u/sub-s. (2), or no action is intended u/sub-s. (2-E) of S. 13 of the Act, the Local (Health) Authority shall intimate the result to the Vendor from whom the sample has been taken and also to the person, whose name, address and other particulars have been disclosed u/ S. 14A of the Act, within 10 days from the receipt of the report from the Public Analyst".

It has been introduced in 1977 after S. 13 came to be substituted by Act No. 34 of 1976. The substitution made relying upon R. 9A and more particularly proviso to that rule was that once the sample conforms to the provisions of the Act or rules made thereunder and no prosecution was intended u/sub-s. (2) or no action is intended u/sub-s. (2-E) of S. 13 of the Act, the Local (Health) Authority shall intimate the result to the vendor from whom the samples has been taken and also to the person, whose name, address and other particulars have been, disclosed u/S. 14A of the Act, within 10 days from the receipt of the report from the Public Analyst. It was in this case, the report of the Public Analyst, Pune showed that the sample conformed to the provisions of the Act or rules made thereunder. It is also made clear by the letter that it was so. It is an admitted position that it was a letter issued under rule 9A of the Act. Therefore it is clear that the Local (Health) Authority i.e. the Asstt. Commissioner in this case, indicated within the stipulated period that no prosecution was intended nor that any action was intended u/sub-s. (2-E) of S. 13 of the Act, and therefore accordingly informed the petitioner about the same.

8. A reference to S. 13(2-E) of the Act was made by the learned Additional Public Prosecutor to show that it was open to the Authority to get a second report if that authority was of the view that the first report was not satisfactory. Sub-section (2-E) of S. 13 reads thus :

"13(2-E) - If, after considering the report, if any, of the food inspector or otherwise the Local (Health) Authority is of the opinion that the report delivered by the public analyst under sub-sec. (1) is erroneous, the said Authority shall forward one of the parts of the sample kept by it to any other public analyst for analysis and if the report of the result of the analysis of that part of the sample by that other public analyst is to the effect that the article of food is adulterated,

the provisions of sub-sec. (2) to (2-D) shall, so far as may be, apply".

The arguments advanced was that it was open to the Local (Health) Authority to get it re-examined and if on re-examination by the authority it is found that it was not up to the standard prescribed, the prosecution could be launched. In my view the power of the Local Health Authority to get it re-examined ought to have been exercised before the issuance of the letter dated 11th February 1982. The provisions of R. 9A cannot be made subject to the provisions of sub-sec. (2-E) of S. 13 of the Act for the obvious reason that the proviso made a specific reference to the provisions of sub-sec. (2-E) of S. 13 of the Act. It says "or no action is intended u/sub-sec. (2-E) of S. 13 of the Act, the Local (Health) Authority shall intimate" Therefore it is only after the Local (Health) Authority decides not to take any action and, therefore clearly indicates that intention, it exhausts its power under S. 13(2-E) of the Act.

9. A time limit has also been prescribed by R. 9A proviso and that time limit is of 10 days. Therefore though it is open, as urged on behalf of the State, for the Public Health Authority to get the sample re-examined after that authority finding that the earlier report was erroneous and not satisfactory, that power cannot be exercised at any time and even by discarding its earlier decision under R. 9A proviso. It is to be noted that the sample was received on 3rd February 1983. The same was received by the Local (Health) Authority on 9th February 1982. On 12th February 1982 an intimation Exh. 18 under R. 9A was given. It is on 28th i.e. long after the report was sent and much beyond the period of 10 days that the authority entertains some doubt about the report and therefore refers the matter to the Public Analyst at Bombay. This, in my view, was impermissible and it has been rightly urged on behalf of the petitioner that the intimation dated 12th February 1982 Exh. 16, was conclusive of the matter and this issue could not have been reopened u/sub-sec. (2-E) of S. 13 of the Act, as has been done by the prosecution. I think the argument advanced is sound and has to be accepted. In view of this position the learned trial Magistrate was not right in directing framing of charge under the provisions of the Prevention of Food Adulteration Act, as has been done by him, and therefore the impugned orders will have to be quashed.

10. Rule, accordingly is made absolute in all the applications.

11. Rule made absolute.