
(1980) 03 CAL CK 0022
In the Calcutta High Court

V.K. Chowdhury and Others

APPELLANT

Vs

The State of West Bengal and Another

RESPONDENT

Date of Decision : 28-03-1980

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 245, 401, 482
Prevention of Food Adulteration Act, 1954 — Section 13, 16, 7

Citation : (1981) CriLJ 664 : 84 CWN 704

Hon'ble Judges : Sudhindra Mohan Guha, J;N.C. Mukherji, J

Bench : Division Bench

Judgement

N.C. Mukherji, J.—Criminal Revision No. 1210 of 1979 arises on an application u/s 401, read with Section 482 of the Cr. P.C. for quashing the proceedings in Case No. 13D of 1975 pending before the learned Metropolitan Magistrate, 4th Court, Calcutta u/s 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 read with Section 7 of the said Act. This application is directed against an order dated 28th May, 1979 rejecting the prayer of the petitioner u/s 13(2) of the Prevention of Food Adulteration Act, 1954 for sending the sample of Food kept in his custody for examination by the Director, Central Food Laboratory.

2. Criminal Revision No. 1211 of 1979 arises on an application u/s 401, read with Section 482 of the Code for quashing the proceedings of the same case and is directed against an order dated 28th May, 1979 rejecting the prayer of the petitioner for discharge u/s 245(2) of the Cr. P.C. Both the cases are taken up together.

3. The facts of the case may briefly be stated as follows:

On 3-3-75 opposite party No. 2 who is a Food Inspector, Corporation of Calcutta filed a complaint before the learned Metropolitan Magistrate against the petitioner and others u/s 16(1)(a)(i) read with Section 7 of the Act and the learned Magistrate took cognizance and issued summons. It is alleged in the complaint that the complainant inspected the shop/godown/manu-factory of the accused at 57, Park Street and found an article of food namely ice cream stored/

exposed for sale. The complainant purchased some sample of the said ice cream and divided the said sample into three parts. One part was sent to the Public Analyst for analysis. The Public Analyst opined that the said food is highly adulterated/misbranded/unfit for human consumption. The accused appeared in court in obedience to the summons. The learned Magistrate on 9th June, 1976 committed the case to the court of session applying the amended provisions of the Act. Against the said order, the accused persons moved this Court and the order of commitment was set aside. Thereafter, the learned Magistrate decided to hold the trial of the case by himself and accordingly, fixed a date for evidence of the prosecution witnesses. Thereafter, the accused Nos. 1 to 4 filed an application before the learned Magistrate for their discharge u/s 245(2) of the Code. The learned Magistrate on hearing the parties, by his order dated 6-4-79, discharged the Directors of the Company as the charges levelled against them were groundless. On 10-4-79 an application was filed on behalf of the petitioner Sri V. K. Chowdhury before the learned Magistrate u/s 13(2) of the Act wherein it was prayed that the petitioner might be allowed to send the part of the sample of food given to him by the Food Inspector to the Director of Central Food Laboratory for examination and for a Certificate. The learned Magistrate rejected the said application and hence the present application before this Court, out of which Criminal Revision No. 1210 of 1979 arises. Accused No. 1-Sky Room (P.) Ltd. filed an application for discharge on the ground that the prosecution has failed to establish initially that the article of food allegedly sold by the accused No. 5 and accused No. G to the Food Inspector belonged to the Accused Company (accused No. 1). The learned Magistrate was of opinion that the case was yet to be heard on evidence and as such, rejected the prayer of accused No. 1. Being aggrieved, accused No. 1 has come up to this Court in Criminal Revision No. 1211 of 1979.

4. Mr. Bijoy Kumar Bhowse, learned advocate appearing on behalf of the petitioner, raises only one point, namely, that the petitioner V. K. Chowdhury's application filed on 10-4-79 was wrongly rejected by the learned Magistrate. In the said application it was prayed that the petitioner might be allowed to send the sample of ice-cream in question to the Director of Central Food Laboratory for a certificate u/s 13(3) of the Prevention of Food Adulteration Act. Mr. Bhowse submits that there is no time limit for making such an application and if such an application is made for ends of justice that should be allowed. In this connection, it is submitted that as the matter was pending for a long time before this Court such an application could not be filed earlier, Mr. Bhowse relies on a decision reported in Municipal Corporation of Delhi Vs. Ghisa Ram, . But, in this case it was" found that it was laches on the part of the prosecution and as such the benefit should go to the accused. But in the present case we find that the report of the Public Analyst is dated 3rd Feb., 1975 and the same was sent to Court duly. The petitioner appeared in Court in pursuance to the summons on the 26th June, 1975 and it is about 4 years after that is on Apr. 10, 1979 an application was filed u/s 13(2). This inordinate delay in filing the application is on the part of

the petitioner and that it cannot be said that there is any laches on the part of the prosecution. Mr. Bhose submits that the case was instituted on the 3rd Mar., 1975 and at that time there was no time limit to file such an application. It is true that such was the position. But Prevention of Food Adulteration Act was amended and the amendment came into effect from the 1st Apr., 1976. This petitioner, along with several others, took up a point before this Court that the Amendment Act had retrospective operation and the provisions should apply to the pending cases. That contention was upheld by this Court in the case of Henry Ah Hoc v. State, reported in 1978 Cal HC 588. It has been held, "after the Prevention of Food Adulteration (Amendment) Act, 1976 came into force on 1st Apr., 1976, all proceedings which were pending under the provisions of the principal Act as amended by the State Act and had not been concluded would cease to be governed by the said Act and would come under the provisions of the principal Act as amended by the Central Amendment Act". Mr. Pradip Kumar Ghosh, learned advocate appearing on behalf of the respondent No. 2, submits that though the Corporation of Calcutta took a different stand in the above case yet the Corporation's contention was negatived. The Corporation has, however, challenged the findings of the learned Judges before the Supreme Court and the matter is pending. But, even then at the present moment it must be held on the basis of the judgment referred to above that the Amendment Act of 1976 has retrospective operation and such being the position, it must be held that the petitioner was required to file an application u/s 13(2) of the Act within 10 days from 1-4-76 when the amendment came into force. As has been noted earlier, the application was filed only on 10th Apr., 1979. Moreover, the learned Magistrate found that the article of food, namely, ice-cream was seized as far back as 30th Jan., 1975. No satisfactory reason was shown by the petitioner for the delay in making the prayer. It must also be taken into consideration that the article of food namely, ice-cream which was seized as early as on the 30th Jan., 1975 cannot, on further examination, give any effective result. For the reasons stated above, we are of opinion that the learned Magistrate has lightly rejected the applications.

5. In the result, the applications fail and the Rules are discharged. Let the records go down immediately. The learned Magistrate is directed to proceed with the case in accordance with law. He is further directed to dispose of the case as early as possible as the same is pending for a very long time.

Sudhindra Mohan Guha, J.

6. I agree.