

(1979) 10 AHC CK 0003

Allahabad High Court

Case No: Criminal Rev. No. 788 of 1979

Chhattak Pal

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Oct. 6, 1979

Acts Referred:

- Prevention of Food Adulteration Act, 1954 - Section 13(1), 13(2), 14A, 16, 7
- Prevention of Food Adulteration Rules, 1955 - Rule 13(2), 9, 9A

Citation: (1979) ACR 512

Hon'ble Judges: P.N. Bakshi, J

Bench: Single Bench

Advocate: Satish Trivedi, for the Appellant;

Judgement

P.N. Bakshi, J.

The applicant has been convicted u/s 7/16 of the Prevention of Food Adulteration Act and sentenced to 6 months" R.I. and a fine of Rs. 1000/- by the trial Court. In default of payment of fine, he is to undergo 3 months" R.I. His conviction and sentence has been maintained in appeal by the Sessions Judge, Bareilly. Hence this revision.

2. The prosecution case is that the sample of buffalo milk was purchased by the Food Inspector from the applicant on 25th December, 76 at 9 A.M. in accordance with the procedure prescribed by law. One of the sample phials was sent to the Public Analyst for analysis. The report of the Public Analyst disclosed that the sample was deficient in fat contents by 28 per cent and in non-fatty solids by 22 per cent. The sample was thus adulterated. After obtaining sanction the applicant has been prosecuted and convicted as above.

3. I have heard learned Counsel for the applicant and have also perused the impugned orders. The sole point which has been argued in this revision is that there has been an infringement of the mandatory provisions of Section 13(2) of the

Prevention of Food Adulteration Act. Section 13(2) of the said Act runs as follows:

13(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 person 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 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 Central Food Laboratory.

4. The admitted facts are that the sample in question was taken by the Food Inspector on 25th December, 76. One of these sample phials was sent to the Public Analyst for analysis. The report of the Public Analyst is dated 10th February, 77. The complaint was filed on 4th April, 1977. Rule 9(j) had already been deleted on 7th January, 77. Section 13(2) of the Amended Prevention of Food Adulteration Act and the Rules framed hereunder was clearly applicable. The statement of the Food Inspector indicated clearly that on 5-4-77 i.e. one day after the filing of the complaint, the copy of the report of the Public Analyst was sent to the applicant by registered post, from the office of the Chief Medical Officer, Bareilly, as required by Rule 9(A) of the Prevention of Food Adulteration Rules, but no information was sent to the applicant informing him that if he so desired, he could apply to the Court within 10 days from the receipt of the report to get the sample of food kept by the Local (Health) Authority analysed by the Central Food Laboratory. The question for consideration is whether it is mandatory for the Local Health Authority to send such intimation to the accused applicant along with the report of the Public Analyst. I have already held earlier that it is mandatory for the Local Health Authority to send a copy of the report of the Public Analyst to the accused from whom the sample has been taken after the institution of the prosecution in the manner prescribed under the Rules. Apart from other reasons, one of the main reason for holding likewise was the use of the expression "shall" in Section 13(2). There can be no doubt that in some cases the word "shall" can also be read as "may", but that depends entirely upon circumstances of each case. Under the old Act one sample phial was given to the accused and two sample phials were retained in the office of the Nagar Swasthya Adhikari, out of which one was sent for analysis to the Public Analyst. Under the new Act, the effected party, namely, the accused is not given any sample phial at all. Out of the three sample phials, two are retained in the office of the Chief Medical Officer and one is dispatched within 24 hours by the Food Inspector to the Public Analyst for analysis and report. On the receipt of the report, if it is adverse to the accused, a prosecution is launched by the filing of a complaint. It is not necessary in every case that a complaint should be filed. Thus, the accused remains absolutely in the dark as to what is the fate of the sample taken by the Food

Inspector from him, and whether the result of the analysis is favorable to him? After the prosecution has been instituted, a mandatory duty is cast upon the Local (Health) Authority to send a copy of the report to the person from whom the sample was taken. This report has to be dispatched by registered post or by hand, immediately after the institution of the prosecution to the person from whom the sample of food was taken by the Food Inspector and also to the person, if any, whose address or other particulars had been disclosed u/s 14A of the Prevention of Food Adulteration Act. Along with this report, an intimation has also to be given to such person that if he so desires, he may apply to the Court within 10 days of the receipt of the report for getting his sample, kept with the Local Health Authority, analysed by the Central Food Laboratory. The report of the Public Analyst would merely give the result of the analysis, but the intimation which is sent to him along with it would obviously convey to him information of the fact that the prosecution has been launched against him, as also the Court where he can make an application, within a period of ten days, for re-analysis of his sample. The period of ten days, prescribed is a limited period within, which he must exercise his right provided" u/s 13(2). If the details of the information as required under this Section is not supplied to him, it may in several cases lead to unavoidable delay, with the result that the applicant would be deprived of his valuable right provided under the Act of getting his sample of food re-analysed by the highest authority, namely, the Central Food Laboratory.

5. Under the unamended Act this right could be exercised by the accused at any time till such date as the judgment was pronounced by the Court, but now when that period has been curtailed to the extent that he loses his right on the expiry of 10 days from the receipt of the report of the Public Analyst, it is but fair and just to the accused that he should be supplied the requisite information, so that he can, if necessary, take legal advice in the matter and make up his mind, whether it would be proper for him or not to exercise this right, and if so he can avail of the procedure prescribed by law. Rules of procedure are hand-maids of justice. They are prescribed for the purposes of facilitating the administration of justice. When such a limited period has been given to the accused to exercise his right, then the rest of the procedure prescribed under the section, whereby the requisite information is to be tendered to the accused, so that he does not unnecessarily lose time and suffer the penal consequences, should also be followed and the information made available to him. When law enjoins upon an authority the power to do a particular act in a particular way then it should be either done in that particular way or not at all. Thus, I am of the opinion that it is not only necessary to send a copy of the report of the Public Analyst to the person, from whom the sample was taken but the requisite information as required under Rule 13(2) must also be sent along with the report, so that the accused might have a full and complete opportunity of putting up his defence by getting his sample re-analysed by the proper authority within the stipulated time.

6. I, therefore, hold again that Section 13(2) is mandatory and that it is incumbent upon the Local Health Authority to forward a copy of the report along with the detailed information, mentioned therein to the accused, so that he may exercise his valuable rights granted to him under the statute. A failure to do this, has caused a grave miscarriage of justice particularly in the instant case, wherein no application at all has been made by the accused for the exercise of his right.

7. For the reasons given above, this revision application is hereby allowed. The conviction of the applicant for the offence u/s 7/16 of the Prevention of Food Adulteration Act and the sentence imposed thereunder is set aside. The accused is on bail. He need not surrender. His bail bonds are hereby discharged.