

Pravan Kumar Gupta and Others Vs State of U.P. and Another

Court: Allahabad High Court

Date of Decision: July 10, 1991

Acts Referred: Criminal Procedure Code, 1973 (CrPC) " Section 482
Prevention of Food Adulteration Act, 1954 " Section 10(6), 11(1), 13(2), 16, 2
Prevention of Food Adulteration Rules, 1955 " Rule 50

Citation: (1991) 15 ACR 525

Hon'ble Judges: N.L. Ganguly, J

Bench: Single Bench

Advocate: Ajai S. Chandel, for the Appellant;

Final Decision: Dismissed

Judgement

N.L. Ganguly, J.

This is an application u/s 482 Code of Criminal Procedure on behalf of the partners of the firm M/s. Sarwan Kumar & Company and M/s. Jaihind Bottling Company Pvt. Ltd. through its partner for quashing the proceedings in Complaint Case No. 373 of 1990

(State of U.P. through Nagar Swasthya Adhikari Nagar Mahapalika, Kanpur Nagar v. Jaihind Bottling Co. Pvt. Ltd. and Ors.) u/s 7/16,

Prevention of Food and Adulteration Act read with Rule 50.

2. The Food Inspector inspected the premises of Firm M/s. Sarwan Kumar and Company, Halsi Road, Kanpur on 13-9-89 and sample of bottle

of Limca was taken by the Food Inspector u/s 10(6) of the Prevention of Food and Adulteration Act on the ground of violation of Section 2(a)(e)

of the Act. The sealed bottle of the sample of Limca was found contain dead ants floating in the sealed bottle and the Food Inspector after

following the necessary legal requirement and after serving the notice u/s 11(1-a) of the Prevention of Food and Adulteration Act filed complaints

against the applicants and four other persons. The present application is for quashing the proceedings in the criminal complaint filed by the

manufacturer of the Soft drink ""Limca"" on the ground that firstly the sample of sealed Limca was not seat to the Public Analyst for examination and

report. If it is presumed that sample was sent to the Public Analyst for report, the prosecution of the applicants is illegal for want of supply of the

copy of the Public Analyst to the accused persons. Secondly there is no material or allegation in the complaint that presence of some dead ants in

the sealed bottle of Limca was injurious to health, so as to bring the accused within the clutches of Provision of Food and Adulteration Act.

Thirdly, the court below has failed to pass orders on the application of the applicants for supplying the copy of the report of the Public Analyst,

which seriously affects and prejudice of the applicants defence and lastly, it was urged that the valuable right of the accused persons u/s 13(2-A) of

the Act has been illegally withdrawn in the absence of copy of the Public Analyst.

3. I have learned the learned Counsel for the applicants at length.

4. The first submission of the learned Counsel for the applicants is that sample of the sealed bottle of Limca was not sent to the Public Analyst for

his report which itself is sufficient for quashing the proceedings u/s 7/16 of the Act. The prosecution allegation is clear that dead ants were found

floating in the fluid of the Limca sealed bottles seeing by naked eye. If that may be the position, it cannot be said that the prosecution is liable to be

quashed only on the grounds that it was not sent for report of Public Analyst. The perusal of the complaint shows that in the bottom of the

complaint, it has been mentioned that report of the Public Analyst enclosed. Thus, at this stage, it cannot be conclusively said that the sample was

not sent to the Public Analyst at all. The allegation of the applicant that inspite of the application, copy of the report was not supplied to them,

cannot be enquired into here in application u/s 482 Code of Criminal Procedure. It is for the trial court before whom the case is pending to enquire

into and record finding in that aspect.

5. The next question for consideration is that the prosecution for Food Adulteration cannot succeed unless it is shown that the adulteration was

injurious to health. The learned Counsel is not correct in saying that unless it is shown that for prosecution and conviction under provisions of

Section 7/16 of the Act, it was necessary to prove that adulteration was injurious to health. The Supreme Court as far back as in Smt. Manibai and

Another Vs. The State of Maharashtra, , held in para 6:

It is not for the prosecution in a case under the Act to show that the adulterated article of Food in question was deleterious to health and if so, how

much harmful affect it would have open the health of the person consuming it. All that is required to be shown is that the article of food in question

was adulterated. So far as that aspect of the matter is concerned, in the present case, we find that the coconut oil which was purchased from Pran

Jivan was adulterated as it did not conform to the prescribed standard"". Thus, it is clear that for the prosecution under the Act, it was not necessary

to show that the adulteration was deleterious and injurious to health.

6. The provision of Section 2(i-a)(e) of the Act is quoted below:

If the article had been prepared, packed or kept under insanitary conditions whereby it has become contaminated or injurious to health.

It is submitted that since it is not shown that the presence of dead ants in the sealed bottle was injurious to health, the prosecution is bound to fail.

The submission is misconceived. Before the Supreme Court, the provision of Section 2(i-a)(f) of the Act was considered in Municipal Corporation

of Delhi Vs. Tek Chand Bhatia, . The provision of 2(i-a)(f) is quoted as under:

If the article consists wholly or in part of any filthy, putrid, rotten, decomposed or diseased animal or, vegetable substance or is otherwise unfit for

human consumption.

The Hon^{ble} Supreme Court while interpreting Section 2(i-a)(f) observed:

It is quite apparent that the words ""or"" is otherwise unfit for human consumption and disjunctive of the rest of the words preceding them. It relates

to a distinct and separate class altogether. It. seems to us that the last clause "or" is otherwise unfit for human consumption is residuary provision

which would apply to a case not covered by or falling squarely within the clauses preceding it. If the phrase is to be read disjunctively the mere

proof of the article of food being filthy, putrid, rotten, decomposed...or insect infested would be per se sufficient to bring the case within the

perview of the word "adulterated" as defined in Sub-clause (f) and it would not be necessary in such a case to prove further that the article of the

food was unfit for human consumption. If we examine the provisions of Clause (e) and (f), the collocation of words and the adjectives used in the

both of the said sections are similar and there is no difficulty in holding that it was necessary for the prosecution to prove both the things together

about the contamination in the fluid contained in the sealed bottle alongwith the fact that the said contamination was injurious to health. The moment

it is found that it was contaminated, it was covered within the meaning of the word ""adulterated"".

7. The submission whether the non supply of the copy of the report of the Public Analyst prejudice the case of the applicants for proper defence

and for avoiding the legal right, provided u/s 13(2) of the Act. At this stage, there is no material before this Court to find out whether the copy of

the report of the Public Analyst was not supplied inspite of the application or not. It is a question of fact and at this stage u/s 482 Code of Criminal

Procedure neither it was desirable nor proper for this Court to embark in investigation about the question of supply of the report of the Public

Analyst. If such is the fact, it would be open for the applicants to raise the plea before the court below for decision.

8. Lastly, the learned Counsel for the applicant submitted that the non supply of report of the Public Analyst prejudiced the case of the defence and

the valuable right of the accused to get the sample analysed again from the authority u/s 13(2-A) of the Act is lost. The question of prejudice to the

defence on the ground of non supply of the report of the Public Analyst, could be considered only after the evidence is recorded in the case and at

this stage u/s 482 Code of Criminal Procedure it cannot be said that mere delay in supplying the copy of the report of the Public Analyst was

sufficient to quash the proceedings. If it is found that there was no affect or material change in the contents of the sealed bottles on account of the

passage of time or long delay, the want of supply of Public Analyst would not be material. At this stage, on this ground also no interference is

possible u/s 482 Code of Criminal Procedure.

9. After hearing the learned Counsel at length, I do not find any merit in the petition at present for quashing the further proceedings in the complaint

case already mentioned in the first paragraphs of the judgment.

10. The petition u/s 482 Code of Criminal Procedure is rejected.