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(1982) 04 AHC CK 0101

Allahabad High Court

Case No: Criminal Revision No. 907 of 1981

Baij Nath — APPELLANT

Vs

State of U.P. — RESPONDENT

Date of Decision: April 8, 1982

Acts Referred:

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

Citation: (1982) 6 ACR 267

Hon'ble Judges: V.N. Misra, J

Bench: Single Bench

Advocate: Palok Basu, for the Appellant;

Final Decision: Allowed

Judgement

V.N. Misra. J.

1. This is an application in revision by Baij Nath against the judgment and order dated 1-7-1981 by Sri Prahlad Narain, Sessions Judge, Mathura, in Criminal Appeal No. 307 of 1980 by means of which he upheld the conviction of the applicant u/s 7 read with Section 16 of the Food Adulteration Act and maintained the sentence on him as passed by Sri R.S. Garg, Chief Judicial Magistrate, Mathura.

2. Very briefly stated the prosecution case was that on 26-11-1979 at about 3 p.m. the applicant was found storing and exposing for sale Zeera in his shop in Mohalla Pratap Bazar in Vrindaban in the district of Mathura. When the applicant told the Food Inspector that this Zeera was meant for human consumption, he gave a notice to the applicant and purchased 300 Grams of this Zeera from him and paid its price at Rs. 4.50. This was kept in three clean phials and was sealed and one of these was sent to the Public Analyst, Lucknow. He gave his report that the Zeera was adulterated. Sanction of the Chief Medical Officer was obtained ; then a complaint was filed against the applicant and he has been convicted as aforesaid.

3. This sample was taken on 16-11-1979 and the Public Analyst examined this Zeera and gave his report on 27-12-1979. A complaint was filed against the applicant on 27-3-1980. The applicant appeared on 16-7-1980 and because a notice u/s 13(2) of the Prevention of Food Adulteration Act had already been served on him, he made an application on 4-10-1980 that the sample be sent to Central Food Laboratory at Calcutta for analysis again. This application was allowed, but when the sample was produced before the Magistrate, he found that the phial, in which this Zeera was kept, had broken and the sample was not in a despatchable condition, which could be sent to the Director, Central Food Laboratory at Calcutta. It has been argued by the learned Counsel for the applicant that since this sample was not sent to the Central Food Laboratory at Calcutta for analysis again, therefore, he was denied the right, which he had u/s 13(2) of the Act and his sentence cannot be maintained.

4. The report of the Public Analyst was sent to the applicant on 1(sic)-4-1980 and almost six months after that he made an application on 4-10-1980 that the sample be sent to the Central Food Laboratory for re-analysis. This application was certainly made beyond the time of ten days an mentioned in Section 13(2) of the Act. But on this application being made the application was allowed and the Magistrate wanted to send this sample to the Central Food Laboratory for re-analysis. It was, however, found that the phial, in which the sample was kept had broken and the Zeera could not be sent, as it was not in a despatchable condition.

5. There was no evidence to show that this Zeera had in any manner deteriorated or that the seals of the phials, in which the sample was kept, had broken and it could not be said whether it is the same Zeera, which was taken by the Food Inspector from the applicant and was sealed. The sample was, however, available, it was not shown that it had deteriorated or that the seals were broken, the Magistrate had, therefore, no choice and he had to send it to the Director, Central Food Laboratory at Calcutta. No doubt, the application was made by the applicant beyond ten days ; but this provision in Section 13(2) of the Act is obviously only directory and is not mandatory ; very often an application cannot be made within the time of ten days for so many reasons, which can be beyond the control of the accused and it cannot be said that if an application is made beyond these ten days and is lightly delayed, then too the sample need not be sent to the Central Food Laboratory. Where the sample is not deteriorated and is kept sealed and a delayed application is made that it may be sent to the Central Food Laboratory for re-analysis, it cannot be refused. In this particular case the sample was of Zeera, which could not have deteriorated and the learned Magistrate did not say that it had deteriorated in any manner and was not fit for being sent to the Public Analyst, he only thought that it was not in a despatchable condition and, therefore, he refused to send the sample to the Central Food Laboratory, Calcutta. By doing so, the right available to the applicant u/s 13(2) of the Act was clearly denied and because the sample could not again be examined in the Central Food Laboratory the correctness of the report given by the Public Analyst cannot be upheld and the applicant could not be convicted.

6. In this case no evidence was examined even to say that the application was made beyond the time of ten days allowed u/s 13(2) of the Act and there was nothing to indicate when the letter sent by the Chief Medical Officer actually served on the applicant. For this reason too the right given to him u/s 13(2) of the Act could not be denied, particularly when inspite of the phial being broken, he was making an application that the Zeera be sent to the Central Food Laboratory. Since the right of the applicant u/s 13(2) of the Act was denied, his sentence cannot be maintained.

7. This revision is, therefore, allowed and the conviction of the applicant and the sentence imposed on him are hereby set aside. The applicant is on bail and need not surrender. His bail bonds are hereby cancelled and sureties discharged. Fine, if deposited, shall be refunded to the applicant.