Jitendra Kumar Gupta Vs State of U.P.

Court: Allahabad High Court

Date of Decision: Aug. 26, 1994

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 313
Prevention of Food Adulteration Act, 1954 â€" Section 13(2), 16, 16(1), 20, 7
Prevention of Food Adulteration Rules, 1955 â€" Rule 18, 44A

Citation: (1994) 18 ACR 680

Hon'ble Judges: R.R.K. Trivedi, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

R.R.K. Trivedi, J.
This criminal revision has been filed challenging conviction and sentence of the applicant for six months R.I. and a fine of

Rs. 1,000/- u/s 7/16 of the Prevention of Food Adulteration Act, 1954, here-in-after referred to as Act", awarded by the learned Additional Chief

Judicial Magistrate, Varanasi on 11.1.82 in Criminal Case No. 1096 of 1981 which has been confirmed in Appeal No. 19 of 1982 by judgment

and order dated 19th May, 1982 passed by V Additional Sessions Judge, Varanasi.

2. The facts. In brief leading to the applicant"s conviction and sentence, are that on 27th September, 1979 at 11.30 a.m. a sample of Besan (Cicer

Crietinum) which is a product obtained by grinding de husked Bengal gram, was collected by B.K. Singh, Food Inspector. The sample was sealed

in three bottles one of which was sent to Public Analyst who, gave opinion that the sample contained small proportion of powdered kesari and the

use of which is prohibited. Sri H.C. Verma, Nagar Swasthya Adhikari, Nagar Mahapalika, Varanasi sanctioned the prosecution for the offence u/s

7/16 of the Act. The complaint was filed on 6th January, 1981 by the Food Inspector. A copy of the report of the Public Analyst was sent to the

applicant as required u/s 13(2) of the Act on 9th March, 1981, on the request of the applicant the sample kept with the Local Health Authority

was sent by the Court for analysis to the Central Food Laboratory, Calcutta. The Director, Central Food Laboratory on 20th May, 1981

concurred with the report of the Public Analyst and found the sample adulterated for presence of kesari Dal. The prosecution examined B.K.

Singh, Food Inspector, P.W. 1 in support of its case. The applicant admitted prosecution story so far as taking of sample, dividing in three parts

and keeping in sealed phials. He also admitted seal on the samples and his signatures. He also admitted the notice by Food Inspector and the

receipt and signatures. He also admitted the report of the Public Analyst. The only defence put by him was that he had sent for grinding unhusked

grounded chana and when it was received from the flour mill its sample was taken which was found to be adulterated. He examined Jawahar,

D.W. 1 in defence to prove that before his grounded chana was put for grinding bejhar (a mixture of kesari and chana) had been grinded in the

flour mill and thus a small proportion was found in the grounded chana of the applicant which was put for grinding immediately thereafter. The

learned Magistrate did not accept the defence of the applicant and accepting the prosecution case convicted and sentenced him as mentioned

above. The applicant remained unsuccessful in appeal also. Hence this revision.

3. I have heard learned Counsel for the applicant and learned Assistant Government Advocate. It may be mentioned that the record of this case

was not received and the same was not made available at the time of hearing of this revision. However, after hearing learned Counsel for the

applicant and after perusing the impugned orders, in my opinion, the examination of the record is not necessary and the revision can be decided on

basis of the material on record.

4. Learned Counsel for the applicant has challenged the conviction and sentence on various grounds. The first submission is that there was no

compliance of Rule 18 which has been held to be mandatory by this Court and there is no evidence on record showing compliance of this

mandatory rule. Rule 18 requires that the copy of the memorandum and a subsequent impression of the seal used to seal the packet shall be sent,

in a sealed packet separately to the Public Analyst under the circumstances by a suitable means immediately but not later than a succeeding

working day. Learned Counsel has placed reliance in the judgment of this Court in case of Hridya Narain v. State reported in 1980 ACC 240,

There is no doubt that the provisions of Rule 18 are mandatory which provides a safeguard to the accused In such proceedings, with the object of

eliminating chances of tempering with the sample during the course of transit. But the question is whether such plea was taken and raised by the

applicant before the Courts below. A perusal of the order of the learned Additional Chief Judicial Magistrate, Varanasi shows that the applicant

admitted the prosecution case so far as its factual aspects are concerned. No such question was raised before the trial Magistrate. He has

observed that the prosecution story has been admitted. He also admitted the report of the Public Analyst and the learned Magistrate has further

observed that in view of this admission, there is no necessity on the part of the prosecution to adduce evidence. In my opinion, as the applicant

admitted the prosecution case on all these material facts including the report of the Public Analyst, It is not open for him to challenge the same

subsequently on the ground that Rule 18 was not complied with. It may be mentioned that the compliance of the Rule 18 is required at the stage

before the opinion of the Public Analyst is received.

5. The applicant contested the opinion of the Public Analyst and requested for sending the sample to the Central Food Laboratory for re-analysis

but the report of the Public Analyst was not disputed on any other basis. It was not the case of the applicant at any stage that there was tampering

with the sample collected during transit. The opinion of the Director, Central Food Laboratory also was against the applicant and the sample of

Besan was found adulterated. In these circumstances, in my opinion, it is not open for the applicant to challenge the prosecution case on the ground

of breach of Rule 18 of the Rules. Even from the defence set up by the applicant it appears that he proceeded with the admission that Kesari was

mixed with the sample of Besan collected but he tried to explain it placing fault with the flour mill owner. In these circumstances also the alleged

absence of evidence showing compliance of Rule 18, in my opinion, is of no consequence.

6. Learned Counsel for the applicant has then submitted that there was no valid sanction for the prosecution as required u/s 20 of the Act. Learned

Counsel for the applicant also submitted that as requirement of the valid sanction is essential element for prosecution and it can be raised at any

stage, even though the sanction was not questioned before the Courts below. It appears (as noticed in the judgment of this Court in case of

Rajendra Singh v. State of U.P. reported in 1984 ACC 203, that by notification dated 20th January, 1979 Governor ""appointed w.e.f. from the

date of publication of the notification in the official gazette all Chief Medical Officers as Local Health Authorities to be Incharge of the Health

Administration under the Act for the whole of the district excluding cantonment area, railway premises and railway colonies.

7. It is true that in this case the sanction was granted by Sri H.C. Verma, Nagar Swasthya Adhikari, Nagar Mahapalika. Varanasi. However as the

Chief Medical Officer under the aforesaid notification could be the Local Health Authority, for the whole district but excluding certain areas, it was

incumbent upon the applicant to cross-examine the prosecution witness examined on this question. However unfortunately no such question was

put to P.W. 1. The question of sanction raised at this stage cannot be said to be a pure question of law, as certain facts are required to be gone

into for ascertaining the authority competent to grant sanction. The ground of sanction u/s 20 though is a jurisdictional fact but the applicant ought

to have challenged it from the very beginning for establishing that the sanction was not granted by the competent authority with regard to the area

or place where the offence was committed. In the facts and circumstances of the case it cannot be ruled-out that for certain areas Nagar Swasthya

Adhikari of Nagar Mahapalika. Varanasi still continued to be competent authority for granting sanction of prosecution in spite of the notification

dated 20th January, 1979. Until the necessary aspects of the case were not brought on record by cross-examination the prosecution witness or

otherwise by bringing some relevant material on record, no benefit can be claimed by the applicant at this stage.

8. It was further submitted by the learned Counsel for the applicant that in this case as the analysis report of the Director of Central Food

Laboratory was obtained, it ought to have been put to the applicant u/s 313, Code of Criminal Procedure As the report was not put to the

applicant it shall vitiate the prosecution case. However, I am not impressed by the submission of the learned Counsel for the applicant. In this case

the opinion of the Director of Central Food Laboratory concurred with the opinion of the Public Analyst and In these circumstances it made no

difference if the report of the Public Analyst alone was put to the applicant. u/s 313, Code of Criminal Procedure no prejudice has been caused to

the applicant by not putting the report of Director of Central Food Laboratory to the applicant.

9. Lastly, the learned Counsel for the applicant has submitted that in this case the sample was collected in the year 1979. Only a small proportion

of Kesari has been noticed by the Director, Central Food Laboratory and in these circumstances the sentence of the applicant may be reduced.

The reliance has been placed by the learned Counsel in case of State of Orissa v. K. Rajeshwar Rao reported in 1992 ACC 69 and in case of

Khem Chandra v. State of Himachal Pradesh reported in 1993 ACC 638.

10. I have considered the submission of the learned Counsel for the applicant on the question of sentence also. However, in both the aforesaid

cases relied on by the learned Counsel for the applicant, the facts are different. In case of State of Orissa v. K. Rajeshwar Rao the sample

collected was cumin (Jira) and the Public Analyst found that it contained 9% foreign seeds as against the permissible limit of 7%. The extent of

adulteration found with regard to inorganic (which includes dust, stems, lunks of earth etc.) was 2% and with regard to organic (which includes

chaff, stem, stipulates etc.) it was 8%. In case of Khem Chandra (supra) the sample collected was of the milk where the deficiency noticed was

with regard to the solids non-fats. Section 16 of the Act the minimum sentence is of six months and a fine of Rs. 1,000/-. However, it can be

reduced in certain circumstances to the minimum sentence of three months and Rs. 500 of fine if it is not covered under the proviso (i) and (ii) of

Sub-section (1) of Section 16 of the Act. In the present case the offence is of the violation of Section 16(a)(ii) read with Rule 44A and the article

of food has been found to be adulterated by mixing a substance injurious to health, like Kesari and in these circumstances the sentence already

awarded by the Courts below cannot be reduced. The Courts below have not committed any illegality in convicting and sentencing the applicant

for six months R.I. and for a fine of Rs. 1,000.

11. For the reasons recorded above, this revision has no force and is, accordingly, rejected. The applicant shall immediately surrender to serve out

the sentence already awarded.