

(1984) 11 AHC CK 0082

Allahabad High Court

Case No: Criminal Revision No. 188 of 1982

Ram Autar

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Nov. 5, 1984

Acts Referred:

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

Hon'ble Judges: K.C. Dhuliya, J

Bench: Single Bench

Advocate: R.R.K. Trivedi, for the Appellant;

Judgement

K.C. Dhuliya, J.

This Criminal Revision is directed against the appellate judgment dated 19th January, 1982 of the Court of learned IV Additional District and Sessions Judge, Banda by which he dismissed the appeal of the applicant and confirmed the conviction and sentence of six months R.I. and fine of Rs. 1,000/- u/s 16 of Prevention of Food Adulteration Act (in short the Act), recorded by Special Judicial Magistrate, Banda by his judgment and Order dated 14-10-1981, in Criminal Case No. 1101/1X/81.

2. I have heard learned Counsel for the applicant and also the counsel for the State.

3. Material facts necessary for coming to the points involved in the case are that the Food Inspector, Shri. M.L. Verma PW 1, took a sample of Cow's milk from the applicant on 9th December, 1978. He purchased the milk and issued the receipt to the applicant. Thereafter, he divided the milk into three parts and necessary quality of formalin was mixed with the milk. In presence of the applicant and witnesses, the Food Inspector divided the milk and placed in three bottles, which were sealed and two of the sealed bottles were deposited in Local Health Office. One sample of the milk was sent to the Public Analyst, Lucknow and a report dated 23rd January, 1979 was obtained from the Public Analyst, which indicated that the sample in question

was found deficient in fat contents as well as non-fatty solids. It was strange that the sanction was obtained by the Food Inspector, as late as, on 12-9-1979 from the Chief Medical Officer. The complaint in the Court was filed on 20th February, 1980 and one day earlier to the filing of the complaint i. e. on 19-2-1980, a notice under registered cover was sent to the applicant, stating therein that on 9th December, 1978 the Food Inspector took sample of milk from him, the Public Analyst found the same deficient in fat contents as well as non-fatty solids vide his report dated 23rd January, 1979 and consequently the milk has been found to be adulterated. It was further stated that a copy of the Analyst's report is being sent to him for information and necessary action.

4. The argument of learned Counsel for the applicant, Sri R.R.K. Trivedi, is that the mandatory provision of Sub-section (2) of Section 13 of the Act have not been complied by the Food Inspector and he has vigorously argued that the applicant has been prejudiced, inasmuch as the information sent to him was one day earlier of the date when the complaint was filed. In my opinion this is not fatal to the case, if the information contained the fact that the complaint is being filed in the Court such information is sufficient compliance of Sub-section (2) of Section 13 of the Act. The mere fact that the report was sent to him one day or few days earlier is immaterial, if the notice contained such information, so that he may make an application to the court to get the sample of food analysed by the Central Food Laboratory. In Ganga Din Vs. State of U.P., Hon'ble Bakshi, J. held that even if there is wrong description of the Court in the notice, but summons were received from the Court, there is no prejudice to the accused and it will be sufficient compliance of Section 13(2) of the Act. He also held that there is nothing wrong and illegal if the report of the analyst is sent earlier to the accused to the filing of the complaint in the Court. But unfortunately in the information sent to him no indication was given that the complaint is being filed. Thus the applicant was kept in dark as to whether the complaint was filed in the Court or not and if so, then, in which court. In my opinion non-furnishing of important and necessary details in the notice to the applicant has caused prejudice to him. He could not approach the Court, as he was not aware about the fact that any complaint has been filed against him. In fact the notice did not mention that the complaint is being filed against him. It was only mentioned that the report is being sent to him for information and necessary action. I have no doubt in my mind that the provision of Sub-section (2) of Section 13 of the Act are mandatory to the extent that the information should be given to the applicant, so that no prejudice is caused to him and he is in a position to approach the court to challenge the Public Analyst's report. The applicant was deprived of this opportunity and so he is entitled to get the benefit of the same.

5. It is strange that the report of the Public Analyst is dated 23rd January, 1979, the sanction was obtained from the Chief Medical Officer on 12-9-1979 and the complaint in the Court was filed on 20th February, 1980. This conduct on the part of the prosecution is deplorable. Even if, such information was available to the

applicant that he is being prosecuted in the court and the complaint is filed on 20th February, 1980, it was not possible that the samples of the milk, that were kept with the Local Authority, were worth being examined, after more than one year. This callous attitude on the part of the Food Inspector and Public Health Department is highly reprehensible.

6. Before I part with the case, it is necessary to give direction to the Trial Courts, dealing in Food adulteration cases to mention all relevant dates in the judgment, so that clear picture is given to the higher courts in disposing the revisions, even without record.

7. I accordingly allow this Revision, set aside the conviction u/s 7/16 of the Act. The applicant is on bail. He need not surrender. His bail bonds are discharged. The amount of fine, if deposited, is to be refunded to him.

Revision allowed.