

(1997) 04 AHC CK 0162

Allahabad High Court

Case No: Criminal Revision No. 1261 of 1986

Gokul Singh

APPELLANT

Vs

Food Inspector

RESPONDENT

Date of Decision: April 3, 1997

Acts Referred:

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

Citation: (1997) 21 ACR 576

Hon'ble Judges: P.K. Jain, J

Bench: Single Bench

Judgement

P.K. Jain, J.

Heard learned Counsel for the parties.

2. Revisionist Gokul Singh was convicted by the trial court u/s 7/16 P.F.A. Act and was sentenced to undergo six months rigorous imprisonment and pay a fine of Rs. 1,000 and in default of payment of fine to undergo further imprisonment for three months. Criminal Appeal No. 89 of 1985 preferred by him against the judgment and order of the trial court also failed, hence the present revision.

3. Two questions have been raised in this revision. Firstly, there was delay in sending the report of the Public Analyst in violation of Rule 9A framed under the P.F.A. Act which caused prejudice to the revisionist and secondly, considering the fact that the offence was committed in the year 1978, the sentence of imprisonment awarded by the trial court be modified to the period of imprisonment already undergone.

4. It appears from the record that on receipt of the report of the Public Analyst and sanction of prosecution a complaint was filed by the Food Inspector. Admittedly compliance of provisions of Section 13(2) of the Provision of Food Adulteration Act was made on 22.1.1979.

5. The main contention of the learned Counsel for the revisionist is that the complaint was filed on 21.12.1978 whereas compliance of Section 13(2) was made on 22.1.1979 whereas the copy of the report of public analyst should have been sent to the revisionist immediately after filing of the complaint as envisaged under Rule 9A of the P.F.A. Rules, 1955. Non-compliance of Rule 9A has caused prejudice to the revisionist inasmuch as he was deprived of his valuable right of getting the sample tested by Central Food Laboratory. The revisional court has considered this argument and has observed that after receipt of the copy of the report, the Appellant (present revisionist) did not apply for sending the sample for analysis to the Central Food Laboratory. Hence no prejudice was caused to him. I think there is no illegality in the finding of the appellate court. In the case of *Tulsi Ram v. State of M.P.* 1985 SCC 4. it was held that the expression "immediately" in Rule 9A is intended to convey a sense of continuity rather than urgency. What must be done is to forward the report to the person from whom the sample was taken at the earliest opportunity, so as to facilitate the exercise of the statutory right u/s 13(2) in good and sufficient time before the prosecution commences leading evidence. Non-compliance with Rule 9A is not fatal. It is a question of prejudice.

6. It is not disputed that after receipt of the copy of the report of public analyst the revisionist did not exercise his right of getting the sample kept with local authority analysed by the Central Food Laboratory. Therefore, there was no question of any prejudice being caused to the revisionist. There is no merit in the revision of the applicant. As regard the question of sentence, the trial court awarded the minimum sentence provided u/s 16 of the Act. No special reason is pointed out for reducing the sentence of imprisonment. The revision, therefore, deserves to be dismissed and is accordingly dismissed.

The revisionist is on bail. He surrender forthwith for serving out the sentence, awarded to him.