

Intazar Ali Vs State of U.P.

Court: Allahabad High Court

Date of Decision: July 28, 2014

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 313
Prevention of Food Adulteration Act, 1954 â€” Section 10(7), 13, 13(2), 14A, 16

Citation: (2014) 8 ADJ 56

Hon'ble Judges: Ranjana Pandya, J

Bench: Single Bench

Advocate: V.M. Zaidi, Advocate for the Appellant

Final Decision: Partly Allowed

Judgement

Ranjana Pandya, J.

This revision has been preferred against the order dated 18.04.1988 passed in Criminal Appeal No. 125 of 1987 by

the Sessions Judge, Ghaziabad upholding the conviction of the appellants u/s 7/16 Prevention of Food Adulteration Act to undergo six months"

rigorous imprisonment and to pay a fine of Rs. 1000/- with defaulting clause in Criminal Case No. 750 of 1986.

2. Brief facts of the case are that on 03.05.1983 at about 5.30 p.m. the revisionist No. 2 Husnain was exhibiting for sale, carbonated water of

chocolate colour in Pratishtan Mandi Chopla Garh near the house of Vinod Kumar. The said water was suspected to be adulterated and

therefore Sri Narendra Pal Singh Rawat, the Food Inspector took the sample after serving upon Husnain a notice in form No. 6. The carbonated

water was purchased in a sealed bottle for Rs. 27/-. Laxmi Chand and Nazir Hussain put their signatures as witness of the sample taken. The

revisionist No. 2 Hasnain also put his signature on the sample and received the price of the sample phials. The other public witness of the locality

did not cooperate when the samples were being taken about which mention was made in the documents. Shri Narendra Pal Singh Rawat, Food

Inspector prepared the labels. The bottles were kept in three separate phials, which were sealed and stamped. One of the samples was sent to the

public analyst, Lucknow on 04.05.1983 for analysing. The remaining two phials were submitted to the Chief Medical Officer, Ghaziabad. When

the report of the public analyst was received, it was found that without declaration saccharine was found to be used in the sample in contravention

of provisions of Rule 47 of the Rules framed under the Act. After receipt of the report of the public analyst, a report was sent to the Chief Medical

Officer, Ghaziabad to obtain necessary sanction to prosecute the accused. On 19.03.1984, the Chief Medical Officer, Ghaziabad accorded

sanction. After which the complaint was filed before the Court.

3. Charges were framed against the accused persons, who pleaded not guilty and claimed to be tried. The prosecution examined Nazir Hussain as

PW-1, Jaipal Singh as PW-2, Jeet Singh as PW-3.

4. In the statement u/s 313 Cr.P.C., the accused persons again denied of having committed any offence. The accused Intazar Ali said that he had a

factory which manufactured carbonated water, but he denied and said that Husnain was not his servant.

5. The learned trial court after perusing the evidence on record found both the accused persons guilty and convicted both the accused persons u/s

16(i)(a)(ii) read with section 7(v) of the Prevention of Food Adulteration Act and Rule 47 of the Rules framed under to the imprisonment

mentioned above.

6. Feeling aggrieved the appellants preferred the Appeal No. 125 of 1987, which was dismissed. Feeling aggrieved the present revisionists have

come up in the revision.

7. I have heard learned counsel for the revisionists and learned AGA for the State.

8. Learned counsel for the revisionists had argued that the impugned order of conviction passed by the Magistrate as well as the impugned order of

the appellate court in Appeal are wrong on facts of law. Since both the courts below failed to consider that the samples were not examined in

accordance with the rules. The Food Inspector was not examined. He did not comply with the mandatory provisions of section 13(2), section

10(7) and rule 16(c) of the Food Adulteration Act. He has further argued that only interested witnesses were examined by the prosecution and no

independent witness was examined, hence the prosecution has failed to prove charges against the revisionists.

9. It is well settled law that in revisional jurisdiction and appellate jurisdiction the high court is required to exercise its powers where there is

material irregularity or manifest error of law or procedure or there is misconception of misreading of evidence or court below has failed to exercise

jurisdiction vested or wrong jurisdiction perversely or by the facts admitted or proved by the prosecution do not disclose any offence.

10. "9. In The The Food Inspector, Kovur, Hyderabad Vs. Jaladanki Fajamma and Others a single Judge of the Andhra Pradesh High Court held

that Rule 7(3) is mandatory.

11. In State of Madhya Pradesh v. Ghasiram Malviya 1986(3) F.A.C. 62, a single Judge of the Madhya Pradesh High Court held that Rule 7(3) is

mandatory, placing reliance on the Judgment of the Andhra Pradesh High Court in The Food Inspector v. Jaladanki Fajamma and Anr. (supra)

and State of Maharashtra v. Deepchand (supra).

12. In Food Inspector Vs. Moosa and Others, a Division Bench of the Kerala High Court held that Rule 7(3) is mandatory.

13. Now we shall also list out the cases where the said Rule is held to be only directory and not mandatory. In The Food and Sanitary Inspector,

Giddalur Panchayat Vs. Koppu Subbaratnam, (a case of Andhra Pradesh High Court) wherein Hon^{ble} K. Ramaswamy, J., as he then was, held that

Rule 7(3) is only directory and not mandatory. In State of Himachal Pradesh Vs. Punnu Ram, a single Judge of the Himachal Pradesh High court

held that Rule 7(3) is only directory. In Bhaviriseti Deva Mohan Rao and Anr. v. The State of Andhra Pradesh 1986 (1) F.A.C. 12, a Division

Bench of Andhra Pradesh High Court consisting of Hon. Jeevan Reddy (as he then was) and Sriramulu, JJ. held that Rule 7(3) is only directory

and not mandatory and there by did not agree with the view taken by the learned Sessions Judge of the same High Court in The State through

Food Inspector v. Shaik Nisar Ahmed 1983 (II) F.A.C. 211 and Food Inspector v. Jaladanki Fajamna and Anr. (supra). Again a Division Bench

of the Kerala High Court in E.V. Kunhamu Vs. Food Inspector, Cannanore Municipality, considered very elaborately the scope of Rule 7(3) and

referred to all the earlier decisions and held that Rule 7(3) is only directory and not mandatory.

14. Shri P.S. Poti learned senior counsel appearing for the appellant submitted that though there is divergence of opinion, the rule must be held to

be mandatory and having regard to the stringent provisions of the Act, strict compliance with the provisions of the Act as well as the Rules should

be insisted upon and where there is a failure to comply with, prejudice per se must be inferred.

15. Learned counsel for the revisionists has argued that the accused Intazar Ali is said to be the owner of the factory, which has not been proved

by evidence on record. Hence his conviction is bad in law.

16. PW-2 Jaipal Singh has stated in his statement that at about 5.00 p.m. Shri Rawat went to the factory of the accused Intazar Ali. There is no

evidence on record that the accused Intazar Ali was found in the factory, hence to infer that the factory belonged to Intazar Ali is wrong. Further

there is no evidence on record to prove that samples were sold by Intazar Ali. Copy of the report of the analyst was sent to both the accused, but

this will not prove that the factory if any was owned by Intazar Ali. The courts below have referred to the statement u/s 313 Cr.P.C. given by the

accused Intazar Ali, in which he has admitted that he was running a factory in the year 1983-84 at the house of Vinod Kumar and was

manufacturing carbonated water, but the prosecution has to independently prove the charges levelled against the accused. The principle of

vicarious liability is not applicable in the case and thus, I think the accused Intazar Ali was not correctly held guilty by the courts below.

17. As far as accused Husnain is concerned, it has been argued that according to law laid down in Saleem vs. State of U.P. and another 2014 (5)

ADJ 62, the accused Husnain is also entitled to acquittal because no independent witnesses are forthwith in this case.

18. As far as independent witness is concerned, the Food Inspector has specifically mentioned in Exh. Ka-10 that he made attempts to call

independent witnesses, but independent witnesses refused to give evidence and give their details. I think this would suffice.

19. Learned counsel for the revisionists has argued that compliance of section 10(7) has not been done.

20. According to section 10(7) says as under:

10. Powers of food inspectors:-

(7) Where the food inspector takes any action under clause (a) of sub-section (1), sub-section (2), sub-section (4) or sub section (6), he shall [call

one or more persons to be present at the time when such action is taken and take his or their signatures].

21. As I have said above, the mentioning of the fact that witnesses failed to give the evidence would it needful. The revisionists have failed to show

any reason for their false implication and the allegations made against them regarding the samples taken.

22. Learned counsel for the revisionists has further argued that compliance of section 13(2) has not been done.

23. Section 13(2) reads as follows.

21. Report of public analyst:-

(2) On receipt of the report of the result of the analysis under sub-section (1) to the effect that the article of food is adulterated, the Local (Health)

Authority shall, after the institution of prosecution against the persons from whom the sample of the article of food was taken and the person, if any,

whose name, address and other particulars have been disclosed u/s 14A, forward, in such manner as may be prescribed, a copy of the report of

the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both of

them may make an application to the court within a period of ten days from the date of receipt of the copy of the report to get the sample of the

article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory.

24. This argument does not find favour of the Court because Exh. Ka-1 and 2 are acknowledgement due which go to show that the accused have

been served copies of the report of analyst. Thus, compliance of section 13(2) has been done by the prosecution.

25. Learned counsel for the revisionists has further argued that compliance of Rule 16(c) has not been done.

26. Rule 16(c) of the Rules reads as under:

24. Manner of packing and sealing the samples:-

22. [(c) A paper slip of the size that goes round completely from the bottom to top of the container, bearing the signature and code and serial

number of the Local (Health) Authority, shall be pasted on the wrapper, the signature or the thumb impression of the person from whom the

sample has been taken being affixed in such a manner that the paper slip and the wrapper both carry a part of the signature or thumb impression:

Provided that in case, the person from whom the sample has been taken refuses to affix his signature or thumb impression, the signature or thumb

impression of the witness shall be taken in the same manner;]

27. P.W.-1 is Nazir Hussain said that after the articles were bought label was affixed on the samples, which were prepared at the spot, copies of

which has been filed as Exh. Ka-3. It was signed by the Food Inspector and sample was divided into three parts and opening of the bottle was

sealed thereafter he has stated what procedure was followed. The procedure said to have been followed by the Food Inspector is in consonance

with the Rule 16(c) of the Rules.

28. P.W.-3 Jeet Singh has stated that the sample was not taken in his presence. According to the analyst report, the sample was adulterated as

without any declaration saccharine has been used in the sample.

29. "15. In Maxwell on Interpretation of Statutes, Eleventh Edition, at page 362 it is suited as under:

Where, indeed, the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a particular manner did not

imply a prohibition to do it in any other manner, no doubt can be entertained as to the intention; that is to say, such a requirement would be

imperative.

30. It is further stated on page 364 that:

25. The general rule is, that an absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or

fulfilled substantially.

26. XXX XXX XXX

27. When a public duty is imposed and the statute requires that it shall be performed in a certain manner, or within a certain time, or under other

specified conditions, such prescriptions may well be regarded as intended to be directory only in cases when injustice or inconvenience to others

who have no control over those exercising the duty would result if such requirements were essential and imperative. In Craies' Statute Law,

Seventh edition at page 62 it is stated thus:

When a statute is passed for the purpose of enabling something to be done and prescribes the formalities which are to attend its performance,

those prescribed formalities which are essential to the validity of the thing when done are called imperative or absolute; but those which are not

essential and may be disregarded without invalidating the thing to be done, are called directory.

31. At page 250 it is further states thus:

28. The question whether the provisions in a statute are directory or imperative has frequently arisen in this country, but it has been said that no

general rule can be laid down and that in every case the object of the statute must be looked at.... When the provisions of a statute relate to the

performance of a public duty and the case is such that to hold null and void acts done in respect of this duty would work serious general

inconvenience or injustice to persons who have no control over the main object of the legislature, it has been the practice to hold such provisions to

be directory only, the neglect of them, though punishable not affecting the validity of acts done. In Dattatraya v. State of Bombay it was held as

under:

Generally speaking the provisions of a statute creating public duties are directory and those conferring private rights are imperative. When the

provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty

would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time

would not promote the main object of the legislature, it has been the practice of the courts to hold such provisions to be directory only; the neglect

of them not affecting the validity of the acts done. In Rule 7(3) no doubt the expression "shall" is used but it must be borne in mind that the Rule

deals with stages prior to launching the prosecution and it is also clear that by the date of receipt of the report of the Public Analyst the case is not

yet instituted in the court and it is only on the basis of this report of the Public Analyst that the concerned authority has to take a decision whether

to institute a prosecution or not. There is no time limit prescribed within which the prosecution has to be instituted and when there is no such limit

prescribed then there is no valid reason for holding the period of 45 days as mandatory. Of course that does not mean that the Public Analyst can

ignore the time limit prescribed under the Rules. He must in all cases try to comply with the time limit. But if there is some delay, in a given case,

there is no reason to hold that the very report is void and on that basis to hold that even prosecution can not be launched. May be, in a given case,

if there is inordinate delay, the court may not attach any value to the report but merely because the time limit is prescribed, it can not be said that

even a slight delay would render the report void or inadmissible in law. In this context it must be noted that Rule 7(3) is only a procedural provision

meant to speed up the process of investigation on the basis of which the prosecution has to be launched. No doubt, Sub-section (2) of Section 13

of the Act confers valuable right on the accused under which provision the accused can make an application to the court within a period of 10 days

from the receipt of copy of the report of Public Analyst to get the samples of food analysed in the Central Food Laboratory and in case the sample

is found by the said Central Food Laboratory unfit for analysis due to decomposition by passage of time or for any other reason attributable to the

lapses on the side of prosecution, that valuable right would stand denied. This would constitute prejudice to the accused entitling him to acquittal

but mere delay as such will not per se be fatal to the prosecution case even in cases where the sample continues to remain fit for analysis inspite of

the delay because the accused is in no way prejudiced on the merits of the case in respect of such delay. Therefore it must be shown that the delay

has led to the denial of right conferred u/s 13(2) and that depends on the facts of each case and violation of the time limit given in Sub-rule 3 of

Rule 7 by itself can not be a ground for the prosecution case being thrown out.

32. Thus, it is not mandatory for the public analyst to send the report to the accused within 40 days, but it is just a directives for the public analyst

to submit the report of the result of such analysis of sample within 40 days to the Local (Health) Authority.

33. Thus, after perusal of the material available on record, as far as the accused Husnain is concerned, the revision has to be allowed in part.

34. The revision is partly allowed. The conviction and sentence as far as it relates to the accused Intazar Ali is set aside. The conviction and

sentence as far as it relates to accused Husnain is confirmed.

35. Let the lower court record be remitted back to the court below along with copy of this order for taking necessary action.