(2012) 02 GAU CK 0052

Gauhati High Court

Case No: Criminal Revision No. 73 of 2004

Shri Mahesh Agarwalla		APPELLANT
	Vs	
State of Assam		RESPONDENT

Date of Decision: Feb. 14, 2012

Acts Referred:

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

Citation: (2012) 2 GLD 435

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

Bench: Single Bench

Advocate: Kamal Agarwal, Mr. D.K. Chomal and Mr. R.J. Baruah, for the Appellant; K. Munir, Addl. PP, Assam, for the Respondent

Final Decision: Allowed

Judgement

P.K. Musahary, J.

The petitioner was convicted u/s 16 read with Section 7 of the Prevention of Food Adulteration Act, 1954 and sentenced to undergo simple imprisonment for one year and to pay fine of Rs. 1,000/- and in default of fine, 30 days simple imprisonment vide judgment and order dated 29.4.2003 passed by the learned Chief Judicial Magistrate, Golaghat in CR Case No. 1 of 2002 which was upheld in appeal by the learned Sessions Judge, Golaghat vide his judgment and order dated 15.11.2003 in criminal appeal No. 24 of 2003. Being aggrieved by the aforesaid judgment and orders rendered by the learned Courts below, the present convict/petitioner has approached this Court by filing this revision petition. I have heard Mr. K. Agarwal, learned counsel for the convict/petitioner and also Mr. K. Munir, learned Addl. Public Prosecutor, Assam for the opposite party. I have also gone through the records as made available at the time of hearing.

2. The facts narrated by the prosecution are that, P.W. 1 Paresh Banikya, Food Inspector, visited the shop of the convict/petitioner on 15.10.2001 at about 2.30 p.m. and he, identifying himself to be so, collected samples of rice and Moong, Dal stored for sale for human consumption suspecting it to be adulterated by observing necessary formalities. After collecting the samples, a part of it was sent to Forensic Science Laboratory, Guwahati for necessary chemical analysis. After doing necessary chemical analysis, the FSL submitted a report stating that the sample of rice is not upto the standard. Receiving the said report the Food Inspector obtained the prosecution sanction from the local Health Authority and launched prosecution against the convict/petitioner in the Court of learned CJM, Golaghat. The convict/petitioner, on receipt of notice from the trial Court faced the trial. The learned trial Court thereafter proceeded against the accused in accordance with law by recording evidence of two witnesses. PW. 1 is the Food Inspector and PW. 2 is a Peon of the Office of the Joint Director, Health Services, Golaghat and on the basis of their evidence, the petitioner was convicted and sentenced u/s 7/16 of P.F.A. Act which was upheld by the learned Sessions Judge, Golaghat in appeal as stated earlier.

3. Mr. Agarwal, learned counsel for the convict/petitioner submits that the learned trial Court as well as the appellate Court failed to appreciate that the prosecution did not comply with the statutory requirement u/s 132 of the Prevention of Food Adulteration Act, 1954 (hereinafter in short referred to as ''Act'' only) inasmuch as the convict petitioner was not furnished with a copy of the report of the Public Analyst along with the notice for prosecution. According to him, the prosecution committed serious lapse vitiating the entire trial for which the convict/ petitioner is entitled to get an order of acquittal. In support of his submission, learned counsel relies on the decisions of the Apex Court in Rameshwar Dayal v. State of U.P., reported in 1995 Supp (4) 659 and State of Orissa Vs. Gouranga Sahu, . In this regard he also refers to decisions of this Court in Shymal Nag Vs. State of Assam, and Dhananjoy Pal v. State of Assam, reported in 2005 (Supp) GLT. 764.

4. I have gone through the order passed by the Apex Court in Rameshwar Dayal''s case (supra) which runs as under:

The matter arises under the Prevention of Food Adulteration Act. The sample taken was found to be adulterated. On the record it appears that the report of the Public Analyst is not supplied to the accused as required u/s 13(2) of the Act. Consequently, he could not get his own sample examined by the Central Laboratory. It is a very valuable right given to him. Rules also provide that such a report should be supplied to the accused within a certain period. The question arose in a similar case where this rule is mandatory or directory. We need not launch into such a discussion in this case. We are satisfied that serious prejudice has been caused to the appellant because of non-supply of the Public Analyst''s report as required u/s 13(2) of the Act. The High Court having noticed this, yet rejected the plea on the mere ground that

such an objection was not raised before the trial Court. It is not a question of an objection, but it is a question of prejudice. Such a point can be raised even at a later stage if material on record supports the same. In the "result the conviction and sentence are set aside. The appeal is allowed accordingly.

5. The other case of Gauranga Sahu (supra) as cited by the learned counsel for the petitioner, settled the law on supply of copy of report of Public Analyst to the accused holding that it is a statutory requirement which must be observed mandatorily. It has been held further therein that mere despatch of report is not enough to claim compliance of the said requirement but it must be proved that the accused, in fact, received the copy of the report of the Public Analyst on the basis of which the accused is sought to be convicted. This a settled position of law and on the basis of said decision, this Court also rendered judgment in the similar line in Shyamal Nag''s case (supra) and Sri Indradev Yadav and Sri Ramanand Paswan Vs. State of Assam, and Dhananjoy Pal''s case (supra). No further discussion on this legal point is called for.

6. What is required to be ascertained from the evidence on record is whether the prosecution has been able to establish the fact of (1) dispatch of notice along with a copy of Public Analyst''s report to the convict petitioner and (2) due delivery of the same to him. I have scanned the evidence of Sri Paresh Banika, Food Inspector concerned, who was examined as PW 1. In his deposition, he stated that by a letter dated 28.2.2002 (Ext. 13) he sought permission from higher authority to initiate prosecution against the accused by furnishing all the necessary documents. The higher authority namely the Chief Medical & Health Officer (CD)-Cum-Local (Health) Authority, accordingly granted the permission vide communication dated 20.3.2002 (Ext. 14). On receipt of the permission he instituted the case against the accused petitioner. He, however, stated that the samples, notice sent in Form-13(2) and postal report have not been produced before the Court as he has not been asked to do so. In cross-examination the Food Inspector again stated that in the letter (Ext. 13) seeking prosecution sanction, there is no mention of sending the copy of report of the Public Analyst. The said Food Inspector (PW 1) did not disclose in his evidence as to how and in what manner report of the Public Analyst was sent to the accused. Report could be sent by registered post or through a special messenger. If it was sent by a registered post with A/D the prosecution must produce the A/D card as a proof of due service on the addressee. If it was sent by a special messenger, the prosecution is required to produce the peon''s book/dak book which bears the signature(s) of the addressee and the same must be proved before the Court. In case where there is no acknowledgement receipt, the special messenger office peon who delivered the notice along with the report of the Public Analysist should be examined as witnesses to prove the fact of delivery of the letter or notice accompanied by the copy of the report. In the instant case, the prosecution has neither produced the A/D card nor the postal record as a proof of delivery of the notice with copy of the report of the Public Analyst to the accused. Record shows

that prosecution did not produce/examine any witness to prove the fact of due delivery of notice and the report to the accused. The prosecution also did not even examine any official from the postal department to prove that the accused was served with copy of the report of the Public Analyst. In my considered view the prosecution, except making a vague statement, has not been able to prove that the notice along with the report of the Public Analyst as required u/s 13(2) of the Act was duly despatched and delivered to the convict/petitioner. The report, therefore, never reached the convict petitioner.

7. Mr. Agarwal, learned counsel, does not want to make further submission inasmuch as, according to him, non-furnishing of report of the Public Analyst caused serious prejudice to the convict/petitioner vitiating the entire proceeding and on that ground alone the impugned conviction and sentence has been rendered unsustainable in law.

8. This Court in Dhananjoy Pal''s case (supra) following the decisions of the Apex Court in this regard, held that the object of giving a notice u/s 13(2) of the Act is really to inform the accused of his valuable right to get the sample analysed from the C.F.L. and it is not enough for the prosecution to say that the accused ought to have known the law that he has the right to get the sample analysed from the C.F.L. From the evidence and the materials on record there is no difficulty for the Court in arriving at a conclusion that the convict/petitioner was never informed about the case against him by way of furnishing the report of the Public Analyst. From the evidence on record it is quite clear that due to non-receipt of the report he could not avail the opportunity of effectively defending himself by way of getting the sample analysed as provided under the said provision of the Act. Without providing such opportunity, the petitioner was prosecuted and convicted. The lapse on the part of the prosecution prevented the petitioner from taking recourse to action u/s 13(2) of the Act and thereby prejudice was caused to him. The convict petitioner has been able to make out a case of prejudice due to non-compliance of the aforesaid provision by the prosecution and such prejudice has led to denial of justice to him. This Court must, therefore, hold that there is a clear violation of mandatory provision u/s 13(2) of the Act which has caused prejudice to the accused in defending his case. There is no doubt that in the attending facts and circumstances of the case the entire trial has been vitiated making the impugned conviction and sentence untenable and invalid in law.

9. In the result the impugned judgments and orders convicting and sentencing the convict/petitioner are hereby set aside and quashed. The convict/petitioner stands acquitted. It is stated at the bar that the convict/petitioner is on bail. The bail bond stands discharged. Petition stands allowed. Return the LCR.