(1978) 07 BOM CK 0022

Bombay High Court

Case No: None

State of Maharashtra		APPELLANT
	Vs	
Shriram Hotel and Others		RESPONDENT

Date of Decision: July 26, 1978

Citation: (1979) CriLJ 271

Hon'ble Judges: Jahagirdar, J

Bench: Single Bench

Judgement

Jahagirdar, J.

The respondents in this appeal (hereinafter referred to as the accused) were prosecuted at the instance of the Food Inspector of Poona in Criminal Case No. 83 of 1974 before the Judicial Magistrate, First Class, at Daund. In the town of Daund accused Nos. 2 and 3 are carrying on the business of a restaurant which was joined as accused No. 1 in the trial Court. On 18th August 1''973 the Food Inspector purchased, among other things, 600 grams of jilebi from the accused. One-third of the same, namely, 200 grams of jilebi was sent to the Public Analyst who reported that the sample was adulterated inasmuch as it contained a non-permitted coal tar dye (metanil yellow).

2. On these facts, the accused were prosecuted as mentioned above. The learned trial Magistrate by his judgment and order dated 13th Nov. 1975 acquitted the accused mainly on one ground that the quantity which was sent to the Public Analyst was not in compliance with what he regarded as the mandatory requirements of Rule 22 of the Prevention of Food Adulteration Rules. There was no difficulty in regarding jilebi as an article of prepared food. If it was so, then it was covered by item 14 of Rule 22 as it then stood. The rule required that approximately 500 grams were required to be sent to the Public Analyst. Admittedly in the present case only 200 grams were sent. The learned trial Magistrate relying upon the judgment of the Supreme Court in Rajaldas Gurunamal Pamanani Vs. The State of Maharashtra, felt obliged to acquit the accused.

3. The State has challenged this order of acquittal mainly relying upon the subsequent decision of the Supreme Court which has re-interpreted Rule 22 and has held that the requirements of Rule 22 are directory and not mandatory. This decision of the Supreme Court is the State of Kerala and Others Vs. Alasserry Mohammed and Others, . Mr. Hudlikar, the learned Public Prosecutor appearing in support of the appeal, has naturally relied upon this judgment and has contended that prosecution should not fail if the quantity sent was not shown to be insufficient for a proper analysis by the Public Analyst. A proper reading of the judgment of the Supreme Court, says Mr. Hudlikar, leads one inevitably to the conclusion that if the Public Analyst has found it fit to analyse the sample without finding the quantity insufficient, then the result of the analysis made by him and as embodied in the report sent by him should be accepted. On the other hand, it has been contended by Mr. Khatal-Patil that the judgment of the Supreme Court in Alassery Mohammed''s case does not give a blank power to the Food Inspector to send any quantity that he likes. The fact that certain quantity is mentioned in Rule 22 is sufficient warrant for holding that some quantity near about the quantity mentioned in Rule 22 must be sent by the Food Inspector to the Public Analyst. Mr. Khatal-Patil also sought to support the order of acquittal by pointing out that what this Court has held to be the mandatory requirements of Rule 17 have not been complied with by the Food Inspector in the instant case.

4. In State of Kerala and Others Vs. Alasserry Mohammed and Others, the Supreme Court in terms overruled its earlier judgment in Rajaldas Gurunamal Pamanani Vs. The State of Maharashtra, . After analysing the relevant provisions of the Prevention of Food Adulteration Act as well as of the Rules, the Supreme Court has mentioned that the provisions of Rule 22 are directory and not mandatory. At the same time they have hastened to add that the Food Inspectors should take care to see that they comply with the rules as far as possible. It is true, as mentioned by the learned Public Prosecutor, that in paragraph 9 of the judgment the Supreme Court has specifically mentioned that if the quantity sent to the Public Analyst is less then it is for the Public Analyst to see whether it is sufficient for his analysis or not. If he finds it insufficient, there is an end of the matter. On the other hand, says the Supreme Court, if the Public Analyst finds it sufficient, but due to one reason or another it is shown that the report of the Public Analyst based upon the short 4uantities sent to him is not trustworthy or beyond doubt, the case may fail. It would be proper for me to reproduce the following which is contained in paragraph 9 of the judgment of the Supreme Court:

In other words, if the object is frustrated by the sending of the short quantity by the Food Inspector to the Public Analyst, it is obvious that the case may end in acquittal. But if the object is not frustrated and is squarely and justifiably achieved without any shadow of doubt, then it will endanger public health to acquit offenders on technical grounds which have no substance.

The question is whether these observations of the Supreme Court are tantamount to saying that any quantity may be sent by the Food Inspector and unless the Public Analyst reports that the quantity is insufficient, his report must be accepted. The answer which I am arriving at is in the negative. While deciding the question whether the requirements of Rule 22 are mandatory or directory, the Supreme Court referred to Section II as it then stood. Sub-section (2) of Section 11 mentioned that if the person from whom the sample had been taken by the Food Inspector declined to accept one of the parts, the Food Inspector was to send intimation to the Public Analyst of such refusal and thereupon the Public Analyst receiving the sample for analysis should divide it into two parts and carry out the analysis fully in respect of only one part. The other unused part was required to be kept in a sealed container. Referring to this, the Supreme Court pointed out that the Public Analyst had to divide one-third part sent to him into two parts and half of the one-third part was retained for him for further tests if necessary, or for production in case legal steps were taken. In other words, a combined reading of Section 11 of the Act and Rule 22 should lead one to the conclusion that half of the quantity mentioned in Rule 22 should be regarded as sufficient for analysis of the Public Analyst. In case therefore, the Food Inspector has sent a'' quantity of a sample not in accordance'' with the quantity mentioned in Rule 22 but somewhat more than half that quantity, the analysis carried out by the Public Analyst of the sample so sent should be adequate enough for the purpose of the case that may be launched on the basis of that report. This is the scheme con-j tained in Section 11 of the Act read with Rule 22.

5. I am, therefore, of the opinion that though as the Supreme Court has held that the quantities mentioned in Rule 23 are mentioned as approximate quantities and the rule itself is to be regarded as directory and not mandatory, the Food Inspector is not free to send inadequate quantity. What is inadequate is indicated by a combined reading of Section 11 of the Act and Rule 22 and that is approximately half of the quantities mentioned in Rule 22. If in a given case the quantity sent is even less than the half of the quantity mentioned in Rule 22, then it is open to the Public Analyst to mention and to prove to the satisfaction of the Court that the quantity received by him was sufficient for a proper analysis as required under the Act. In such a case the prosecution may not fail on the basis of the smaller quantity sent to the Public Analyst. If, however, more than half of the quantity mentioned in Rule 22 is received by the Public Analyst, then one can safely proceed on the basis that that quantity was sufficient for the purpose of the analysis required under the provisions of this Act unless the contrary is proved.

6. In the instant case, admittedly less than half of the quantity as required by Rule 22 was sent and in the light of what 1 have stated above, the order of acquittal passed by the learned trial Magistrate will have to be upheld though on a slightly different ground.

7. I have also to uphold the order of acquittal in view of non-compliance by the Food Inspector with the mandatory requirements of Rule 17 which is established in the instant case.

8. In the result, the appeal must fail and is dismissed. The order of acquittal passed by the learned Judicial Magistrate, First Class, Daund, in Criminal Case No. 83 of 1974 is confirmed. Bail bonds of the accused stand cancelled.