

(1979) 07 CAL CK 0020

Calcutta High Court

Case No: Criminal Rev. Case No. 607 of 1979

Ang Chinck Wogn and Another

APPELLANT

Vs

State of West Bengal and
Another

RESPONDENT

Date of Decision: July 9, 1979

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 245(2)
- Prevention of Food Adulteration Act, 1954 - Section 13(2), 16(1)(a)(i), 7, 7(1)

Citation: 84 CWN 167

Hon'ble Judges: Jyotirmoyee Nag, J

Bench: Single Bench

Advocate: B.K. Bhose and Alope Kumar Sengupta, for the Appellant; Sunil Kumar Basu (Sr.) for Opposite Party No. 2 and Dipak Banerjee for Opposite Party No. 1, for the Respondent

Judgement

Jyotirmoyee Nag, J.

This Rule is directed against an order dated 19th January, 1979 passed by the learned Metropolitan Magistrate, 4th Court, Calcutta, rejecting the prayer of the accused petitioners for their discharge u/s 245 (2) of the Code of Criminal Procedure in case No. 1160 of 1974 under section 16(1) (a) (i) read with section 7 of the Prevention of Food adulteration Act, 1954" and also against an order dated 19.12.78 rejecting the prayer of the accused for sending the sample to the Central Food Laboratory u/s 13(2) Food Adulteration Act, 1954. On the 30th May, 1974 the Food Inspector of the Corporation of Calcutta, opposite party No. 2, filed a complaint against the petitioners and two others before the learned Metropolitan Magistrate, 4th Court, Calcutta, u/s 16 (1) (a) (i) read with section 7 of the Prevention of Food Adulteration Act, 1954. The learned Magistrate took cognizance of the alleged offence and issued process against the petitioners and -others fixing 13.8.74 for their appearance. On 13.1.75 the accused appeared before the learned Magistrate and on 17.3.75 the case was adjourned to 22.4.76 for hearing on the point whether

the accused should be committed to the court of session or to the learned Magistrate should try the case himself. Then the case was adjourned till 30.6.76 and on 2.2.77 a petition was filed by the accused challenging the maintainability of the case and that matter was fixed for hearing on 9.6.77. Before that on 7.4.77 a petition was filed by the accused u/s 13(2) of the Prevention of Food Adulteration Act. That petition was heard by the learned Magistrate and on 30.4.77 the learned Magistrate rejected that petition on the ground that the case is triable by the court of sessions and so he could not pass any order. Against that order the petitioners came up to the High Court and the High Court decided that the case was triable by the learned Magistrate and not by the court of session and the case came back to the learned Magistrate on 14.7.78. On 17.8.78 the accused entered appearance on receiving notice from the learned Magistrate's court and on 23.11.78 the accused filed another application u/s 13(2) of the Prevention of Food Adulteration Act on the ground that the sample be sent to the Central Food Laboratory for examination, but that application was rejected as according to the learned Magistrate the sample was taken as long back as 26.3.74 and it was rather too late to have the sample examined by the Central Food Laboratory. Then on the ground that by not permitting (he petitioner to have the sample examined by the Central Food Laboratory, the petitioners prayed that he be discharged u/s 245(2) of the Code of Criminal Procedure, in as much as, they had been prejudiced in their defence as a valuable right has been denied to them by not sending the sample to the Central Food Laboratory for further examination and report. That application was rejected by the learned Magistrate on 19.1.79. It is against that order that the petitioners have come up before this Court as also the previous order dated 13.12.78 rejecting the prayer for sending the sample to the Central Food Laboratory for examination u/s 13(2) of the Prevention of Food Adulteration Act, 1954.

2. Mr. Bhose, learned Advocate appearing on behalf of the petitioner, has submitted that the petitioners had made an application for sending the sample to the Central Food Laboratory for examination first on 7.4.77 which was rejected by the learned Magistrate on the ground that the case was triable by the Court of Sessions and so the learned Magistrate did not accede to the request of the petitioner for sending the sample. Again an application was made on 23.11.78 for sending the sample to the Central Food Laboratory for examination. That application was rejected and thereby a valuable, right of the accused has been denied to them. The reasons for rejecting the last application by the learned Magistrate are that the sample was taken as far back as on 26.3.74. "Now at this distant date I am not inclined to send the sample to the Central Food Laboratory for analysis. Hence the defence prayer is considered and disallowed." It will be seen from this order that the main reason for disallowing the application was that once before on 26.3.77 a similar application was rejected by the learned Magistrate's predecessor. The previous application was rejected, as I have already stated, by the learned Magistrate because according to him the case was triable by sessions. But that question was ultimately decided by

the High Court wherein it was held that the trial should be held by the learned Magistrate himself. As soon as the case went back the petitioners made the said application for having the same examined by the Central Food Laboratory u/s 13(2) of the Prevention of Food Adulteration Act on 23.11.78. That application was also rejected because of the long gap and since the report of the analyst had been submitted and a petition of complaint filed on the basis of that report. Therefore the delay in making the application for examination u/s 13(2) of the Prevention of Food Adulteration Act was not due to any laches on the part of the accused petitioner because as early as March 1977 they did make an application and that was rejected. Therefore a valuable right which was available to the accused has been denied to them. On this ground alone the entire proceeding should be quashed.

3. In this connection Mr. Bhose has cited several cases which support this contention and I may shortly refer to these cases. One of them is reported in 1977(II) F.A.C. 310 (Tara Dutt and Ors. v. The State). There the subject-matter of adulteration was butter which was recovered from the restaurant of the accused. An application was made on behalf of the accused petitioner u/s 13(2) for sending the sample to the Director, Central Food Laboratory for analysis and this application was made on the date fixed for arguments by both the parties. The application was rejected on the ground that it was belated. It was held that there was no unreasonable delay in making the application. "Accordingly the trial court could not reject it. Further it was considered futile to send the case for retrial, in as much as, no useful purpose would be served for sending the sample for examination at that late stage. Accordingly the accused was acquitted.

4. The next case is reported in 1978(1) F.A.C. 93 (Girwar v. State of U.P.). In this case the sample of milk was taken on 5.10.77. Summons was served on the applicant in the first week of September 1967. Thus more than 308 days elapsed since the collection of sample. It is presumed that the sample which left with the petitioner had deteriorated by that time as the milk must have curdled by that time. Therefore, the accused appellant was denied the opportunity to have the sample left with him to be analysed by the Director. The benefit of this lapse on the part of the prosecution must go to the applicant.

5. Another case is reported in 1975(1) F.A.C. 401 (Ram Chandra Banerjee and Anr. v. A.K. Chatterjee and the State), It is a decision of the Division Bench of this court. There the delay was on the part of the Food Inspector who instituted the case after 15 months after the sample was taken and the application u/s 13(2) made on behalf of the accused for sending the sample to the Director, Central Food Laboratory, was made after the lapse of two and half years. The application was rejected on the ground that it will be infructuous to send the sample after such a length of time. At the same time it was held that it was an abuse on the process of court to continue the proceeding under such circumstances as the accused has been denied a valuable right and thereby he has been prejudiced in his defence.

6. The other case is reported in 1977(1) F.A.G. 1. There the sample which was of Masur Dal was taken on "18.11.72. The complaint was filed on 3.8.73. The delay was due to pressure of work as explained by the Food Inspector. The application u/s 13(2) of the Act was made on behalf of the accused. In this case also it was held that no useful purpose would be served by sending the sample to the Director, Central Food Laboratory, after such a length of time, but at the same time it was held that thereby the accused had been denied a valuable right and therefore he was entitled to be acquitted.

7. The last case cited by Mr. Bhose is reported in 1978(II) F.A.C. 275 (State of Kerala v.K. C. John and Anr.). Therein it has been held that the provision of section 13(2) of the Prevention of Food Adulteration Act is mandatory provision of law, and violation of that provision by not permitting the accused to send the sample to the Director, Central Food Laboratory, is a deprivation of a valuable right conferred on him which results in serious prejudice to him. Accordingly it was considered unsafe to convict the accused on the basis of the report of the analyst alone. All these support the case of the present petitioner.

The case cited by Mr. Basu appearing for the Corporation of Calcutta is reported in [Ajit Prasad Ramkishan Singh Vs. The State of Maharashtra](#). This is a decision of the Supreme Court by three Judges. There the accused was prosecuted u/s 16(1) (a) (i) read with section 7(1) of the Prevention of Food Adulteration Act for having adulterated buffalo milk as it was found on analysis that it contained only 2.7% of milk fat instead of 6% as required by rules. The trial court acquitted the accused solely on the ground, that as the summons in the case was served on the accused after three months, the accused was deprived of his valuable right u/s 13(2) of the Act to get his sample analysed by the Director of the Central Food Laboratory; but the High Court convicted him and sentenced him to six months rigorous imprisonment with a fine of Rs. 1000/-. There was no application u/s 13(2) by the accused for getting the sample analysed by the Director in that case. So the accused could not complain that he had been deprived of the right to have the sample analysed by the Director u/s 13(2) of the Act. Secondly it was held that mere delay and laches on the part of the complainant in getting the summons served was not in the absence of evidence to show that the sample had deteriorated when the summons was served, sufficient to hold that the accused was prejudiced by reason of deprivation of the right u/s 13 (2). The conviction of the accused was accordingly upheld. This case must be distinguished from the facts of the present case, inasmuch as, in that case there was no application u/s 13(2) of the Prevention of Food Adulteration Act by the accused. But as I have already stated in this case the accused made an application in 1977 and also late in 1978. Both the applications were rejected. Further in the case cited above the learned Magistrate acquitted the accused because three months had elapsed since the sample was taken. It was too early to forecast that the sample had deteriorated by that time or had become absolutely useless for examination by the Director of Central Food Laboratory.

Accordingly it was held that the accused had been wrongly acquitted by the learned Magistrate. But as I, have already stated, two applications were made by the accused u/s 13(2) which were rejected by the learned Magistrate. The last application was made after a period of four years and by that time it is common knowledge that the chilly sauce, which is the subject-matter of the present case, would deteriorate and it would be useless to send the sample to the Central Food Laboratory. Therefore, I must hold that the accused had been denied a valuable right and in the facts and circumstances of this case it would be an abuse of the process of the Court to allow the proceeding to continue. Accordingly the same is quashed.

The Rule is made absolute.