

(1960) 11 CAL CK 0012

Calcutta High Court

Case No: Criminal Revision Case No. 1357 of 1960

Messrs Htkalal Ramkhmar

APPELLANT

Vs

The State

RESPONDENT

Date of Decision: Nov. 21, 1960

Acts Referred:

- Prevention of Food Adulteration Act, 1954 - Section 11(1), 13, 13(2)

Citation: (1961) 2 ILR (Cal) 468

Hon'ble Judges: Amaresh Roy, J

Bench: Single Bench

Advocate: Rebati Nath Sarkar, for the Appellant; Prasun Chandra Ghose, for the Respondent

Judgement

A.C. Roy, J.

This application raises a question of interpretation of Section 13(2) of the Prevention of Food Adulteration Act, Act XXXVII of 1954. The point arises in this way. The present Petitioner is being prosecuted for keeping in his possession adulterated Gur. In launching the prosecution, the Food Inspector in conformity with the provisions of the Act took sample of the commodity and in conformity with Section 11(1)(c)(i) delivered one of the parts to the present Petitioner; he sent; another part for analysis to the Public Analyst and retained the third part with himself. After cognisance of the case was taken and summons issued, the accused Himangsu Sekhar Baherji appeared in Court on August 17, 1960 and on that date filed an application u/s 13(2) of the Act praying for sending the part of the sample that was given to him in terms of Section 11(1)(c)(i) to the Director of Central Food Laboratory for a certificate and he produced that sample phial. On examining that phial, as is required by Section 13(2), the learned Magistrate found that seal etc. were broken and there was no label on it showing that it was the sample taken by the Food Inspector. Thereupon, the present Petitioner asked the learned Magistrate to call for the third phial kept with the Food Inspector under the provisions of Section

11(1)(c)(iii). The learned Magistrate acceded to this prayer and called for that third phial and fixed August 30, 1960 for production. On that later date the Food Inspector filed an application before the learned Magistrate stating that the phial that was kept by him was not traceable although he had searched for the same. In that application he said, Now if your honour perm is me to take a fresh sample from the seized tin tying lander the custody of the accused then I may take the same and Send it to your Court as per your honour"s order.

2. Upon that application the learned Magistrate recorded an order on August 30, 1960, saying, "Allowed the prayer of Food Inspector. Seen petition. To 7.10."

3. Against this last order the present Rule has been obtained and the learned Advocate for the Petitioner, Mr. Sarkar has raised two contentions. His first contention is that Section 13(2) mentions that either of the two samples mentioned in Sub-clauses (i) and (iii) of Section 11(l)(c) can be availed of by the accused for exercising his right u/s 13(2) and in the present case, the prosecution! having failed to produce the sample covered by Sub-clauses (iii) of Section 11(1)(c), his legal right u/s 13(2) is being denied and therefore, he has prayed for Squashing the proceedings. Mr. Sarlrar"s second contention is that the learned Magistrate had no power to direct taking of fresh sample from the seized tin of GUR and to send it for the purpose of obtaining a certificate u/s 13(2). He also pleaded that a long period has elapsed since the Gur was seized and it will be extremely prejudicial to the accused person to take a sample from that tin now.

4. On the question whether the accursed vendor u/s 13(2) can avail of either of the sample mentioned in sub-clause (i) or Sub-clause (iii) of Section 11(1)(c), Mr. Prasun Chandra Ghose, the learned Advocate appearing for the State, has contended that when the accused vendor makes the application he can avail of only the sample mentioned in Sub-clause (i) of Section 11(1)(c) and when the complainant makes an application he can avail of the sample mentioned in Sub-clause (iii) of Section 11(1)(c) and neither of the parties can avail of the other sample. Upon that contention Mr. Ghose has urged that in the present case the accused having failed to satisfy the learned Magistrate about the mark and seal of the first sample or fastening as required by Section 13(2) in respect of the sample given to him, his application u/s 13 must fail and although the learned Magistrate by his order dated August 30, 1960, allowed the prayer of the Food Inspector to take fresh sample from the seized tin of Gur as the accused person objected to that, on behalf of the State Mr. Ghose will accede to that order being set aside. Now upon examination of the language of Section 13(2) we find that it provides for making an application to the Court for sending one or the other sample to the Central Food Laboratory for a certificate. The Section does not authorise the Magistrate upon an application of one party to call for the sample retained with the other party. And the true meaning of the Sub-section, in my view, is as Mr. Ghose has contended that the accused vendor can make an application for sending the sample retained with him and he cannot ask

the Magistrate to call for the sample retained with the Food Inspector to be utilised upon his application. Similarly, the complainant by his application may ask the Magistrate to send the sample retained with him but he cannot ask the Magistrate to call for the sample retained with the accused vendor. In fact, during argument, Mr. Sarkar, on behalf of the Petitioner, urged that the second result I have just mentioned, that is, on an application by the complainant the accused cannot be asked to produce the sample retained with the accused is the correct position in law. Moreover Section 11(2) gives key to the whole problem, in my view, when it provides that if at the stage of Section 11 the accused vendor has not accepted the sample mentioned in Sub-clause (i) of Section 11(1)(c) then that sample will be divided into two parts as provided in Section 11(2) for production in case legal proceedings are taken. This means that if having refused at that stage, later at the stage of Section 13 the accused vendor make an application u/s 13(2) then the sample held u/s 11(2) will be utilised for making direction upon such an application. Otherwise Section 11(2) would be reduced to an unnecessary appendage. In that view of the law; that part of the order of the learned Magistrate dated August 17, 1960, by which he called for the third phial meaning the phial retained with the Food Inspector under Sub-clause (iii) of Section 11(1)(c) the Magistrate acted without jurisdiction and that part of that order must be set aside and the order dated August 30, 1960, granting the prayer of the Food Inspector to take fresh sample from the seized tin must also be set aside and the proper order would be to reject the application made by the accused Petitioner before the learned Magistrate u/s 13(2) as the requirements of Section 13(2) in that respect could not be complied with by the accused Petitioner and the trial shall proceed according to law and I direct accordingly. The Rule is thus disposed of. Let the records be sent down as quickly as possible.