

* **THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl. Rev. P.No.304/2011**

Reserved on: 16.11.2011
Pronounced on: 21.11.2011

Subhash

..... Petitioner

Through: Mr. Ashish Kumar, Advocate
along with petitioner produced
from JC.

Versus

The State (Govt. of NCT of Delhi)

..... Respondent

Through: Ms. Fizani Husain, APP for the
State.

CORAM:
HON'BLE MR. JUSTICE M.L. MEHTA

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|----|---|-----|
| 1. | Whether Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the Reporter or not ? | Yes |
| 3. | Whether the judgment should be reported in the Digest ? | Yes |

M.L. MEHTA, J.

1. This revision petition is directed against the judgment dated 31.5.2011 passed by learned ASJ, New Delhi in Criminal Appeal

No.47/2010. The petitioner herein was convicted under Section 2(ia)(a)(j) read with Section 16 and 7 of Prevention of Food Adulteration Act (for short “the Act”) by the learned MM vide his judgment dated 14th December, 2007. This judgment was assailed in Criminal Appeal No.47/2010 whereby the order of the MM was maintained by the learned ASJ. The present petition is filed assailing the order of learned ASJ.

2. The main question that arises for consideration in the present petition is whether Rule 7(3) of the Prevention of Adulteration Rules (for short “the Rules”) is mandatory or only directory and whether as per Rule 29(c) of the Rules the use of permitted synthetic food colour was prohibited in case of peas kept in the open container.

3. A sample of green peas was taken from an open tray bearing no label declaration from the shop of the petitioner by the Food Inspector. After following the required procedure, the sample was preserved and the other two parts were deposited with the Local Health Authority (LHA) in intact condition. The Public Analyst (PA) opined the sample adulterated due to the reason, “the sample is adulterated because it was coloured with artificial colouring matter”. The petitioner being the sole

proprietor of the said shop was chargesheeted under Section 2 (ia)(a)(j) read with Section 16(1A) and 7 of the Act. After he was summoned in the court, he exercised his right under Section 13(2) of the Act and got the second part of the sample analysed from the Central Food Laboratory (CFL). As per report of the CFL, this sample was found to be adulterated as it contained synthetic colour which was permitted only for canned or bottled peas as per Rule 29(c) of the Rules.

4. The contentions which have been raised by the learned counsel for the petitioner are two-fold.

1) that Rule 7(3) of the Rules was violated inasmuch as the PA did not send his report of analyses of the sample to the LHA within the period of 45 days from the date of receipt of the sample. The learned counsel relied upon the judgment of *Punjab & Haryana High Court in Amar Singh Vs. State of Haryana* 1986 (2) FAC 606 wherein it was held that the burden of proving that the PA had forwarded his report and was received by the LHA within 45 days was on the prosecution and it was not for the court to raise a presumption for filling the gaps. In the absence of any evidence in this regard, the conviction in respect of

sample of red chilli powder found adulterated by the PA was held not sustainable.

5. In the *Amar Singh's* case (supra), the facts in detail are not enumerated as to whether the accused had exercised his right under Section 13(2) of the Act for getting the second counterpart of sample analysed from CFL or not. I am of the view that if the Court had so held despite that the accused had exercised his right under Section 13(2) of the Act, to my mind, the reasoning in the case of Amar Singh does not seem to be laying the correct proposition of law.

6. Rule 7(3) of the Rules which is under consideration reads as under :

“7(3). The Public Analyst shall, within a period of forty days from the date of receipt of any sample for analysis (send by registered post or by hand) to the Local (Health) Authority a report of the result of such analysis in Form III:

Provided that where any such sample does not conform to the provisions of the Act or these rules, the Public Analyst shall (send by registered post or by hand) four copies of such report to the said Authority:

Provided further that the Public Analyst shall forward a copy of such report also to the person who purchased an

article of food and forwarded the same to him for analysis under section 12 of the Act.”

7. The question whether Rule 7 (3) is directory or mandatory came up for consideration before the Hon’ble Supreme Court in the case of ***T.V. Usman Vs. Food Inspector, Tellicherry Municipality, Tellicherry*** AIR 1994 SC 1818 wherein it was held as under :

“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, I n 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 under Section 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.

8. In the instant case, the petitioner exercised his right under Section 13 (2) and got the second counterpart of the sample analysed from the CFL. The mere want of evidence on the point that the report of the Public Aanalyst was sent to the LHA within 45 days of receipt of the sample or not was in any way not to adversely affect the prosecution case or to prejudice the accused. If the LHA would have found the second

counterpart of the sample sent to it as decomposed or not fit for analysis, that would have certainly adversely affected the prosecution case and also prejudiced the petitioner and in that situation it would not have been safe to record conviction based on the report of the PA. That being not the situation in the instant case, no prejudice of any kind could be seen to have been caused to the petitioner on this ground of the prosecution having filed to prove that the report of the sample was sent by the PA to the LHA within the period stipulated under sub-Rule (3) of the Rule 7. For these reasons, I am of the view that Rule 7(3) is only directory and not mandatory.

9. Secondly to examine the question as to whether the use of permitted synthetic food colours in open peas was prohibited as per Rule 29(c) or not, this Rule is reproduced as under :

“29. Use of permitted synthetic food colours prohibited—Use of permitted synthetic food colours in or upon any food other than those enumerated below is prohibited:

.....
.....

(c). Peas, strawberries and cherries in hermetically sealed containers, preserved or processed papaya,

canned tomato juice, fruit syrup, fruit squash, fruit cordial, jellies, jam, marmalade, candied, crystalised or glazed fruits.”

10. Admittedly, the sample of peas was drawn from an open tray. As per clause (c) as reproduced above, the use of synthetic food colours in or upon peas, strawberries and cherries kept in hermetically sealed containers was not prohibited. Though this clause does not say about peas kept in open container, but what is implied therefrom is that what was not prohibited was the use of food synthetic colours in peas kept in sealed containers. By necessary corollary, it would mean that the use of synthetic food colours in peas kept in open containers was not permitted or in other words was prohibited. The learned counsel for the petitioner tried to impress that this violation could be considered and termed as only technical. Keeping in view the scheme of the provisions of the Act which was intended to secure unadulterated food for the safety of the public, deviations in the prescribed standards or use of impermissible commodities in the eatables cannot be considered or termed as technical. When the legislature intended to lay down specific standards of food items, the provisions need to be given its meaning in letter and spirit and

nothing could be read in between them. I am outrightly not convinced with this contention of the learned counsel for the petitioner.

11. The learned counsel for the petitioner then relied upon the case of ***Krishan Gopal Sharma & Ors. Vs. Govt. of NCT of Delhi*** 1996 (4) SCC 513 to contend that since the offence was technical and the accused has already undergone six months of imprisonment, he may be released as undergone. As is noted above, the petitioner had used synthetic food colours in the peas kept in open tray in violation of the Rule 29(c). In the case of Krishan Gopal Sharma (supra), the addition in the mouth freshner and pan masala was that of saccharin which was held to be not injurious to health and also because addition of saccharine to the extent of 8000 p.p.m. in pan masala had been allowed by amending Rule 47. The petitioner cannot draw any support from the judgment of Krishan Gopal Sharma (supra) which was entirely on different facts.

12. The Legislature had provided the minimum sentence leaving no scope for any reduction therefrom under Section 16(1A) of the Act. Consequently, I am not persuaded to agree with the submission of the learned counsel for sentencing the petitioner as undergone.

13. In view of the above discussion, the petition has no merit and is dismissed.

M.L. MEHTA, J.

November 21, 2011
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