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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 635 of 2003

Hemram Patel S/o Narayan Singh Patel, Occupation - Agriculturist, R/o village – Balakpondi, P.S. Kapu, Tah. Dharamjaigarh, District – Raigarh (CG)

----Applicant

VERSUS

State of Chhattisgarh through D. M. Raigarh (CG)

---- Respondent

For Applicant	:	Shri Amit Kumar Sharma, Advocate
For Respondent/State	:	Shri Majid Ali, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy

Order On Board

10 /03/2017

The present criminal Revision is against the judgment dated 23.12.2013 passed by the Second Additional Sessions Judge, Raigarh in Criminal Appeal No. 95 of 2002 whereby the Court below has affirmed the conviction of the applicant for the offence under Section 7 (1) read with Section 16 (1) A (1) of the Prevention of Food Adulteration Act, 1954 and sentence of rigorous imprisonment for six months and Rs.1,000/- as fine with default stipulation.

2. The facts relevant for adjudication of the revision petition are that the applicant was found carrying 15 Kg. milk for sale purposes on 29th May, 1992. The Food Inspector and the Assistant Food Inspector of the flying squad of District Raigarh belonging to the Food and Drugs Department, on suspicion, collected samples of the milk which was in the possession of the present applicant for chemical examination doubting adulteration.

Accordingly, three samples of milk were collected and sealed in bottles. One of the samples were sent for obtaining the report of Public Analyst at Bhopal. The remaining two samples were deposited to be stored in the office of the local health authority. The report of the public analyst reflected that the milk which was subjected to analysis was found to be of below the prescribed standard. Subsequently, a case in this regard was filed before the JMFC, Dharamjaigarh registered as Criminal Case No. 745 of 1992.

3. The prosecution in all examined four witnesses. There was no witness examined on behalf of the defence. After conclusion of trial, the JMFC vide order dated 22.07.2002 found the applicant guilty of having committed the offence under Section 7 (1) read with Section 16 (1) (A) (1) of the Prevention of Food Adulteration Act and accordingly, sentenced him to undergo RI for six months with fine of Rs.1,000/- with default stipulation for the said offence.

4. This judgment of JMFC dated 22.07.2002 was subjected to challenge in Criminal Appeal No. 95 of 2002 before the Second Additional Sessions Judge, Raigarh. The appellate Court also vide impugned judgment dated 23.12.2003 affirmed the judgment of conviction passed by the JMFC and rejected the appeal leading to the filing of the present revision petition.

5. Contention of the counsel for the applicant is that the entire proceeding drawn before the Court below stands vitiated only on the ground of non compliance of Section 13 (2) of the Prevention of Food Adulteration Act. According to him, the requirement of sub section 2 of Section 13 of the Act is that immediately on the Food Inspector initiating a prosecution case under the Prevention of Food Adulteration Act, it is mandatorily required that the report of the public analyst be made available to the accused person so that if at all if he is not satisfied with the report of the public analyst, he

can get the sample tested from the Central Food Laboratory. In the instant case, firstly the report of the public analyst itself was not made available to the accused. Secondly, the accused was not promptly given the notice of initiation of prosecution. In addition, the applicant himself had moved an application under Section 13 (2) of the Act for an appropriate direction to get the second sample kept before the local health authority analyzed by the Central food Laboratory. Therefore, for the non compliance of the aforesaid requirement under Sub Section 2 of Section 13 of the Prevention of Food Adulteration Act, the case against the applicant itself gets vitiated in its entirety and the judgment of conviction passed by the two Courts below deserves to be set aside/quashed.

6. According to the counsel for the applicant, in the instant case, notice was issued to the applicant for the first time on 21st of October, 1992. The notice was received by the applicant on the next day i.e. 22nd of October, 1992 and the applicant entered appearance before the Court below on 23rd of October, 1992 on which date itself he moved an application under Section 13 (2) of the Prevention of Food Adulteration Act for calling of the second sample to be examined by the Central Food Laboratory. Though the application in this regard was filed by the applicant on the very first date of appearance before the Court below, the Court below did not proceed to pass an order on the said application and it remained pending before the Court below. Finally, while passing the judgment of conviction the trial Court held that since the present applicant had not pressed upon the said application, the same was not considered rather considered as not pressed and proceeded to decide the case on its merits. Thus, the present applicant was deprived of his statutory right under Section 13 (2) of the Act to get the second sample examined by Central Food Laboratory. According to the counsel for the applicant, in the absence of the sample being subjected to

retest, the report of the public analyst cannot be said to be authentic or proved beyond reasonable doubt. Thus, counsel for the applicant prays for setting aside of the impugned judgment and for acquittal of the applicant.

7. State counsel, however, opposing the revision petition submitted that the judgment of conviction passed by the JMFC has been subjected to challenge before the appellate Court and the appellate Court having not found any illegality or perversity in the order of the JMFC has rejected the appeal, therefore, there is no scope of interference in the impugned order. State counsel submitted that the contentions made by the applicant have already been dealt with by the two Courts below and therefore, there is not much for this Court to exercise its revisional power questioning the veracity of the two judgments. It was contended by the State counsel that a perusal of the record would show that the case of the prosecution has been proved beyond all reasonable doubts in as much as the factual matrix of the case and the documents have been proved and established by the concerned Food Inspector who had conducted the inspection and collected the samples which were sent for the report of the public analyst. State Counsel referred to the deposition of B. K. Jain, PW-1 who has proved the documents which were relied upon by the prosecution from which the charges stood proved. He submitted that there is not much which has been extracted from the cross-examination of the prosecution witnesses so as to disbelieve and even doubt the veracity of the documents proved by PW-1. Thus, prayed for rejection of the revision petition.

8. Considering the facts and circumstances of the case, some of the dates relevant for adjudication of the case are that an inspection was done by PW-1 on 29.05.1992. Samples were collected and sent for the report of the public analyst on 30.05.1992. Report of the public analyst was received



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on 22.06.1992. Sanction from the Govt. for prosecution obtained on 15.09.1992 and thereafter, a case was registered before the JMFC, Dharamjaigarh where the case was registered as Criminal Case No. 745 of 1992. Notice was issued to the applicant to enter appearance on 21.10.1992. Notice was delivered upon the applicant on 22.10.1992 i.e. next day. The applicant on service of notice immediately appeared before the Court below on 23.10.1992 and moved an application under Section 13 (2) of the Act seeking for the second sample to be examined by the Central Food Laboratory. Filing of the application is established from the order sheet dated 11.12.1992 and is also reflected from paragraph-13 of the judgment of the JMFC. In its judgment, the JMFC referring to the said application filed on 23.10.1992 holds that since it was not pressed by the applicant after filing, the same has to be treated as not pressed.

9. Before dealing with the other issues, this Court is of the opinion that it would be more appropriate to decide the first objection raised by the applicant that of non compliance of Sub-Section 2 of Section 13 of the Prevention of Food Adulteration Act, 1954. For better understanding, it would be appropriate if the said provision of law is taken into consideration which for ready reference is reproduced hereunder:

"13. (2) On receipt of the report of the result of the analysis under sub-section (1) to the effect that the article of food is adulterated, the Local (Health) Authority shall, after the institution of prosecution against the persons from whom the sample of the article of food was taken and the person, if any, whose name, address and other particulars have been disclosed under section 14A, forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both of them may make an application to the court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory."

10. A perusal of the deposition of PW-1 B. K. Jain as well as PW-2 R. K.

Bhargav does not reflect that the report of the public analyst was served upon the applicant. Non supply of the report of public analyst to the accused would definitely prejudice his interest as well as the case against him. If this ground is raised before the Revisional Court for the first time, even then it cannot be ignored of having filed at a belated stage as that is the mandatory requirement of law. In this regard, it would be relevant to cite the judgment of the Supreme Court in the case of **Rameshwar Dayal Vs. State of U.P.** reported in **1995 Supp (4) SCC 659** wherein the Supreme Court has held 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 under Section 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 under Section 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."

11. The second issue under the same provision is the effect of not processing the application moved by the applicant under Section 13 (2) of the Prevention of Food Adulteration Act. Undisputedly, the report of the public analyst dated 22.06.1992 observed that the quality of the milk was not as per the prescribed standard. Under the said circumstance, since the report of the public analyst could be a basis for criminal prosecution, the applicant accused has a right to get the sample and the report of the public analyst verified by way of a second check from the Central Food Laboratory.

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A plain reading of Sub-section 2 of Section 13 reveals that on an application made by the accused, it is the mandatory requirement of law under Section 13 (2A) for the Court to order the local Health Authority to produce the sample kept under his custody. On the samples being produced before the Court, it is also mandatory requirement of law under Section 13 (2B) for the Court to ensure that the seals and the samples are not tampered and thereafter the same may be forwarded to the Director of the Central Food Laboratory to provide the report of the analysis. In the instant case, undisputedly, an application was filed on 23.10.1992 within the prescribed period under Sub-section Section 2 of Section 13 of the Act. It was incumbent upon the Court below to have called for the second sample and sent the same for its analysis to the Central Food Laboratory and not doing the same amounts to a clear violation of the said provisions of law. Therefore, the entire prosecution case stands vitiated only on the ground of non compliance of sub section 2 of Section 13 of the Prevention of Food Adulteration Act. It is wrong on the part of the Court below to reject the application as not pressed.

12. The view of this Court stands fortified by the decision of the Supreme Court in the case of **Girishbhai Dahyabhai Shah Vs. C. C. Jani and another** reported in (2009) 15 SCC 64 wherein in paragraphs- 9, 10 & 11 it has been held as under:

"9. In other words, in the instant case, the appellant was prevented from applying for analysis of the second sample before 17th July, 1989, by which time the second sample of curd had deteriorated and was not capable of being analysed as was found in the case of Ghisa Ram¹ referred to above.

10. In that view of the matter, we are unable to sustain the judgment of the High Court impugned in this appeal and we also see no reason to continue with the proceedings which have lasted for 28 years in the absence of any valid and reliable report with regard to the second sample.

1 AIR 1967 SC 970

11. Accordingly, the appeal is allowed. The order passed by the High Court is set aside and the proceeding, being Criminal Complaint No.58 of 1989, pending before the Metropolitan Magistrate, Ahmedabad, is quashed."

13. In view of the aforesaid judicial pronouncements, this Court is not inclined to go into the other grounds raised by the applicant assailing the impugned judgment of conviction. Since the prosecution itself stands vitiated for the non compliance of the aforesaid mandatory requirement under the statutory provisions of the Prevention of Food Adulteration Act, this Court is unable to sustain the conviction of the applicant.

14. Thus, the two judgments i.e. the judgment passed by the JMFC, Dharamjaigarh dated 22.07.2002 and which has been affirmed by the Second Additional Sessions Judge, Raigarh vide its order dated 23.12.2003 are not sustainable and deserve to be and are accordingly set aside. The applicant is acquitted of the charges under Section 7 (1) read with Section 16 (1) (A) (1) of the Prevention of Food Adulteration Act, 1954. He is set at liberty subject to the conditions of Section 437A Cr.P.C.

15. The Criminal Revision stands allowed.

Sd/-
P.Sam Koshy
Judge