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VIJENDRA

v.

STATE OF UTTAR PRADESH

(Criminal Appeal No. 1167 of 2019)

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JULY 31, 2019

[R. BANUMATHI AND A. S. BOPANNA, JJ.]

Prevention of Food Adulteration Act, 1954:

- ss. 7(1)/16(1)(a)(i), 10(7) and 13(2) – Notice by Food Inspector
- C (Complainant) suspecting adulteration in the milk – Sample of milk purchased by complainant in the presence of public witness (PW3) – Sample sent to Public Analyst – Sample was found adulterated by the Public Analyst – Complaint filed before Magistrate – Report of the Public Analyst sent to the accused by registered post after 19 days of filing the complaint – During trial PW3 turned hostile – Plea of non-compliance of ss. 10(7) and 13(2) taken – The Magistrate, the appellate Court as well as High Court convicted the accused – Appeal to Supreme Court – Held: Safeguard u/s. 13(2) is a valuable right – No evidence was brought on record to indicate that the report of the Public Analyst was actually served or delivered to the appellant – Despite the delay beyond 10 days from the date of initiation of prosecution, even if despatch of the report is taken as substantial compliance, in absence of proof of delivery of the report, the right of the accused to seek reference within the period of ten days stands defeated – The provision u/s. 13(2) has to be construed strictly, as the accused is made to suffer penal consequences – Therefore, report of Public Analyst cannot be made basis for holding the accused guilty – The uncorroborated testimony of the complainant/Food Inspector (PW1) cannot be relied upon to sustain the conviction – Thus, the prosecution has not proved the guilt of the accused beyond reasonable doubt – Therefore, G conviction is not justified – Prevention of Food Adulteration Rules, 1955 – r. 9B.

Allowing the appeal, the Court

HELD : 1. While advertizing to the provision in Section 13(2) of Prevention of Food Adulteration Act, 1954, requiring to furnish

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the report of the Analyst to the accused as contemplated therein, all the three Courts have taken note of the evidence of PW-2 the Food Clerk who claimed to have despatched the report by registered post on 07.04.1980. They have, however, failed to take note that no evidence was brought on record to indicate that the report which is claimed to have been despatched was actually served or delivered to the appellant. The very purpose of furnishing such report is to enable the accused to seek for reference to the Central Food Laboratory for analysis if the accused is dissatisfied with the report. Such safeguard provided to the accused under Section 13(2) of the Act is a valuable right. In that view even if the despatch of the report on 07.04.1980 is taken as substantial compliance though it is beyond the period of 10 days from 18.03.1980 i.e., the date on which the prosecution was lodged, in the absence of there being proof of delivery of the report to the accused; in the instant facts, the valuable right available to the accused/appellant to seek for reference within the period of 10 days stands defeated. In that circumstance when the appellant/accused is made to suffer the penal consequences, it will have to be construed strictly. In the facts and circumstances of the present case, since the report of the Analyst has not in fact been served on the appellant and the mere despatch of the report as per the statement of PW-2 was not sufficient. If that be the position, the entire case of the prosecution which revolves around and is built upon the report of the Analyst cannot be made the basis for holding the appellant/accused guilty in the present case. [Para 15] [798-B-G]

2. Though it is contended on behalf of the prosecution that as per the requirement under Section 10(7) of the Act, 1954, an independent person had also witnessed the taking over of the sample, the said witness did not support the case of the prosecution. Though the Magistrate has in that circumstance held that it would be sufficient to rely on the evidence of PW-1 (Food Inspector) despite not being supported by any other witness as PW-1 has no enmity with the accused, that by itself would not be sufficient in the instant facts, since the very requirement of the provision is to collect the sample in the presence of an independent witness. [Para 16] [799-B-D]

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- A 3. The manner as to whether the sample was appropriately taken after properly stirring the milk and whether the same was sent for analysis also in such manner has, therefore, not been established. This is more so in the circumstance where milk which is a primary product, has fat content and the fat content would also depend on the appropriate manner in which the sample is taken after stirring. In the instant case, the Public Analyst had opined that the milk sample was deficient by 12 per cent in milk fat and 27 per cent in non-fatty solids. The said results would become relevant only if it is established that the sample taken for such analysis was also in a proper manner after stirring which would make the fat and non-fat into homogenous mixture. Hence, in that regard appropriate evidence was necessary more particularly, when PW-3 who was claimed to be an independent witness has not supported the prosecution. In the facts and circumstances of the present case, the uncorroborated testimony of PW-1 – Food Inspector cannot be relied upon to sustain the conviction. [Paras 16 and 17] [799-D; E; G-H; 800-A]

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K. Harikumar v. Food Inspector, Punaloor Municipality
(1995) Suppl. 3 SCC 405 – relied on.

- E 4. Therefore, even if the other aspects are not adverted to, the very fact that the Analyst's report being served not being proved and the sample being taken in an appropriate manner not being established, it would be sufficient to hold that the prosecution has not proved the guilt of the appellant beyond reasonable doubt and the conviction is not justified. The appellant is acquitted of the charge under Section 7(1)/16(1)(a)(i) of Prevention of Food Adulteration Act. [Para 18] [800-B-D]

Ram Lubhaya v. Municipal Corporation 1975 FAJ 253 – referred to.

Case Law Reference

G	1975 FAJ 253	referred to.	Para 8
	(1995) Suppl. 3 SCC 405	relied on.	Para 16

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal A
No. 1167 of 2019.

From the Judgment and Order dated 09.12.2014 of the High Court of Judicature at Allahabad in Criminal Revision No. 1595 of 1988.

Ms. Richa Kapoor, Shivam Tyagi, Rohit Singh, Advs. for the Appellant. B

Dhirendra Singh Parmar, Sarvesh Singh Baghel, Advs. for the Respondent.

The Judgment of the Court was delivered by

A. S. BOPANNA, J.

1. Leave granted.

2. The instant appeal arises from the judgment passed by the High Court of Allahabad in Criminal Revision No. 1595 of 1988 in and by which the High Court dismissed the revision filed by the appellant thereby affirming the conviction of the appellant under Sec. 7(1)/16(1)(a)(i) of Prevention of Food Adulteration Act, 1954. D

3. Sri R.C. Kansal, Food Inspector filed a complaint stating that on 16.10.1979, at about 8:00 AM, while he was posted as Food Inspector at Primary Health Centre Bhojpur, he found the appellant taking buffalo milk for sale on the Acchapalgarhi Road, Pilakhuwa, District Ghaziabad. On demanding license from Appellant, it was revealed that he did not have any license for selling the milk. Suspecting adulteration in the milk, complainant prepared a notice Ex.6 and gave a copy to the appellant. After that, in the presence of public witness Radhey Shyam/PW-3, the complainant purchased 660 ml milk for 1 Rupee 65 paise and gave the money to the appellant and took thumb impression of the witness. The purchased milk was divided equally and filled in 3 clean bottles. The bottles were sealed in accordance with the rules and labels were pasted on them. Thumb impression of the Appellant was taken on the labels posted on the bottles. One sample was sent to Public Analyst Lucknow on 17.10.1979. The rest of the 2 bottles were submitted before the office of Chief Medical Officer, Ghaziabad. The Public Analyst received the sample on 18.10.1979, who prepared report Ex.No. 4 dated 15.11.1979 with the finding that the sample of buffalo milk was deficient by 12% in milk fat and 27% in non-fatty solids. The sample was thus found to be adulterated. E F G H

- A 4. The complainant submitted an application along with relevant material seeking consent for prosecution. The Chief Medical Officer/ Sri. Y.K. Bhushan granted consent for prosecution under Section 7(1)/ (16)(1)(a)(i) of Prevention of Food Adulteration Act vide order dated 06.02.1980.
- B 5. After that, the complainant prepared the complaint/Exhibit A-8 and produced it before the court on 18.03.1980, whereupon the court took cognizance and criminal case No. 787 of 1986 was registered.
6. The Public Analyst's report was forwarded to the Appellant by registered post on 07.04.1980.
- C 7. The prosecution examined the complainant/R.C. Kansal as PW-1, Jaipal Singh/clerk in the office of Chief Medical Officer as PW-2 and Radhey Shyam, as PW-3. PW-2 stated in his statement that on 07.04.1980, he sent the report of the Public Analyst to the Appellant by registered post. PW-3, who is an independent witness, was declared hostile by the prosecution. The appellant, in his turn, pleaded not guilty. He however did not produce any evidence in defence.
8. Before the Trial Court, it was argued on behalf of the appellant that the independent witness/PW-3 has not supported the case of the prosecution and there is non-compliance of Section 10 (7) of the Food Adulteration Act. Appellant further alleged non-compliance of provisions of Section 13 (2) of the Food Adulteration Act. Regarding PW-3 being hostile, the trial court opined that according to the complainant, sample has been taken in the presence of independent witness. It has further observed that the Supreme Court in the case of ***Ram Lubhaya vs. Municipal Corporation***, 1975 FAJ page no. 253, held that it is not a rule of law that guilt cannot be proved only on the evidence of Food Inspector. Regarding compliance of provisions of Sec. 13 (2) of Prevention of Food Adulteration Act, the court held that the compliance is clear from the statement of PW-2 that report of public analyst and letter of Chief Medical Officer has been sent to the address of the appellant through registered receipt dated 07.04.1980. The court accordingly convicted the appellant and sentenced him to 6 months rigorous imprisonment and fine of Rs. 1000/- with default sentence.
9. Appeal filed by the Appellant was also dismissed with the finding that the appellant has been rightly convicted by the trial court.

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10. The appellant herein then filed Criminal Revision No. 1595 of 1988 before the High Court contending that there was non-compliance of Section 10 (7) of Food Adulteration Act inasmuch as no independent witness supported the prosecution case and of Section 13 (2) of the Food Adulteration Act inasmuch as the application was filed before the Magistrate on 18.03.1980, while the report of Public Analyst was sent on 07.04.1980, i.e. with delay of almost 19 days. The High Court rejected both these objections raised by the Appellant, holding that as far as Section 10 (7) is concerned, the objective of this section is to ensure actual or genuine transaction of sale. The provision is mandatory to the extent that the Food Inspector must make genuine efforts to get the corroboration of one or more persons present on the spot to witness his act of taking sample and completion of other formalities. Once such effort has been made, but in vain, it cannot be said that there is any non-compliance of this section. The High Court also relied on the decision of the apex court in *Shri Ram Lubhaya (Supra)* wherein this court inter alia held that the obligation which Section 10 (7) casts on the Food Inspector is to ‘call’ one or more persons to be present when he takes action. If none was willing to cooperate, he cannot compel their presence. Regarding the submission that there is non-compliance of Section 13 (2) of the Food Adulteration Act, the High Court noted that the requirement of this section is to send report after institution of prosecution against the person from whom sample was taken in such manner as prescribed under Rule 9B of Prevention of Food Adulteration Rules, 1955. Said Rule provides that the Local Authority shall, within 10 days after institution of prosecution, forward a copy of Analyst’s Report by registered post or by hand as may be appropriate. In the instant case, instead of 10 days, there is a gap of about 19 days. The court held that the purpose of Section 13 (2) is to enable the accused, if he so desires, to make an application to the court for getting the sample re-tested. This has not been done in the case at hand by the appellant at all and that being so, there is substantial compliance of Section 13 and it would not render the entire prosecution illegal. The revision was thus dismissed as being devoid of merit. The High Court further cancelled the bail bonds and surety bonds of the appellant and directed that he shall be arrested and lodged in jail to serve out the sentence passed against him.

11. It is the contention of the Appellant that since he denied receiving notice as contemplated under Section 13(2) of Prevention of

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- A Food Adulteration Act and in the absence of any proof of postal receipt or acknowledgement, mere statement of PW-1 and PW-2 that notice was sent by registered post would not suffice to warrant conviction of the appellant. Sending of notice under Section 13 (2) by registered post has to be proved on record by documentary evidence which has not been done in the instant case. Further the said notice should have been sent within 10 days from the date of receipt of report of public analyst whereas in the present case, admittedly the notice was sent after 20 days. Moreover, there is failure of compliance of mandatory provisions of Rules 17 and 18 of Prevention of Food Adulteration Rules, rendering the conviction recorded by courts below unwarranted and unjustified.
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- C 12. The respondent, on the other hand, aver that Section 13 (2) of Prevention of Food Adulteration Act and Rule 9A of Prevention of Food Adulteration Rules use the expression "forward" and not "serve" or "deliver"; thus the contention of the appellant that he was not served with notice under Section 13 (2) merits no consideration. Moreover, the
- D Appellant could very well have applied to the court to send one of the samples to the Central Food Laboratory, but this has not been done in the case at hand. Therefore, the appellant cannot contend that there has been prejudice, merely because of non-compliance or defective compliance of provisions of law.
- E 13. From the above narration, it is no doubt seen that all the three Courts have held against the appellant and have sentenced him accordingly. Though in that circumstance, the reappreciation of evidence which led to the conviction may not arise, this Court is certainly required to examine as to whether the requirement contemplated under the Act, 1954 and the Rules 1955 has been complied with by the Authorities as per the requirement in terms of the safeguard provided therein. The primary contention of the learned counsel for the appellant as noticed above is that in respect of the sample said to have been collected on 16.10.1979, the report was submitted by the Public Analyst, Pilakuwa on 15.11.1979 indicating that the milk sample was deficient by 12 per cent in milk fat and 27 per cent in non-fatty solids which were below the prescribed standard and hence the sample was reported to be adulterated. Pursuant to the such report the complaint was filed before the learned Magistrate on 18.03.1980. Subsequent thereto the copy of the report of the Analyst is stated to have been despatched to the appellant on 07.04.1980. It is in that view, the contention has been raised by the
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learned counsel for the appellant that the same is in violation of the provision contained in Section 13(2) of the Act, 1954. In this regard, it is contended that sub-section (2) to Section 13 of the Act, 1954 provides that the Authority on receiving the copy of the report of the result of analysis and on institution of prosecution, forward a copy to the person and it would be open for such person to make an application to the Court within a period of 10 days from the date of the receipt of the copy of the report to get the sample of the article kept by the Local (Health) Authority analysed by the Central Food Laboratory. In that regard, Rule 9B of Rules, 1955 provides that the Local (Health) Authority shall send the report based on which the action is taken within 10 days after institution of the prosecution. Such report is to be sent by registered post or by hand to the person from whom the sample of the article was taken by the Food Inspector.

14. In the instant case, the contention put forth is that firstly no such report of the Analyst has been made available to the appellant and there is no proof of delivery of the report. It is contended that even though the prosecution had stated that the report was despatched on 07.04.1980, keeping in view that the prosecution was instituted by filing the application before the learned Magistrate on 18.03.1980 the very alleged despatch of the report is beyond the period of 10 days as contemplated in the Rule as stated above. On this aspect the learned Magistrate, while rejecting the contention has held that the report of the Public Analyst was sent to the appellant by registered post on 07.04.1980 which is within the period of 20 days and since such report was sent within a reasonable time the appellant cannot be said to have been prejudiced in any manner. It is further observed that he was at liberty to move the Court for sending a sample to the Director of Central Food Laboratory, Calcutta for analysis but he did not exercise his right in this respect. The learned Additional Sessions Judge in his judgment while considering this aspect has held that the Food Clerk, Shri Jaipal Singh (PW-2) has stated that the report of the Public Analyst was sent to the appellant by registered post on 07.04.1980. On this very aspect the learned Judge of the High Court has also recorded that Shri Jaipal Singh (PW-2) who is the clerk of the Food Inspector (PW-1) has proved the fact that the Public Analyst's report was sent to the appellant by registered post on 07.04.1980. In that background, the High Court on referring to the provision contained in Section 13(2) of the Act 1954 read with Rule

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- A 9B of the Rules, 1955 has held that the purpose of Section 13(2) is to enable the accused if he so desires, to make an application to the Court for getting sample retested. The learned Judge was swayed by the fact that the appellant herein who was the accused has not made such application at all and in that light the learned Judge has arrived at the conclusion that there is substantial compliance of Section 13 of the Act, 1954.

- B 15. On this aspect of the matter, we take note that while adverting to the provision in Section 13(2) requiring to furnish the report of the Analyst to the accused as contemplated therein the learned Judges of all the three Courts have taken note of the evidence of PW-2 Shri Jaipal Singh, the Food Clerk who claimed to have despatched the report by registered post on 07.04.1980. The learned Judges have however failed to take note that no evidence was brought on record to indicate that the report which is claimed to have been despatched was actually served or delivered to the appellant. The very purpose of furnishing such report is to enable the accused to seek for reference to the Central Food Laboratory for analysis if the accused is dissatisfied with the report. Such safeguard provided to the accused under Section 13(2) of the Act is a valuable right. In that view even if the despatch of the report on 07.04.1980 is taken as substantial compliance though it is beyond the period of 10 days from 18.03.1980 i.e., the date on which the prosecution was lodged, in the absence of there being proof of delivery of the report to the accused; in the instant facts the valuable right available to the accused/appellant to seek for reference within the period of 10 days stands defeated. In that circumstance when the appellant/accused is made to suffer the penal consequences, it will have to be construed strictly. In the facts and circumstances of this case, since as already noticed above the report of the Analyst has not in fact been served on the appellant and the mere despatch of the report as per the statement of PW-2 was not sufficient. If that be the position, the entire case of the prosecution which revolves around and is built upon the report of the Analyst cannot be made the basis for holding the appellant/accused guilty in the present case.

- G 16. Further in the instant facts, it is noticed that the very manner in which the prosecution has put forth its case will disclose that the Food Inspector on 16.10.1979 found the appellant taking milk for sale and when licence was demanded he did not possess the same. In that background he had collected the sample of 660 ml. milk and thereafter

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proceeded in the matter. In such circumstance, it was at the outset required to establish that the accused was regularly carrying on such business and in that circumstance while inspecting had found adulterated milk which was being sold by him to the customers. No doubt the Food Inspector has examined himself as PW-1 and stated with regard to the incident, the manner in which the sample was taken and that the same was sent for analysis but has not been clearly spelt out. In the instant facts, though it is contended on behalf of the prosecution that as per the requirement under Section 10(7) of the Act, 1954 one Shri Radhey Shyam, an independent person had also witnessed the taking over of the sample, the said witness did not support the case of the prosecution. Though the learned Magistrate has in that circumstance held that it would be sufficient to rely on the evidence of PW-1 despite not being supported by any other witness as PW-1 has no enmity with the accused, that by itself would not be sufficient in the instant facts since the very requirement of the provision is to collect the sample in the presence of an independent witness and when such independent witness has not supported the case of the prosecution. The manner as to whether the sample was appropriately taken after properly stirring the milk and whether the same was sent for analysis also in such manner has, therefore, not been established. This is more so in the circumstance where milk which is a primary product has fat content and the fat content would also depend on the appropriate manner in which the sample is taken after stirring. In this regard, it is apposite to take note of the decision rendered by this Court in the case of **K. Harikumar vs. Food Inspector, Punaloor Municipality** (1995) Supple 3 SCC 405 relied upon by the learned counsel for the appellant, wherein while considering the provisions of the Act, 1954 with regard to the sample of curd which was the subject matter therein, it was held that in order to attain homogeneity in curd, stirring and churning may become necessary for the ingredients of the milk solid non-fat and milk solid fat getting consistency in order to determine the percentage in their completeness.

17. In that background, in the instant case, as already noticed the Public Analyst had opined that the milk sample was deficient by 12 per cent in milk fat and 27 per cent in non-fatty solids. The said results would become relevant only if it is established that the sample taken for such analysis was also in a proper manner after stirring which would make the fat and non-fat into homogenous mixture. Hence, in that regard

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- A appropriate evidence was necessary more particularly, when PW-3 who was claimed to be an independent witness has not supported the prosecution. In the facts and circumstances of the present case, in our view, the uncorroborated testimony of PW-1 – Food Inspector cannot be relied upon to sustain the conviction.
- B 18. Therefore, in that circumstance even if the other aspects are not adverted to, the very fact that the Analyst's report being served not being proved and the sample being taken in an appropriate manner not being established, it would be sufficient to hold that the prosecution has not proved the guilt of the appellant beyond reasonable doubt and the conviction is not justified. In that view, the judgments dated 02.06.1987, 01.11.1988 and 09.12.2014 passed respectively by the Judicial Magistrate, Hapur, Ghaziabad, the Additional Sessions Judge Ghaziabad and the High Court of Allahabad are set aside and this appeal is allowed. The appellant is acquitted of the charge under Section 7(1)/16(1)(a)(i) of Prevention of Food Adulteration Act.
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- D 19. Before parting we would like to place on record the able assistance rendered by the learned counsel for the appellant who was appointed through Supreme Court Legal Services Committee.

Kalpana K. Tripathy

Appeal allowed.