Ram Dayal vs Municipal Corporation Of Delhi And Anr on 7 October, 1969

Equivalent citations: 1970 AIR 366, 1970 SCR (2) 682, AIR 1970 SUPREME COURT 366, 1970 (1) SCJ 899, 1970 2 SCR 682, 1970 MADLW (CRI) 97, 1970 MADLJ(CRI) 405

Author: P. Jaganmohan Reddy

Bench: P. Jaganmohan Reddy, S.M. Sikri, G.K. Mitter

PETITIONER:
RAM DAYAL

Vs.

RESPONDENT:
MUNICIPAL CORPORATION OF DELHI AND ANR.

DATE OF JUDGMENT:
07/10/1969

BENCH:
REDDY, P. JAGANMOHAN
BENCH:
REDDY, P. JAGANMOHAN
SIKRI, S.M.
MITTER, G.K.

CITATION:
1970 AIR 366 1970 SCR (2) 682
1970 SCC (3) 35

ACT:
prevention of food Adulteration Act, 1954 --public Analyst--Right to cross examine though procedure prescribed by s. 13(2) not gone through.

HEADNOTE:
The appellant was convicted for selling food with impermissible colouring matter. He contended that as his request for summoning the Public Analyst for cross-examination had not been acceded to he had been prejudiced and as such the entire proceeding against him were vitiated The High Court rejected the contention on the ground that s. 510 of the Code of Criminal Procedure bad no

application in that it only dealt with the experts mentioned therein. The Court also observed that when the accused desired to challenge the report of the Public Analyst under the Act, he had to follow the procedure provided in s. 13(2) for sending the sample to the Director of Central Food Laboratory whose report would be final and conclusive.

Dismissing the appeal,

HELD: Where certificates are not made final and conclusive evidence of the facts stated therein, 'It will be open to the party against whom certificates are given either to rebut the facts stated therein by his own or other evidence or to require the expert to be produced for cross examination which prayer the court is bound to consider on merits in granting or rejecting it. The court may reject the prayer for good and sufficient reasons such as for instance where it is made for the purpose of vexation or delay or for defeating the ends of justice. [685 B-C; F-G]

The present case is not a fit case for interference. No attempt was made to establish why the evidence was required and as to the specific point which needed to be elucidated. The accused knew what colouring matter he added; he could have easily said that that colour was one of the permitted colours; but he did not say so in his examination under s. 34 nor did he produce any evidence of those whom he employed as to the colouring matter which was added. The application was made more to delay the disposal of the case. [687 E]

Mangaldas Raghavji v. State, [1965] 2 S.C.R. 894 and Sukhmal Gupta v. The Corporation of Cakutta, Cr. A. No. 161/66 dated 3-5-68, referred to.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 80 of 1968.

Appeal from the judgment and order dated November 6, 1967 of the Delhi High Court in Criminal Revision No. 189 of 1967. Hardev Singh, for the appellant.

Bishan Narain and B. P. Maheshwari, for respondent No. 1. L. M. Singhvi and R. N. Sachthey, for respondent No. 2.

The Judgement of the Court was delivered by Jaganmohan Reddy, J. This appeal by certificate granted by the Delhi High Court under Art. 134(1)(c) of the Constitution is against its judgment which confirmed the conviction of the accused of an offence under s. 9 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the Act) and against the enhancement of the sentence of imprisonment from the one till the rising of the court to six months R.I. which is the minimum prescribed under the Act together with a fine of Rs. 1,000/-, in default to undergo six months R.I. The appellant is a sweetmeat seller. It is alleged that on September 1, 1965, Shri B. S.

Sethi, Food Inspector appointed by the Central Government under s. 9 of the Act visited his shop and found that the appellant was selling coloured laddus. The Food Inspector purchased 1,500 grams of these laddus by way of a sample by paying him Rs. 9/- as the price thereof. This sample was subdivided into three parts and was put into three separate bottles as required under s. II of the Act. One bottle was given to the accused, another was sent to the Public Analyst and the third was retained by the Food Inspector. The sample sent to the Public Analyst was analysed and a report was received from him on September 10, 1965 to the effect that the laddus were adulterated with unpermitted colour. Thereupon a complaint was filed against the accused and he was convicted by the magistrate on October 17,1966 and sentenced to imprisonment till the rising of the court and to pay a fine of Rs. 1,000/-, in default to undergo six months' R.I. It would appear that the Municipal Corporation filed before the Sessions Judge a revision for the enhancement of the sentence because the accused having been found guilty under the provisions of s. 7 read with s. 16 of the Act should have been awarded the minimum sentence of six months and a fine of Rs. 1,000 but instead he was sentenced to imprisonment till the rising of the court and a fine of Rs. 1,000/- which was not in accordance with the mandatory provisions of s. 16 of the Act. The Sessions Judge, after hearing the parties accepted the contention of the Municipality and referred the case to the High Court recommending that the accused having been found guilty under the provisions of s. 16 of the Act should have been awarded a minimum sentence of six months and a fine of Rs. 1,000/-, Before the High Court several contentions were raised on behalf of the accused one of which was that as his request for summoning the Public Analyst for crossexamination had not been acceded to, he had been prejudiced, as such the entire proceedings against him were vitiated. The High Court however rejected this contention on the ground that s. 510 of the Code of Criminal Procedure had no application in that it only dealt with Chemical Examiner or an Assistant Chemical L3Sup, CI/70-13 Examiner and other experts mentioned therein. It was also observed that where the accused desired to challenge the report of the Public Analyst under the Act, he had to follow the procedure provided in s. 13(2) for sending the sample to the Director of Central Food Laboratory for his examination, because any report given by him will supersede the report of the Public Analyst and would be final and conclusive as to the facts stated therein. Before us also a similar contention was urged by the learned Advocate for the accused Shri Hardev Singh who had produced before us the application made on behalf of the accused under s. 510(2) for calling the Public Analyst which was summarily rejected on 28th August 1966. This contention urged before us has to be determined in the light of the relevant provisions of the Act.

It cannot be disputed that any person selling food with im- permissible colouring matter contravenes the provisions of s. 7 which prohibits the selling of any adulterated food and would be punishable under s. 16 of the Act. What is adulterated article of food has been defined in s. 2 (i) and so far as it is related to colouring sub-cl. (i) of cl. (i) of s. 2 provides that an article of food shall be deemed to be adulterated "if any colouring matter other than that prescribed in respect thereof and in amounts not within the prescribed in respect thereof and in amounts not within the prescribed limits of variability is present in the article". Rules 23 and 27 of the Prevention of Food Adulteration Rules, 1955 prohibit the addition of any colouring matter except permitted by the Rules, and of inorganic colouring matters and pigments to any article of food. What is permitted and to what extent has been stated in rr. 24 to 26 and 28 to 3 1, but in so far as this case is concerned we may merely refer to rr. 26 and 28 the former of which gives a list of natural colouring matters that can be,

used and the latter with coal tar dyes. We are told that the laddus which were being sold by the accused had yellow colour. If so, item 2 of r. 28 prescribes that the only permitted colours are Tartrazine with colour index 640 belonging to Chemical class of Xanthene and Sunset Yellow FCF belonging to the chemical class Azo, and these alone can be used. It will therefore be incumbent on the Public Analysts to say whether the colour used is that which is permissible under any of the rules and if as in the report he has stated that the sample of the laddus purchased by the Food Inspector was coloured with unpermitted colour, it would mean that the accused has not used any of the colours permitted under the rules. The report of the Public Analyst is as follows:-

> "Butyro Refractometer reading at 40 C of the fact extracted from sweets-50-0 Baudouin test of the extracted fact-Positive Reichert value of the extracted fact-7.59 Colour-unpermitted. 1 1 1 the same is adulterated due to 7.0 excess in Butyro Refractometer reading at 40 0 C of the fact ex-
>
> tracted from sweets, 20.41 deficiency in Reichert value of the extracted fact, Baudouin test of extracted fact being positive, and also coloured with unpermitted colour."

The learned Advocate for the accused submits that the refusal of the court to grant the application of the accused to call the Public Analyst Shri Sudhama Rao for cross- examination has greatly prejudiced him, as such the conviction ought to be quashed. It is contended that the accused has a valuable right of cross-examination to test the contents of the report given by the Public Analyst and the court has to summon him if so desired. On the other hand it is contended both by Shri Bishan Narain for the Delhi Municipality as well as Dr. Singhvi for the Union of India that no such right has been conferred under the Act when the provisions of s. 13(5) have not only made the document signed by the Public Analyst to be used in evidence of the facts stated therein in any proceedings under the Act or under s. 272 to 276 of the Indian Penal Code but has given a right to the accused to have the, sample sent to the Director of the Central Food Laboratories under s. 13(2) whose report supersedes that of the, Public Analyst and is final and conclusive. In view of these provisions it is said that the legislature inferentially took away the right of the accused to summon the Public Analyst either for examination or cross examination, as such the analogy of s. 510(2) of the Criminal Procedure Code which specifically gives a right to summon and examine the chemical examiner and other experts therein stated, as to the subject matter of their respective reports has no relevance. Dr. Singhvi further contends that there are a class of cases which permit of trials by certificates where the general rule of evidence that every document in order to be admissible has to be proved by the person signing it has no application as the statute permits it to be proved without calling the author of it. While it cannot be disputed that there are certain classes of cases where certificates have been treated as conclusive evidence, there were yet others though admissible without calling the functionaries that gave them were none the less only prima facie evidence. In cases where the certificates are not to be treated as conclusive evidence and they are only prima facie evidence, the party against whom they are produced has a right to challenge the subject matter of the certificate. The statutes have also in some cases recognised this right, such as for instance in sub-s. (2) of s. 510 Criminal Procedure Code in respect of reports given under the hand of several experts named in sub-s. (1) notwithstanding the fact that they may be used in evidence in enquiry, trial or other

proceedings under the Code. Sub-s. (2) provides : "The court may if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any such person as to the subject matter of the report". Similarly sub-s.

> 1) of s. 110 of the English Food and Drugs Act, 1955 while providing that the production by one of the parties of the certificate of a Public Analyst in the form prescribed in s.

92(5) or of a document supplied to him by the other party as being a copy of such certificate shall be sufficient evidence of the facts stated therein unless in the first mentioned case the other party requires that the analyst shall be called as a witness. Sub-section (2) of s. 110 also gives a like opportunity in the case of a certificate of an officer who took a sample of the milk. It appears to us that where certificates are not made final and conclusive evidence of the facts stated therein, it will be open to the party against whom certificates which are declared to be sufficient evidence either to rebut the facts stated therein by his own or other evidence or to require the expert to be produced for cross-examination which prayer the court is bound to consider on merits in granting or rejecting it. There is no presumption that the contents are true or correct though such a certificate is evidence without formal proof. In any case where there is evidence to the contra the court is bound to consider that evidence along with such a certificate with or without the evidence of the expert who gave it being called and come to its own conclusion. It is true that sub-s. (2) of s. 13 of the Act has given a right both to the accused as well as the complainant on payment of the prescribed fee to apply to the court after the prosecution has been instituted to send part of the sample preserved as required under sub-cl. (1) or sub-cl. (iii) of cl. (c) of sub-s. (1) of s. 11 to the Director of the Central Laboratory for a certificate, and the court is bound to send it under its seal to the said Director who has to submit a report within one month from the date of the re- ceipt. This certificate under sub-s. (3) supersedes the Public Analyst's certificate and is conclusive and final under sub-sec. (5). But nothing contained in these sub- sections relating to certificate of the Director of the Central Food Laboratory in any way limits the right of the accused under s. 257 of the Code of Criminal Procedure to require the Public Analyst to be produced. The court may, as we said earlier, reject the prayer for good and sufficient reasons such as for instance where it is made for the purpose of vexation or delay or for defeating the ends of justice.

In Mangaldas Raghavji v. State(1) this Court held that where the accused had not done anything to call the Public Analyst the court could legally act on the report of the Public Analyst. Mudholkar, J. speaking for the Court observed at p. 900 :

> "It is true that the certificate of the Public Analyst is not made conclusive but this only means that the court of fact is free to act on the certificate or not as it thinks fit.
>
> (1) [1965] 2 S.C.R. 894.

Again at p. 902 it was said, "As regards the failure to examine the Public Analyst as a witness in the case no blame can be laid on the prosecution. The report of the Public Analyst was there and if either the court or the appellant wanted him to be examined as a witness appropriate steps would have

been taken. The prosecution cannot fail solely on the ground that the Public Analyst had not been called in the case."

In Sukhmal Gupta v. The Corporation of Calcutta (unreported, Criminal Appeal No. 161 of 1966 decided on 3rd May 1968) the Assistant Public Analyst who had analysed the sample was examined and was cross-examined by the defence. It was contended that the Public Analyst was not called. There does not appear to have been any attempt to have him called, nor was any prejudice shown. On the other hand, the accused could have availed of the valuable right given to him under s. 13(2) but he did not do so, nor did lie put any question in cross-examination that the tea was liable to deterioration and could not be analysed by the Director of Central Food Laboratory. In these circumstances the evidence of the Assistant Public Analyst and the report of the Public Analyst was accepted in maintaining the conviction.

In this case we would have remanded it to give the accused an opportunity to examine the Public Analyst, but it appears to us that even before us no attempt was made as to why the evidence was required and what is the specific point which needs to be elucidated. The accused knows what colour he added, he could have easily said that that colour was one of the permitted colours, but he did not say so in his examination under s. 342, nor did he produce any evidence of those whom he employed as to the colour which was added. In our view, the application was made more to delay the disposal of the case; otherwise he could have easily made an application under s. 13(a) as soon as a complaint was lodged against him on 19th Jan. 1966 which was within 3 1/2 months from the purchase of the sample and the receipt of the report. There is nothing to show that either the Laddus or the colour would have deteriorated even if he had made his application under s. 13(2) when he made the application under s. 510(2) on 29th August 1966.

In these circumstances, we do not consider this to be a fit case for interference. The appeal is accordingly dismissed.

R.K.P.S. Appeal dismissed.