

Rajasthan High Court

Paraga Ram vs State Of Rajasthan on 25 October, 2002

Equivalent citations: 2003 (1) WLC 749, 2003 (2) WLN 375

Author: H Panwar

Bench: H Panwar

JUDGMENT H.R. Panwar, J.

1. This Criminal Revision Petition under Section 397 read with Section 401, CrPC is directed against the judgment dated 14.1.1991 passed by learned Sessions Judge, Jalore (hereinafter referred to as 'the Appellate Court') in Criminal Appeal No. 27/86 whereby the Appellate Court dismissed the appeal filed by the petitioner against the judgment of conviction and sentence dated 28.5.1986 passed by Chief Judicial Magistrate, Jalore (hereinafter referred to as 'the trial Court'), whereby the trial Court found the petitioner guilty and convicted him for the offence under Section 7/16 of Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'the Act') and sentenced him to undergo 2 years' rigorous imprisonment and to pay a fine of Rs. 4000/-, in default of payment to further undergo six months' S.I. Being aggrieved by judgment of conviction and sentence, the petitioner has filed the present revision petition.

2. I have heard learned Counsel for the petitioner and the learned Public Prosecutor for the State. Perused the orders of trial Court as well as of the Appellate Court and record of the case.

3. On 15.11.1983 at 8.40 A.M., Food Inspector, P.W.-1 Madan Lal Jain took the sample of milk weighing 660 ml. out of 20 kg. of milk alleged to be in possession of the petitioner. On analysis by Public Health Laboratory, the sample was found to be inconsistent with the prescribed standards of purity under the Act and was found to be adulterated. Petitioner was put to trial for the aforementioned offence. The prosecution produced P.W.-1 Madan Lal Jain, Food Inspector and documentary evidence Ex. P/1 notification by which P.W.-1 Madan Lal Jain was appointed as Food Inspector, Ex. P. 2 order authorising the Food Inspector for inspection, Ex.P/3 receipt for analysing the sample, Ex.P/4 purchase of milk weighing 660 ml, Ex.P/5 memo of the sample taken, Ex.P/6, 7 and 8 memos of sample forwarded to Public Analyst and Ex. P/10 report of Public Health Laboratory as well as Ex. P/11 the sanction of prosecution, Ex. P/12, the acknowledgment receipt. In defence, the petitioner produced Ex. D/1 envelope in which the report is alleged to have been sent to the petitioner, Ex. D/2 the report addressed to Bhopal son of Chaupaji Rao and Ex. D/3 the copy of the report issued by the Public Health Laboratory in respect of milk collected from Shri Bhopal on 23.11.1983.

4. learned Counsel for the petitioner contended that the finding of guilt and conviction of the trial Court as well as the Appellate Court is perverse and vitiated on account of various infirmities in the prosecution case. He submitted that there are material contradictions in the statement of prosecution witnesses with regard to the time of taking sample as well as container in which the sample was taken and number of vials in which sample was sealed. He contended that the prosecution did not prove in the instant case that the Food Inspector stirred the milk before taking the sample. It was further contended that the report of the Public Analyst showing the result of analysis of sample of the milk alleged to have been taken from the petitioner was not served on the

petitioner. learned Counsel for the petitioner also contended that Compliance of Rule 14 of the prevention of Food Adulteration Rules, 1955 (for short 'the Rules') is mandatory and its non-compliance vitiates the trial as well as finding of the trial Court. It was submitted by him that duty is cast upon the prosecution not only to comply with the mandatory provisions of law but also to prove before the trial Court that such provisions have been complied with in letter and spirit.

5. In support of his contentions learned Counsel for the petitioner relied on various judgments of the Hon'ble Supreme Court as well as High Courts. He has cited Rameshwar Dayal v. State of U.P., 1996 SCC (Cri) 75, Bhawar Lal v. State of Rajasthan, 1999 (1) RCD 411 (Raj.) and S.B. Criminal Leave to Appeal No. 161/2002 decided by this Court on 30.4.2002, J.Mc. Gaffin and Anr. v. Life Insurance Corporation of India, , Reet Singh v. State of Haryana, 1990 CrLJ NOC 3 (Punj. & Har.), State of Rajasthan v. Prabhu Dayal and Anr., 1999 (2) RCD 1170 (Raj.), Municipal Board, Deoli v. Hemchand and Ors., 1989 RCC 450 (Raj.). He also referred to judgments of this Court in State of Rajasthan v. Narsingh, 1999 (2) RCD 1180 and Jes Raj v. State of Rajasthan, 1997 (2) RCD 377.

6. On the other hand, learned Public Prosecutor contended that the Courts below have concurrently found the case against the petitioner and, therefore, certain minor infirmities in the prosecution case would not be grounds for interference.

7. I have given my thoughtful consideration to the rival contentions raised at bar. So far as non-compliance of Rule 14 of the Rules is concerned, from the perusal of the statements of all the three prosecution witnesses namely PW.1 Madan Lal, Food Inspector, PW.2 Bhoma Ram and PW.3 Bhopal Singh, the Motbir, it is revealed that they nowhere say that before taking sample of the milk from the container, the milk was stirred by the Food Inspector. Not only this, it is the requirement of Rule 14 of the Rules that before taking sample, the Food Inspector was required to stir the milk with the stick or milk measurement having sufficient length reaching to bottom of container in which the milk was contained and was further required to stir clockwise and anti clockwise in such a way that the milk at the bottom was thoroughly mixed with that of the contents of the milk on its upper layer in the milk container (Drum).

8. Ex. P/5 shows the time of taking sample which is 8.40 A.M. (morning), whereas P.W.-1 Madan Lal Jain, Food Inspector deposed on oath before the trial Court that he took the sample on 15.11.1983 at 8.40 in the night while the petitioner was selling the milk near Chungi Chauki Bagoda Road, Jalore. P.W.-2 Bhoma Ram stated that the sample of milk was taken from the petitioner at 8.00-8.30 A.M. He further stated that the sample was taken in 3-4 vials. When sealed packet was opened in the Court, there were only 2 vials. The trial Court made an endorsement to this effect on the statement. P.W.-1 Food Inspector stated that sample was taken in a pot (Bhagola). P.W.-3 Bhopal Singh deposed that the sample was taken from Pragaram at 8.00 in the night in two vials. He further stated that he does not know whether vials were cleaned or not. P.W.- 1 Madan Lal stated that the sample was taken in pot (Bhagola) and thereafter, it was filled in 3 vials. Thus, there are material contradictions in the statement of prosecution witnesses with regard to the time of taking sample as well as container in which the sample was taken and number of vials in which sample was sealed. The record reveals that in the instant case the prosecution has not care to prove that the Food Inspector stirred the milk before taking the sample. None of the prosecution witnesses namely

P.W.-1, P.W.-2 and P.W.-3 stated that before taking the sample, the milk was stirred. Not only this, P.W.-2 Bhoma Ram and P.W.-3 Bhopal Singh did not depose as to how and in what manner the milk was taken, so much so that these two witnesses have not whispered anything with regard to the taking of the sample in a pot (Bhagola). The prosecution has failed to establish that the Food Inspector stirred the milk by using a clean stick or the milk measurement and stirred the milk clockwise and anti-clockwise in such a way that the milk at the bottom was thoroughly mixed with that of the contents of the milk on its upper layer in the milk container. The case as set up by the prosecution is that the milk was 20 kg. Thus, the evidence of stirring the milk clockwise and anti-clockwise in accordance with law is completely lacking in the instant case. Thus, non-compliance of Rule 14 of the Rules vitiates the trial.

9. In *State of Rajasthan v. Prabhu Dayal and Anr.*, 1999 (2) RCD 1170 (Raj.), this Court held that there is nothing to show that glass bottles used for packing samples of tea were dry. In view of this, it was established that there was non-compliance of provisions of Rule 14 of the Rules. Rule 14 provides that sample of food for the purpose of analysis shall be taken in clean dry bottles or jars or in other suitable containers which shall be closed sufficiently tight to prevent leakage, evaporation, or in the case of dry substance, entrance of moisture and shall be carefully sealed. It is the duty cast upon the prosecution not only to comply with the mandatory provision of law by using clean and dry bottles or the container or storing the sample, but also to lead reliable evidence at the trial to the effect that the bottles or the container in which the sample was taken or used was cleaned and dried properly. Rule 14 of the Rules is mandatory in nature and its non-compliance vitiates the trial and as such the finding of the Courts below cannot be sustained.

10. In *Municipal Board, Deoli v. Hemchand and Ors.*, 1989 RCC 450, this Court held that Rule 14 of the Rules is mandatory and it was necessary for the prosecution to have sufficiently complied with its requirements. It was further held that the burden lies on the prosecution to prove that bottles were dry and clean. It is not for the accused to put question in cross-examination on this point. In the printed form, the Food Inspector mentioned that sample was taken in clean, sealed and dry bottles. It cannot be held to be sufficiently proved merely because it is mentioned in the printed form. It is necessary for the Food Inspector to mention this fact in his statement.

11. The Punjab and Haryana High Court in *Reet Singh v. State of Haryana*, 1990 Cri. L.J. NOC 3 (Punj. & Har.) held that the sample of milk taken must necessarily be a true representative of whole body of milk. Measure used for stirring shorter in length than depth of milk-No proper stirring to make sample homogenous. On that count, the conviction was set aside.

12. It is further seen that the report of Public Analyst showing the result of analysis of sample of the milk alleged to have been taken from the petitioner has not been served on the petitioner. The prosecution has failed to prove the service of the report of Public Analyst of the sample taken from the petitioner. Thus, the petitioner has been denied his valuable right for further analysis by the Central Food Laboratory. The compliance of Sub-section (2) of Section 13 of the Act is mandatory in nature and the prosecution has failed to comply with the said provision resulting in denial of the valuable right of the petitioner for further analysis by Central Food Laboratory. The prosecution has failed to prove the service of Public Analyst report on the petitioner. The report sent to the petitioner

Ex. D/2 is on record, which was addressed to Bhopal son of Chaupaji, village Mandhar, Police Station, Bhinmal, whereas the address of the petitioner as mentioned on the sample taken is Pragaram son of Chuna Ram, Baghoda Road, Jalore.

13. In *Rameshwar Dayal v. State of U.P.* (supra), the Hon'ble Supreme Court held that the report of Public Analyst was 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 Food Laboratory. It is a very valuable right given to him. Rule also provides that such a report shall be supplied to the accused within a certain period. Their Lordships held that supply of Public Analyst's report is mandatory. Non-supply of Public Analyst's report as required under Section 13(2) of the Act causes serious prejudice to the accused and on that count, the Hon'ble Supreme Court set aside the conviction and sentence.

14. In *Bhanwar Lal v. State of Rajasthan* (supra), copy of Public Analyst's report was not delivered to the petitioner therein but to some other person named as Mohan. this Court held that there is nothing on record to show that any effort was made by the Local Health Authority to give the copy of the report to the petitioner later on. It was the duty of the Local Health Authority to take steps and to make efforts for again sending the copy of the report to the petitioner. Even copy could have been given to him when he appeared before the Court to face the trial. The sum and substance is that the petitioner has not received the copy of the report. It is not merely a formality to despatch the report by post but its delivery to the petitioner was a must because the accused petitioner had a right to apply in the Court for analysis of the sample by the Central Food Laboratory within a period of 10 days from the date of the receipt of the copy of the report. If he does not apply to the Court within ten days even after receipt of the copy of the report, then he loses his right to get the sample analysed by the Central Food Laboratory under Section 13(2) of the Act. It is the duty of the prosecution to establish that the petitioner received the copy of the report. On this count, conviction and sentence was set aside by this Court. This view was reiterated by this Court in *S.B. Criminal Leave to Appeal No. 161/2002* (supra).

15. In *J.Mc. Gaffin and Anr. v. Life Insurance Corporation of India*, (supra), it was observed that it has not been established by the deponent that the various steps that render service of such notice valid, viz., that the cover contained the notice to quit and that it was posted in the post office in such condition. There is in effect no evidence to support this aspect of the position about the enclosing of the notice in the letter and also posting the self same letter the post office. In absence of such evidence it is hardly possible for the Court to make presumption about the service.

16. it was also argued by the learned Counsel for the petitioner that the consent for prosecution given in the instant case by the authority is the printed form and filled by the person other than a person, who printed it and, therefore, in the instant case the consent for prosecution for the purpose is without application of mind and, therefore, it is not the consent in the eye of law and, therefore, it vitiates the finding.

17. this Court in *Jes Rai v. State of Rajasthan* (supra), observed that the written consent was not a ritual and must be given only after application of mind and since no such application of mind was

there by the local authority/C.M.H.O., the sanction was not in accordance with law. In that case, the sanctioning authority i.e. C.M.H.O.-cum-local authority was never produced before the trial Court in order to prove that he had applied his mind, and on that count, the conviction and sentence was set aside.

18. Having considered the evidence produced by the prosecution and the contentions raised by learned Counsel for the parties, I am of the considered opinion that the prosecution has failed to prove the commission of offence under Section 7/16 of the Act by the petitioner. Thus, the prosecution has failed to establish its case against the petitioner beyond reasonable doubt. Therefore, conviction and sentence passed by the Courts below cannot be sustained and the same are liable to be set aside.

19. In view of the aforesaid discussion, this revision petition is allowed. Impugned judgments of learned Chief Judicial Magistrate, Jalore as well as of learned Sessions Judge, Jalore are hereby set aside. Accused-petitioner is acquitted of the charge under Section 7/16 of the Act. He is on bail. His bail and surety bonds are discharged.