Supreme Court of India
T. A. Krishnaswamy vs State Of Madras on 10 December, 1965
Equivalent citations: 1966 AIR 1022, 1966 SCR (3) 31
Author: A Sarkar
Bench: Sarkar, A.K.

PETITIONER:
T. A. KRISHNASWAMY

Vs.

RESPONDENT:
STATE OF MADRAS

DATE OF JUDGMENT:
10/12/1965

BENCH:
SARKAR, A.K.
BENCH:
SARKAR, A.K.
MUDHOLKAR, J.R.
BACHAWAT, R.S.

CITATION:
1966 AIR 1022 1966 SCR (3) 31

ACT:
Indian Drugs Act, 1940, s. 25(3)-Analyst's report-Not in prescribed form-lf admissible.

HEADNOTE:
The appellant was convicted under s. 18 (a) (ii) and s. 27 of the Drugs Act for having manufactured and exhibited for sale a drug which did not contain the ingredients in the proportion mentioned in the label pasted on the container of the drug. The prosecution produced in evidence a certificate given by the Government Analyst. In appeal to this Court, the appellant contended that in the absence of the protocols, the report was not in the prescribed form and hence was not admissible in evidence.
HELD : Rule 46 and Form 13 contemplate analysis and test as two different things for otherwise both words would not have been mentioned, nor the word "or" been put between them. It is true that the rule and form require the protocols of a test should be stated but they do not require any protocols to be stated in the report of an analysis. In the present case the report only gave the result of the analysis; it did not give the result of any test; nor did it say that any test had been carried out. Indeed, no dispute existed as to

the components constituting the drug, the only dispute being as to the quantities in which they were so contained. That being so, the report was in the prescribed form and was fully admissible in evidence. [33 C-E]
It was irrelevant to consider whether the Analyst should also have carried out a. test. Even if he should have and did not, that would not prevent the report of the result of the analysis from being admitted in evidence. [33 E-F]
Raj Kishan v. State of U.P. A.I.R. 1960 All 460, referred to.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 40 of 1964.

Appeal by special leave from the judgment and order dated April 24, 1963, of the Madras High Court in Criminal Appeal No. 22 of 1961.

R. Thiagarajan, for the appellant.

A. Ranganadham Chetty and A. V. Rangam, for the respondent.

The Judgment of the Court was delivered by Sarkar, J. The appellant was convicted by a learned magistrate under s. 18 (a) (ii) read with s. 27 of the Drugs Act, 1940 for having manufactured for sale and also exhibited for sale a drug known as OKSAL which did not contain the ingredients in the proportion mentioned in the label pasted on the container of the drug. The magistrate sentenced him to pay a fine of Rs. 125 and in default of payment of the fine, to rigorous imprisonment for one month. On appeal by the appellant to the Sessions Judge, that conviction was set aside and the appellant was acquitted. On appeal by the State to the High Court of Madras, the judgment of the learned Sessions Judge was set aside and the conviction and sentence passed by the learned magistrate were restored. Hence the present appeal by special leave.

The prosecution produced in evidence of the charge that the drug was misbranded within the meaning of s. 18 (a) (ii), that is, its label bore a statement which was false as being at variance with the components of the drug, a certificate to that effect given by the Government Analyst. The label stated that the drug contained Benzoic acid, Salicylic acid, Zinc Oxide and Boric acid in the proportions specified. The report of the Analyst showed that the drug did not contain these substances in the proportion indicated but were deficient as follows : Benzoic Acid by 15.5 per cent, Salicylic acid by 25 per cent, Zinc Oxide by 25 per cent and Boric acid by 46.3 per cent.

The only question is whether this report was admissible in evidence to prove that the contends of the drug were so at variance with the statement on the label and therefore the drug had been misbranded. Sub-section (3) of s. 25 of the Act states that the report of the public Analyst shall be evidence of the facts stated therein and such evidence shall be conclusive unless the accused person adduced evidence to the contrary in the manner laid down in it. The appellant produced no such

evidence. The report has however to be in the form prescribed before it can be admissible in evidence. The contention of the appellant is that the report was not in such form and hence was not admissible in evidence. This contention was accepted by the Sessions Judge but rejected by the other two courts below.

Rule 46 of the rules made under the Act provides that the Government Analyst shall "after the test or analysis has been completed forth with supply to the Inspector a report in triplicate in Form 13 of the result of the test or analysis together with full protocols of the tests applied". This is the prescribed form of the report. Head 7 of Form 13 is in these words : "Results of test or analysis with protocols of tests applied". It appears that the Drugs Inspector who obtained the samples from the appellant's shop duly forwarded a part of these to the Government Analyst with a letter stating that they were sent for "test or analysis".

3 3 Now, the report of the Analyst did not state the protocols of any test. It is said that r. 46 and Form 13 indicated that the protocols of the tests applied had to be stated in the report. The contention is that in the absence of the protocols the report was not in the prescribed form and was hence not admissible in evidence. It appears that protocols of test means the details of the process of test. The question then is, do r. 46 and Form 13 require that in the present case the protocols of tests had to be stated ? We do not think they do. Obviously, the rule and the form contemplate analysis and test as two different things, for otherwise both words would not have been mentioned, nor the word 'or' been put between them. It is true that the rule and the form require that the protocols of a test should be stated. They do not require any protocols to be stated in the report of an analysis. Now in the present case what the, report did was only to give the result of the analysis. It did not give the result of any test. Nor does it say that any test had been carried out. Indeed no dispute exists as to the components constituting the drug, the only dispute being as to the quantities in which they were so contained. The report only stated the quantities of them found on analysis. That being so, in our view, the report is in the prescribed form and is fully admissible in evidence.

The Inspector in his letter to the Analyst no doubt stated that the sample was sent to him for "test or analysis". But what the Analyst did was only to make an analysis. It is irrelevant to consider whether he should also have carried out a test. Even if he should have and did not, that would not prevent the report of the result of the analysis from being admitted in evidence. That report would nonetheless be conclusive evidence under s. 25 (3) of the Act. Our attention was drawn to the case of Rai Kishan v. The State of Uttar Pradesh. (1) There it was observed that when a report did not state the protocols of the test applied, it could not be said to be a report in the prescribed form. It is not clear from the judgment whether the report in that case purported to be the report of a test or of an analysis. If that case intended to hold that no report of an analysis is in the prescribed form where the protocols are not stated, we are unable to agree with it.

The result is that this appeal fails and it is dismissed. Appeal dismissed.

(1) A.I.R 1960 All. 460.