

GAHC010006522009



2024:GAU-AS:12707

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev.P./449/2009

SRI NALIN CHANDRA DAS
S/O SRI DEBEN CHANDRA DAS R/O SATGAON, GUWAHATI, P.S.
NOONMATI, P.O. MAUKHALLI, DIST. KAMRUP, ASSAM.

VERSUS

THE STATE OF ASSAM

Advocate for the Petitioner : MR.K AGARWAL, MS.P NEOG

Advocate for the Respondent : PP, ASSAM, ADDL PP,ASSAM,MR N KALITA (ADDL PP,ASSAM)

Linked Case : Crl.Rev.P./396/2009

NESTOR NUTRITION'S PVT. LTD. and 3 ORS.
HAVING ITS REGISTERED OFFICE AT G.R. BARUAH ROAD
GHY-24. DIST. KAMRUP M
ASSAM.

2: SRI SATYAKAM KASHYAP
S/O LT. A N KASHYAP R/O SUNDARPUR R G BARUAH ROAD
GHY-5
P.S. DISPUR
DIST. KAMRUP M

ASSAM.

3: SMTI VEENA KASHYAP
W/O SRI SATYAKAM KASHYAP
R/O SUNDARPUR
R.G. BARUAH ROAD
GHY-5
P.S. DISPUR
DIST. KAMRUP M
ASSAM.

4: SRI UTPAL GOSWAMI
S/O LT. LAKSHMI PRASAD GOSWAMI
R/O GOSWAMIS
JOYPUR
KHARGHULI REVERSIDE
GHY-4
P.S. LATASIL
DIST. KAMRUP M
ASSAM.
VERSUS

THE STATE OF ASSAM

Advocate for : MR.A K CHOUDHURY
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioners	: Mr. K Agarwal, Sr. Advocate. Ms. P Neog, Advocate.
For the Respondents	: Mr. P Borthakur, Addl. PP, Assam
Date of Hearing	: 16.12.2024
Date of Judgement	: 16.12.2024

JUDGMENT & ORDER (ORAL)

1. Heard Mr. K Agarwal, learned Senior counsel assisted by Ms. P Neog, learned counsel for the petitioners. Also heard Mr. P Borthakur, learned Additional Public Prosecutor, Assam. These two criminal revision petitions are taken up together for its final disposal.
2. The present applications under Section 397/401 Cr.P.C. are filed assailing impugned judgment and order dated 21.07.2003 passed by the learned Chief Judicial Magistrate, Kamrup in CR case No. 1442^C/1996 convicting the accused petitioners under Section 7/16 of the Prevention of Food Adulteration Act, 1954 and sentencing the petitioner No. 1, accused company to pay a fine of Rs. 1,000/- and the other accused persons to undergo Rigorous Imprisonment of 6 months and to pay fine of Rs. 1,000/- each and in default to undergo Rigorous Imprisonment for 3 months. The further challenge is impugned judgment and order dated 19.09.2009 passed by the learned Additional Sessions Judge (FTC) No. 1, Kamrup in Criminal Appeal No. 45/2003 and Criminal Appeal No. 46/2003 dismissing the appeals and upholding and affirming the judgment and order dated 21.07.2003 passed by the learned Chief Judicial Magistrate as recorded hereinabove.
3. The brief fact leading to the filing of these present case can be summarised as follows:
 - (I) The CR case No. 1442/1996 was registered against the Nestor Nutrition's Pvt. Ltd. company and its Director, namely, Sri Satyakam Kashyap, Smt. Veena Kashyap, Sri Utpal Goswami and one Sri Nalin Chandra Das, who was a Chemist of Nutrition's Pvt. Company. The learned trial court i.e. the Chief Judicial Magistrate, Kamrup on the basis of offence report dated 27.08.1996 filed by one Pradip Chandra Saikia,

Regional Food Inspector, Office of the Joint Director of Health Services, Barpeta, registered the CR case.

- (II) It was alleged in the said report that the offence was committed under Section 7(1) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the Act, 1954) for selling, storing and manufacturing for sale of Ice-Cream which has been found to be not conformed to the standards vide analysis report of the Public Analyst, Government of Assam, Guwahati dated 10.07.1996.
- (III) The learned trial court issued process and on appearance of the accused persons, the learned court below explained the particulars of the offence under Section 7/16 of the Act, 1954 to the accused persons, to which they pleaded not guilty and claimed to be tried.
- (IV) During the course of trial, the prosecution examined two witnesses i.e. the Regional Food Inspector as PW1 and one Lakshmi Kanta Das, peon of the office of the Joint Director of Health Services, Barpeta as PW2 and exhibited as many as 30 documents and two parts of samples as material exhibits 1 and 2.
- (V) After completion of the trial, the accused petitioner and four others were examined under Section 313 Cr.P.C. The defence examined two witnesses, namely, Sri Nalin Chandra Das and the chemist of the company and another accused, namely, Satyakam Kashyap, who is Director of the accused company. PW3 exhibited three documents as Ext. K, Kh and G.
- (VI) After completion of the trial and after analysis of the evidence, the learned trial court found the accused guilty of commission of offence under Section 7/16 of the Act, 1954 and sentenced them as recorded

hereinabove.

(VII) Being aggrieved, the company and its Director preferred Criminal Appeal No. 45/2003 before the learned Additional District and Session Judge (FTC) No. 1, Kamrup. The other accused, who is the Chemist preferred a separate appeal, which was registered as Criminal Appeal No. 46/2003.

(VIII) The learned Session Judge, (FTC) No.1, Kamrup by a common judgment and order dated 19.09.2009 dismissed both the appeals and upheld the conviction passed by the learned trial court. Being aggrieved, these two sets of revision petitions are preferred. Criminal Revision Petition 396/2009 is preferred by the Company and its Director and Criminal Revision Petition 449/2009 is preferred by the Chemist Employed of the Company.

4. During the pendency of the present petitions, one of the Director and petitioner in Criminal Revision Petition No. 396/2009, namely, Veena Kashyap had expired and accordingly the proceeding has been abated against her.
5. Mr. Agarwal, learned Senior counsel has fundamentally urged that the mandate of Section 13(2) and the procedure required to be followed thereunder has not at all been followed and therefore, the entire trial has been vitiated for violation of the principle of natural justice. According to Mr. Agarwal though the public analysis report was served upon one of the Director of the Company, however, same was served after two years of the test result and therefore, such service cannot be treated as service under law inasmuch as by that time there is not scope for the petitioners to even request for sending such report to Central Food Laboratory. Therefore, the entire proceeding is vitiated.
6. Per contra, Mr. Borthakur, learned counsel representing the State argues that

when admittedly the analysis report was served upon the accused company, the mandate of Section 13(2) was fulfilled and the company has not raised any objection as regards delayed submission of such report and therefore, the learned courts have rightly convicted the petitioners.

7. Before going further, more particularly, in the backdrop of the argument that the entire trial has been vitiated for non-adherence of procedure under Section 13(2) of the Act, 1954, let this court first summarise the principle of law in this regards and as enunciated by the Hon'ble Apex Court in different pronouncement and thereafter, let this court dealt with the factum of the present case.
8. The Hon'ble Apex court has consistently been emphasising the importance of adherence to Section 13(2) of the Act, 1954. There is no quarrel on the point that this provision of law is intended to provide a right to the accused to challenge the report of the public analyst by requesting analysing of food sample by the Central Food Laboratory. It has been observed in different pronouncements that failure to comply with Section 13(2) of the Act, 1954 is a violation of accused right to fair trial.
9. In the case of ***Chetumal Vs. State of Madhya Pradesh*** reported in **1981 (3) SCC 72**, the Hon'ble Apex Court held that non-compliance with Section 13(2), particularly failure to inform the accused about their right to have the samples re-analysed by Central Food Laboratory amounts to a denial of a fair opportunity of defence and failure to adhere to it to vitiate the trial.
10. In ***Municipal Corporation of Delhi vs. Ghisa Ram*** reported in **AIR 1967 SC 970**, the Hon'ble Apex Court held that if the sample deteriorates due to improper shortage or delay in informing the accused about the option under Section 13(2), the right of accused to challenge the Public Analyst report is compromised and such non-compliance renders the prosecution case invalid because it deprived the

accused of their statutory right to seek a second opinion.

11. In ***State of Orissa vs. Gauranga Sahu*** reported in ***AIR 2004 SC 1233***, the Hon'ble Apex Court reiterated the aforesaid principle of law and held that failure to send a copy of public analyse report to the accused as required under Section 13(2) of the Act, 1954 renders the trial unfair and vitiates the conviction. It was held in ***Tulsiram Vs State of Madhya Pradesh*** reported in ***AIR 1985 SC 299*** that right to seek analysis by Central Food Laboratory is a critical procedural safeguard of the accused and non-compliance results in procedural irregularity leading to acquittal.
12. In the aforesaid backdrop, this court has perused the prosecution evidence as well as the defence that has been taken by the accused. From the evidence of PW1, what is discernible is that on 06.06.1996, he took sample of the Ice-Cream for analysis from the factory of the company. On 10.07.1996, Public Analyst of Government of Assam submitted Ext. 14 report and opined that samples collected do not conform the standard, it is required. Thereafter, 27.08.1996, Ext. 21 offence report was submitted before the Chief Judicial Magistrate and accordingly CR case No. 1442/1996 was registered.
13. There is no dispute that notice was sent by registered post through Ext. 23 to 28 on 27.08.1996. The defence took a stand during their cross-examination of the PWs as well as through their defence witnesses as well as in their statements recorded under Section 313 Cr.P.C. that the report from the local health authority was received on 15.05.1998 inasmuch as the analyse report is dated 10.07.1996 i.e. it is their defence case that they have received the same after two years on 15.05.1998. The defence also exhibited Ext. K, the received envelop, which shows that it was delivered on 12.05.1998. This DW was thoroughly cross-examined by the prosecution. In his evidence in chief, he has specifically stated that he has received the official envelop on 12.05.1998 and he has exhibited the

official envelop where the postal seal of 12.05.1998 was reflected and he also marked and exhibited the said seal. Though defence cross-examined him, however they have not challenged as regards date of receipt of the Report. But their challenge was to the effect that the company did not file any application within 10 days requesting to send the sample to Central Food Laboratory after receipt.

14. Thus, from the aforesaid evidence of prosecution as well as defence what is established is that the Public Analyst's report was sent in the Ext Ga envelop on 10.07.1996 as reflected in Ext. 23. The seal put in at the time of delivering Ext. G i.e. the envelop reflects that it was delivered on 15.05.1998. Such stand of defence that Ext. G was delivered on 12.05.1998 and that it bears a seal dated 12.05.1998 has not been disputed by the prosecution in their cross-examination and not been challenged. Thus, the defence was able to establish that it was received by the company on 12.05.1998.
15. The defence took a stand as recorded hereinabove that even after receipt of same on 12.05.1998 the accused has not opted for their right to request for re-examination by the Central Food Laboratory.
16. Therefore, in the aforesaid background, this court is to decide whether such non-filing of request within 10 days will go against the accused and they can be convicted only on this ground and whether it can be accepted that the procedure under Section 13(2) has duly been submitted.
17. In ***Girishbhai Dahyabhai Shah vs CC Jani and Anr.*** reported in **(2009) 15 SCC 64**, the Hon'ble Apex Court while dealing with a similar situation where the report was received 15 months after the sample of card was taken held that in such a situation it is to be treated that the accused was prevented from apply for the second sample for the reason that by the time, a request can be made for

second sample to be tested in the Central Food Laboratory, the sample had already deteriorated and was not capable for analyse. Similar principle was also laid in the case of ***Ghisa Ram (supra)***.

18. Now coming to the case in hand there is no dispute that sample of the Ice-Cream in respect of which the complaint was filed was collected on 06.06.1996 and the samples was tested on 27.08.1996 and the report was delivered to the accused company on 15.05.1998. The subject matter being Ice-Cream, there would be no scope in the present case also to send it for re-testing after 2 years of the sample. Therefore, in the considered opinion of this court, though the accused had a right on 15.05.1998 to seek for re-testing of the sample in the Central Food Laboratory, however, such right became a futile right to be exercised by elapse of time.
19. It is also by now well settled that the right to seek a sample tested and the Central Food Laboratory being a valuable right the prosecution is to ascertain that such report is duly served upon the accused within a reasonable time so that the accused can meaningfully opt to exercise its right.
20. In ***Municipal Corporation of Delhi (supra)***, it was held that right of the accused to get sample examined by the Director of Sample Laboratories shall be vitiated, if the report is served belatedly and in the meantime sample became decomposed and resulting in impossibility for second analyse. Similar is the case in hand. In the considered opinion of this court, the prosecution had its responsibility to ascertain that the report is served within a period of reasonable time.
21. Though the Legislature in its wisdom has not prescribed any period within which such report is to be furnished but looking into the scheme of Section 13(2) of the Act, 1954, more particularly, when a right is created under Section 13(2) of the

Act, 1954, that the report should be furnished within a reasonable period of time.

22. Section 13(2) provides the accused a time limit of 10 days from the date of receipt of the copy of the report to make an application to the court to get a sample of the article of food kept by the Local Health Authority to be analysed by the Central Food Laboratory. Section 13 (2A) further prescribes a time limit of 5 days from the date of such requisition from the court under Section 13(2) to forward the part or parts of the sample kept by the Authority. Section 13(2B) also prescribes a time limit of one month from the date of receipt of the part or parts of the sample to send it to the Director of Central Food Laboratory to submit a report / certificate to the court the result of analysis. However, the Legislature in its wisdom has not time limit any prescription as regards serving a report of the Food Analyst upon the accused though the manner and method of forwarding the copy is prescribed in the Rules.
23. As discussed hereinabove, the Hon'ble Apex Court has specifically laid down the proposition of law that there should not be delay in informing the accused about the option under Section 13(2) of the Act, 1954 ***[Ghisa Ram (supra)]***. Therefore, in the totality of the matter and under the scheme of the Act, 1954, in a normal course there should not be any un-reasonable delay in delivering the report for compliance of the provision of Section 13(2) of the Act, 1954 inasmuch as by now it is also equally well settled that mere sending the report will not suffice the object, rather it is to be ensured that the report is duly served upon the accused.
24. There may be delay in certain cases, however, in the considered opinion of this court, such delay should not be un-reasonable. According to this court, as soon as the local analyst report is received, the authority should without un-reasonable delay, with reasonable speed and expedition is to furnish the copy of such report under Section 13(2) of the Act, 1954. "Without un-reasonable delay" shall mean

that an action prescribed is taken with reasonable speed with expedition and any delay in the matter is satisfactorily explained. In the case in hand, though report was received immediately, it was sent also without un-reasonable delay, however, the authority did not ensure whether such report is duly furnished to the accused and at the same time, during the trial the prosecution did not challenge the defence that the report was received by the accused after two years from the date, when it was sent through registered post to the accused.

25. Therefore, in the totality of the matter, the impugned judgment and order dated 21.07.2003 passed by the learned Chief Judicial Magistrate, Kamrup in CR case No. 1442^C/1996 convicting the accused petitioners under Section 7/16 of the Prevention of Food Adulteration Act, 1954 and sentencing the petitioner No. 1, accused company to pay a fine of Rs. 1,000/- and the other accused persons to undergo Rigorous Imprisonment of 6 months and to pay fine of Rs. 1,000/- each and in default to undergo Rigorous Imprisonment for 3 months and the impugned judgment and order dated 19.09.2009 passed by the learned Additional Sessions Judge (FTC) No. 1, Kamrup in Criminal Appeal No. 45/2003 and Criminal Appeal No. 46/2003 dismissing the appeals and upholding and affirming the judgment and order dated 21.07.2003 passed by the learned Chief Judicial Magistrate are vitiated and therefore, liable to be set aside and quashed. Ordered accordingly. Petitioners are acquitted from the charges. Bail bond stands discharged. LCR be returned back.
26. Both the criminal revision petitions stand allowed.

JUDGE

Comparing Assistant