

Ram Dayal

Vs

Municipal Corporation of Delhi and Another

Criminal Appeal No. 80 of 1969

(S. M. Sikri, G.K. Mitter, P. Jagmohan Reddy JJ)

07.10.1969

JUDGMENT

JAGANMOHAN REDDY, J. –

1. This appeal by certificate granted by the Delhi High Court under Article 134(1)(c) of the Constitution is against its judgment which confirmed the conviction of the accused of an offence under Section 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.

2. 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 Section 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 Section 11 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 Section 7, read with Section 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 Section 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 Section 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 cross-examination had not been acceded to, he had been prejudiced, as such the entire proceeding against him were vitiated. The High Court however rejected this contention on the ground that Section 510 of the code of Criminal Procedure had no application in that it only dealt with Chemical Examiner or an Assistant Chemical 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 Section 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 Section 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.

3. It cannot be disputed that any person selling food with impermissible colouring matter contravenes the provisions of Section 7 which prohibits the selling of any adulterated food and would be punishable under Section 16 of the Act. What is adulterated article of food has been defined in Section 2(i) and so far as it is related to colouring sub-clause (i) of clause(i) of Section 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 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 Rules 24 to 26 and 28 to 31, but in so far as this case is concerned we may merely refer to Rules 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 Rule 28 prescribes that the only permitted colours are Tartrazine with colour index 640 belonging to Chemical class of Xaethene and Sunset Yellow FCF belonging to the chemical class Azo, and these alone can be used. It will therefore be incumbent on the Public analyst 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 Degree C. of the fat extracted from sweets - 50 Degree C. Baudouin test of the extracted fat - Positive Reichert value of the extracted fat - 7.59 Colour - unpermitted.

1 1 1 the same is adulterated due to 7 Degree C. excess in Butyro Refractometer reading at 40 Degree C. of the fat extracted from sweets, 20.41 deficiency in Reichert value of the extracted fat, Baudouin test of extracted fat being positive, and also coloured with unpermitted colour."

4. 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 Section 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 Sections 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 Section 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 Section 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 nonetheless 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-section (2) of Section 510, Criminal Procedure Code in respect of reports given under the hand of several experts named in sub-section (1) notwithstanding the fact that they may be used in evidence in enquiry, trial or other proceedings under the Code. Sub-section (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-section (1) of Section 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 Section 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 Section 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 the 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-section (2) of Section 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-clause (i) or sub-clause (iii) of clause (c) of sub-section (1) of Section 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 receipt. This certificate under sub-section (3) supersedes the Public Analyst's certificate and is conclusive and final under sub-section (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 Section 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.

5. In *Mangaldas Raghavji v. State*, this Court held that where the accused has 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."

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 of 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."

6. In *Sukhmal Gupta v. the Corporation of Calcutta* 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 Section 13(2) but he did not do so, nor did he 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.

7. In this case we would have remanded the case 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 Section 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 Section 13(a) as soon as a complaint was lodged against him on 19th January, 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 Section 13(2) when he made the application under Section 510 (2) on 29th August, 1966.

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

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