

Dalchand

Vs

Municipal Corporation, Bhopal and Another

Petition for Special Leave (Criminal) No. 1437 of 1982

(O. Chinnappa Reddy JJ)

11.06.1982

ORDER

CHINNAPPA REDDY, J. -

1. One of the questions raised in this petition for special leave to appeal to this Court is whether the failure to supply a copy of the report of the Public Analyst within the period of 10 days stipulated by rule 9(i) of the Prevention of Food Adulteration Act, as it was in force at the relevant time - it may be noticed here that Rule 9(i) which was in force at the relevant time has since been omitted with effect from January 4, 1977 - was fatal to a prosecution under the Prevention of Food Adulteration Act. Was Rule 9(i) mandatory or directory ? There are no ready tests or invariable formulae or determine whether a provision is mandatory or directory. The broad purpose of the statute is important. The object of the particular provision must be considered. The link between the two is most important. The weighing of the consequence of holding a provision to be mandatory or directory is vital and, more often than not, determinative of the very question whether the provision is mandatory or directory. Where the design of the statute is the avoidance or prevention of public mischief, but the enforcement of a particular provision literally to its letter will tend to defeat that design, the provision must be held to be directory, so that proof of prejudice in addition to non-compliance of the provision is necessary to invalidate the act complained of. It is well to remember that quite often many rules, though couched in language which appears to be imperative, are no more than mere instructions to those entrusted with the task of discharging statutory duties for public benefit. The negligence of those to whom public duties are entrusted cannot by statutory interpretation be allowed to promote public mischief and cause public inconvenience and defeat the main object of the statute. It is as well to realise that every prescription of a period within which an act must be done, is not the prescription of a period of limitation with painful consequences if the act is not done within that period. Rule 9(i) of the Prevention of Food Adulteration Act, as it then stood, merely instructed the Food Inspector to send by registered post copy of the Public Analyst's report to the person from whom the sample was taken within 10 days of the receipt of the report. Quite obviously the period of 10 days was not a period of limitation within which an action was to be initiated or on the expiry of which a vested right accrued. The period of 10 days was prescribed with a view to expedition and with the object of giving sufficient time to the person from whom the sample was taken to make such arrangements as he might like to challenge the report of the Public analyst, for example, by making a request to the Magistrate to send the other sample to the Director of the Central Food Laboratory for analysis. Where the effect of non-compliance with the rule was such as to wholly deprive the right of the person to challenge the Public Analyst's report by obtaining the report of the Director of the Central Food Laboratory, there might be just cause for complaint, as prejudice would then be writ large. Where no prejudice was caused there could be no cause for complaint. I am clearly of the view that Rule 9(i) of the Prevention of Food Adulteration

Rules was directory and not mandatory. The decisions in Public Prosecutor v. Murlidhar (1977 Cr LJ 1634 (AP) : 1977 Andh LT 34 : 1977 MLJ (Cri) 205) and Bholu Nath v. State (1977 Cr LJ 154 (Cal) : (1977) 1 FAC 38) to the extent that they hold that Rule 9(i) was mandatory are not good law. The petition is dismissed.

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