Ahmed Dadabhai Advani

Vs

State of Maharashtra

Criminal Appeal No. 195 of 1991, (arising out of S.L.P. No. 1482 of 1990)

(A.M. Ahmadi, S.C. Agrawal JJ)

18.03.1991

ORDER

1.Special leave granted.

2. We have heard counsel on both sides. The appellant and two others had entered into a partnership for starting business. On the date of the incident the appellant alone was at the shop. There was a half used oil tin lying in the shop which was still at the furniture making stage. The Food Inspector insisted on purchasing oil from that tin and the present appellant gave him 375 gms. which was sent to the Public Analyst for examination. The report of the Public Analyst was to the effect that it was adulterated oil. The copy of the report of the Public Analyst which ought to have been given to the appellant 'immediately' within the meaning of R. 9A of the Prevention of Food Adulteration Rules, 1955 was actually sent long after it was received. That apart, the evidence of the Panch witness discloses as under:

> "It is true that the accused had not started their business in the same shop. It is true fixing of furniture in the shop was goinr. The shop was coming up newly. I was called in the shop and at the instance of Patil I signed some papers. During my stay in the shop there was no transaction of sale of any article."
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> It is evident from this statement of the Panch witness that business had not yet commenced and furniture making was in progress. It appears that the Food Inspector asked him to sign certain papers and he obliged. The licence to do business in the said premises was issued just one day before. In the facts and circumstances, it cannot be said that the appellant had commenced business in the shop. Except this half used tin, no other stock-in-trade was found there. It cannot, therefore, be said that the appellant had commenced business and was selling adulterated oil.

3. As regards the delay in furnishing the copy of the Public Analyst's report, the facts reveal that a copy of the report was stated to have been sent on 13th June, 1979 but it was actually dispatched on 11th July, 1979. The report is dated Ist September, 1978. The learned Magistrate had, therefore, taken the view that there was undue delay in forwarding the copy of the report to the appellant as required by Rule 9A. The High Court thereafter invoked S. 114(a) of the Evidence Act and came to the conclusion that it must be taken to have been received in due course. Rule 9A uses the word 'immediately' replacing the words 'within ten days'. This expression has to be appreciated in the context of the facts and circumstances of the each case bearing in mind the purpose for furnishing the report. The report is dated Ist September, 1978. Yet the filing of the complaint was delayed up to 26th April, 1979. But the copy of the report was dispatched on 11th July, 1979 and must have been

received within a Couple of days. Keeping in view the objective of the requirement to furnish a copy of the report to the accused, we think, having regard to the delay which had already taken place, it was incumbent on the part of the Local Health Authority to have promptly sent the copy which it failed to do. We, therefore, find it difficult to agree with the line of reasoning adopted by the High Court. We think that the High Court was not justified in interfering with the order of acquittal in the above circumstances. We, therefore, set aside the conviction recorded by the High Court and restore the order of the trial Court. The fine, if paid, shall be refunded. Bail bonds will stand cancelled. The appeal is allowed accordingly.

Appeal allowed.

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