Rajendra s/o Ram Ratan and others

Vs.

State of M.P.

(A. M. Ahmadi, V. Ramaswami –II, M. M. Punchhi JJ)

Criminal Appeal No. 168 of 1991

18.07.1991

JUDGEMENT

PUNCHHI, J.:-

1.This appeal by special leave is against the judgment and order of the Indore Bench of the Madhya Pradesh High Court rendered in Criminal Appeal No. 102 of 1984.

2. The facts are few and simple. The first appellant Rajendra, on 30th June, 1982, while running a shop under the name and style of M/ s. Kumarvad Bros. In Khargaen Municipality, was found exhibiting and offering for sale tea dust, the quantity of which was about 1 1/2 kgs. D. P. Nath, P.W. 1, the Food Inspector for Khargaon purchased tea dust in the requisite quantity for test. The purchased tea was dealt-with in the prescribed manner as per rules on the subject. The purchase and other attendant documents were witnessed by Madan, P.W. 2 and another.

3. The Public Analyst, Bhopal, to, whom one of the three samples was sent for analysis opined that the food article fell below the prescribed standard as its contents were present in quantities not within the prescribed limits of variability. The report of the Public Analyst was communicated to the first appellant as well as to his two brothers, the second and third appellants, because it appears that at the time of the sale of the tea to the Food Inspector, he was told by the first appellant that the shop being run by him was a partnership concern of three brothers. The accompanying covering letter suggested to the appellants that the Court's intervention could be sought to have one of the samples kept by the Local Health Authority examined one more time. The appellants did not avail of the opportunity and faced the prosecution launched under section 7 read with Section 16 of the Prevention of Food Adulteration Act, 1954 before the Chief Judicial Magistrate, Khargaon.

4. Before the Trial Magistrate the facts as alleged by the prosecution regarding sale by the first appellant to the Food Inspector and of the article of food being adulterated as per report of the Public Analyst were not disputed. Shelter, however, was taken behind the provisions of Rules 7(3) and 9-A of the Prevention of Food Adulteration Rules, 1955, as then standing, where under the Public Analyst was required to send his report to the Local Health Authority within 45 days, which he had not done, and the Local health Authority was required to 'immediately' after the institution of prosecution forward a copy of the report of the result of the analysis to the appellants. Since there was a delay of nearly a month on that count the trial Magistrate viewed this lapse as fatal to the Prosecution. Furthermore, the trial Magistrate took the view that in the covering letter while sending the report, nowhere had the appellants been told that they had a right to have the second sample with the Local Health Authority analysed by the Central Food Laboratory in terms of Section 13(2) of the Act. The trial Magistrate perhaps had in mind that had this been mentioned, the appellants may

have chosen to avail of the opportunity of the analysis by the Central Food Laboratory and such report would have superseded the report of the Public Analyst, whether for or against the appellants. On these two grounds the learned trial Magistrate recorded acquittal of the appellants. The High Court on appeal by the State of Madhya Pradesh, reversed the Order of acquittal and recorded conviction of the appellants and sentenced each one of them to six months rigorous imprisonment and to pay a fine of Rs.5000/- each. This has occasioned the appeal before us.

5. Our attention was brought to the aforesaid rules and Section 13(2) of the Act and the case law on the subject. Rule 7(3) requires that the public analyst shall within a period of 45 days of the receipt of any sample for analysis, deliver to the Local Health Authority, a report of the result of such analysis in Form III. The trial Magistrate found that this duty was not discharged by the Public Analyst within the prescribed period of 45 days. The High Court, however, recomputed the period and came to the conclusion that s1uch duty was performed within the prescribed period. That finding is one of fact and nothing has been addressed to us in that regard. So far as the Local Health Authority being required to 'immediately' after the institution of prosecution send a copy of the report of the result of the analysis in Form III, its failure to do so instantly was held to be of no consequence, relying on a judgment of this Court in Tulsiram v. State of Madhya Pradesh, (1984) 4 SCC 487 : (AIR 1985 SC 299) wherein the word 'immediately' was interpreted to convey 'reasonable despatch and promptitude'intending to convey a sense of continuity rather than urgency. This Court then ruled at page 497 (of SCC) : (at p. 305 of AIR) as follows:

> "The real question is, was the Public Analyst's report sent to the accused sufficiently early to enable him to properly defend himself by giving him an opportunity at the outset to apply to the Court to send one of the samples to the Central Food Laboratory for analysis. If after receiving the Public Ariayst's report he never sought to apply to the Court to have the sample sent to the Central Food Laboratory, as in the present case, he may not be heard to complain of the delay in the receipt of the report by him, unless, of course, he is able to establish some other prejudice. Our conclusions on this question are: The expression 'immediately' in R. 9-A is intended to convey a sense of continuity rather than urgency. What must be done is to forward the report at the earliest opportunity, so as to facilitate the exercise of the statutory right under S. 13(2) in good and sufficient time before the prosecution commences leading evidence. Non-compliance with Rule 9-A is not fatal. It is a question of prejudice." Tulsiram's case was thus a complete answer to the contention to contrary.

6. The next question which requires consideration is whether all the appellants are guilty of the crime. From the material available on the record, we find no basis to sustain the conviction of the second and third appellants, Om Prakash and Subhash. There is no evidence worth the name to conclusively prove their complicity beyond reasonable doubt. The first appellant is alleged to have told the Food Inspector on the date of sale of tea dust that the shop Was being run in partnership by him with his two brothers. This was the only case set up by the prosecution at the trial. No evidence was gathered or tendered to prove the partnership. On the facts, which are eloquent, the first appellant alone made the sale of tea dust to the Food Inspector and not all. Burden was on the prosecution to prove the existence of the partnership. We do not propose to indulge in the refinery of civil law but have to adopt the cautious approach to adjudge criminality of the accused-appellants. Even if the Food Inspector is believed that the first appellant told him that the business on the shop was being run in partnership that per se was not enough to inculpate the remaining two appellants without further evidence. We find an area of doubt in this sphere and extending the same to the second and third appellants order their acquittal. They be discharged from their bail bonds.

Fine, if paid, be refunded to them.

7. The case of the first appellant stands singled out. His conviction was well deserved which is hereby maintained confirming the sentence of imprisonment but reducing the fine to Rs. 1000/-, in default of payment of which further rigorous imprisonment for one month is ordered. He shall surrender to his bail bonds. The excess fine, if paid, be refunded to the first appellant.

8. As a result the appeal of appellants 2 and 3 is allowed and that of appellant No. 1 dismissed, subject, however to the reduction of sentence.

Order accordingly.

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