

SUPREME COURT OF INDIA

Girishbhai Dahyabhai Shah

Vs.

C.C.Jani

CrI.A.No.1401 of 2009

(Altamas Kabir and Cyriac Joseph JJ.)

31.07.2009

ORDER

1. Leave granted.

2. This appeal is directed against the final judgment and order dated 21st August, 2008, passed by the Gujarat High Court in CrI.Misc.Appln.No.15068 of 2007, filed under Section 482 Cr.P.C. for quashing the proceedings arising out of criminal complaint No.58 of 1989, filed by the respondent No.1 herein against the appellant in respect of offences punishable under Sections 16(1)(a)(i) of the *Prevention of Food Adulteration Act, 1954*.

3. There is no dispute that the sample of the curd, in respect of which the complaint was filed, was collected on 8th April, 1988, or that the report of the Public Analyst, whereupon the appellant applied for examination of the second sample on the basis of Section 13(2), was filed on 4th May, 1988, but was made available to the appellant only on 17th July, 1989, i.e. 15 months after the samples had been collected. On 10th November, 1989, the petitioner had prayed for examination of the second sample. The second sample was ultimately sent to the Central Food Laboratory on 6th December, 1989, and the report was received on 26th December, 1989.

4. In the petition under Section 482 Cr.P.C., the appellant had contended that the report of the Public Analyst having been served on him only on 17th July, 1989, he was not in a position to apply for examination of the second sample to which he was entitled in terms of the Section 13(2) of the *Prevention of Food Adulteration Act, 1954*, prior to the said date. It was also his case that since the report had been served on him only on 17th July, 1989, by which time the sample of curd had deteriorated, any further examination of such sample had become meaningless, thereby depriving him of the valuable right conferred on him by Section 13(2) of the above Act.

5. The appellant herein also relied on a decision of this Court in the case of wherein in similar circumstances involving the same substance, the complaint was sought to be quashed on the ground that the sample of curd which had been collected could not have retained its

qualities beyond a period of four to six months under controlled conditions. Despite the above, the High Court in analysing the provisions of Section 482 Cr.P.C. and referring to certain judgments on the point, rejected the appellant's petition under Section 482 Cr.P.C. and dismissed the same.

6. In this appeal, the same point has been taken and urged on behalf of the appellant by Mr. Dave, learned senior counsel appearing in support of the appeal.

7. Section 13(1) and (2) of the Prevention of Food Adulteration Act, 1954, reads as follows:

“Section 13. Report of Public analyst. [(1) The public analyst shall deliver, in such form as may be prescribed, a report to the Local (Health) Authority of the result of the analysis of any article of food submitted to him for analysis.

(2) On receipt of the report of the result of the analysis under sub-section (1) to the effect that the article of food is adulterated, the Local (Health) Authority shall, after the institution of prosecution against the persons from whom the sample of the article of food was taken and the person, if any, whose name, address and other particulars have been disclosed under -4- Section 14A, forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both of them may make an application to the court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory.”

8. It will be apparent from the above, that only on receipt of the report of the Public Analyst under sub-Section (1) to the effect that the article of food is adulterated, can a prosecution be launched and a copy of the report could be supplied to the accused.

9. Sub-Section (2) also indicates that on receipt of the report the accused could, if he so desired, make an application to the court within a period of 10 days from the date of the receipt of the copy of the report to get the sample of article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory. In other words, in the instant case, the appellant was prevented from applying for analysis of the second sample before 17th July, 1989, by which time the second sample of curd had deteriorated and was not capable of being analysed as was found in the case of Ghisa Ram (supra) referred to above.

10. In that view of the matter, we are unable to sustain the judgment of the High Court impugned in this appeal and we also see no reason to continue with the proceedings which have lasted for 28 years in the absence of any valid and reliable report with regard to the second sample.

11. Accordingly, the appeal is allowed. The order passed by the High Court is set aside and the proceeding, being Crl. Complaint No. 58 of 1989, pending before the Metropolitan Magistrate, Ahmedabad, is quashed.