

PETITIONER:
RAJENDRA AND TWO OTHERS

Vs.

RESPONDENT:
STATE OF MADHYA PRADESH

DATE OF JUDGMENT 18/07/1991

BENCH:
PUNCHHI, M.M.
BENCH:
PUNCHHI, M.M.
AHMADI, A.M. (J)
RAMASWAMI, V. (J) II

CITATION:
1991 AIR 1757 1991 SCR (3) 96
1991 SCC (3) 620 JT 1991 (3) 288
1991 SCALE (2) 105

ACT:

Prevention of Food Adulteration Act, 1954/Prevention of Food Adulteration Rules, 1955: S. 7 r/w s. 16, s. 13(2)/rr. 7(3), 9A:--Food adulteration--Food article found adulterated--Delay in analysis report --Local Health Authority not sending 'immediately after prosecution' the report to appellants Acquittal by trial Magistrate--High Court recomputed the period and found the report sent within prescribed period--Order of conviction and six months' imprisonment with fine awarded to each appellant--Validity of.

Non-compliance of r. 9-A not fatal--Word 'immediately' interpreted to convey 'reasonable despatch and promptitude'.

Partnership concern: Food adulteration--Food article sold by shopkeeper found adulterated--Alleged partnership of three brothers--Burden of proof of partnership on the prosecution--benefit of doubt given to remaining two appellants.

HEADNOTE:

Appellant No. 1 was found exhibiting and offering for sale tea dust. P.W. 1, the Food Inspector purchased tea dust in the requisite quantity for test. Appellant no. 1 told P.W. 1 that the shop which was being run by him was a partnership concern of the three brothers appellant no. 1 to 3. On receipt of Public Analyst's report, prosecution was launched against the appellants under s. 7 read with s. 16 of the Prevention of Food Adulteration Act, 1954.

Before the trial Magistrate the facts regarding sale by appellant no.1 of the food article and the same being adulterated as reported by the Public Analyst were not disputed. The appellants however, argued that the Public Analyst did not send the report within the period prescribed under r. 7(3) Prevention of Food Adulteration Rules, 1955 and the Local Health Authority did not forward the copy of the result of the analysis to the appellants 'immediately' after institution of the prosecution as envisaged by r. 9A. Since there was a delay of nearly a month on that count, the trial Magistrate viewed this lapse as fatal to the prosecution. He also held that in the covering letter while sending the report, it was not mentioned that the appellants had a right to have analysed the second sample by the Central Food

Laboratory in terms of s. 13(2) of the

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Act. He, therefore, acquitted the appellants.

On appeal by the State, the High Court reversed the order of acquittal. It convicted the appellants and sentenced each of them to six months' rigorous imprisonment and to pay a fine of Rs.5000 each. Aggrieved the appellants preferred the appeal by special leave to this Court.

On consideration of evidence regarding guilt of all the appellants and requirements of s. 13(2) of the Prevention of Food Adulteration Act, 1954 and rr. 7(3) and 9A of the Prevention of Food Adulteration Rules, 1955, Disposing of the appeal, this Court,

HELD: 1. In the instant case, there was no basis to sustain the conviction of appellants no. 2 and 3. There was no evidence worth the name to conclusively prove their complicity beyond reasonable doubt. The only case set up by the prosecution against these appellants was that appellant no. 1 was alleged to have told the Food Inspector that the shop was being run in partnership by him with his these two brothers. Appellant no. 1 alone made the sale in question to the Food Inspector. Burden was on the prosecution to prove the existence of partnership. Even if the Food Inspector is believed that appellant no. 1 told him that the shop was being run in partnership, that per he was not enough to inculcate the remaining two appellants without further evidence. There is an area of doubt in this sphere and extending the same to appellants no. 2 and 3, they are acquitted. [100G-H; 101A-B]

The case of first appellant stood singled out. His conviction was well deserved, which should be maintained and the sentence confirmed. However, fine was to be reduced to Rs.1,000. [101C]

2. The expression 'immediately' in r. 9A of the Prevention of Food Adulteration Rules, 1955, 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 r. 9-A is not fatal. It is a question of prejudice. The word 'immediately' was to be interpreted to convey 'reasonable despatch and promptitude' intending to convey a sense of continuity rather than urgency. The High Court was right in holding that failure to send instantly a copy of the analysis

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report to the appellants was of no consequence. [100A-F]

Tulsiram v. State of Madhya Pradesh, [1984] 4 SCC 487, relied on.

3. On the question of compliance of r. 7(3) in regard to the period of submission of the report by Public Analyst to the Local Health Authority, the High Court's conclusion, reached by it after recomputing the period, that such duty was performed within the prescribed period was a finding of fact and nothing was addressed before this Court in that regard. [99G-H; 100A]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1680f 1991.

From the Judgment and Order dated 26.7.1989 of the Madhya Pradesh High Court in CrI. A. No. 102 of 1984.

G.L. Sanghi and A.K. Sanghi for the Appellants.
U.N. Bachawat and Uma Nath Singh for the Respondent
The Judgment of the Court was delivered by

PUNCHHI, J- 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.

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 Khargaon Municipality, was found exhibiting and offering for sale tea dust, the quantity of which was about 11/2 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.

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 99

the sale of the tea to the Food Inspector, he was told by the first appellants that the court's intervention could be sought to have one 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.

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, whereunder 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 total 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.

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

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the prescribed period of 45 days. The High Court, however, recomputed the period and came to the conclusion that such 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 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 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 Analyst'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 Rule 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 section 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.

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

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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 he was not enough to inculcate 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.

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.

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

R.P.
disposed of.
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Appeal dis-