

CASE NO.:
Appeal (crl.) 1109 of 1997

PETITIONER:
State of H.P.

RESPONDENT:
Narendra Kumar and Anr.

DATE OF JUDGMENT: 16/02/2004

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT.

JUDGMENT:
JUDGMENT

ARIJIT PASAYAT, J

The State of Himachal Pradesh calls in question legality of judgment rendered by learned Single Judge of the Himachal Pradesh High Court affirming judgment of the trial court holding that respondent no.1 (hereinafter referred to as 'the accused no. 1) was not guilty of the accusations under Sections 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (in short the 'Act').

The prosecution version which led to trial of the accused is essentially as follows:

On 11.4.1985. the Food Inspector took sample of "Shakkar" from the shop of the accused no. 1. He purchased 600 gms. of "Shakkar" for analysis after serving the requisite notice. Thereafter sample articles were sealed and one such sample was sent to the Public Analyst for analysis. On analysis the sample was found to be containing unpermitted acid coal tar of orange shade. Prosecution was launched after service of notice in terms of Section 13(2) of the Act. During trial, the accused no. 1 applied under Section 19(2) seeking to implead Jain Trading Company represented through its manager- respondent no.2 (hereinafter referred to as 'the Vendor'). The vendor was impleaded as accused no.2. In order to establish its accusation, the prosecution examined 4 witnesses and produced the record relating to the sanction and the Public Analyst report. The accused persons pleaded innocence. In his statement recorded under Section 313 of the Code of Criminal Procedure, 1973 (in short 'the Cr.P.C.') accused no. 1 took the stand that though sample was taken, there was no proper mixing and that it was not taken from the place indicated in the complaint. He further took the plea that his brother had purchased the articles in question from accused no.2, which was not meant for sale but was for consumption by animals. Accused no.2 took the plea that articles in question were never sold to accused no.1, and the receipt which was produced was fictitious. Trial court by judgment and order dated 24.10.1990 held that accusations were not established, and recorded the findings in favour of the accused. Firstly, it was held that the sanction order was defective, and secondly there was no compliance of the mandatory requirements of Rule 18 of the Prevention of Food Adulteration Rules, 1955 (in short the 'Rules'). For coming

to the second conclusion it was held that there was no definite material about despatch of the seal impression and the memo Ex. P-E separately. So Far as culpability of accused no.2 is concerned, with reference to Section 19 it was held that the accused no.1 failed to show that the bill on which he placed reliance was a genuine one and that the sample article of food while in his possession was properly stored and that it was sealed in the same state as he had purchased. The State questioned correctness of the judgment before the High Court. By the impugned judgment, the High Court held that the Trial Court was not justified in its conclusion about the absence of valid sanction. It, however, held that the prosecution has failed to prove despatch of seal impression and memo separately which is a mandatory requirement under Rule 18 of the Rules. It also upheld the acquittal of accused no.2.

In support of the appeal, learned counsel for the State submitted that the evidence of the witnesses has not been properly analysed by the Trial Court and the High Court. The Public Analyst in his certificate has categorically stated that the seals and the memo received separately were intact and there was no defect therein. It was submitted that at any rate no prejudice has been caused and shown by the accused. It was urged that when the Public Analyst was satisfied about due despatch of the articles and there was not even any suggestion about any prejudice caused or that the report of the Public Analyst did not reflect the correct state of affairs, the view taken by the Trial Court and the High Court cannot be maintained.

In response, learned counsel for accused no.1 submitted that the requirements of Rule 18 are mandatory in nature and, therefore, it was rightly observed by the High Court that there has been non-compliance with the requirements of the said rule making the prosecution case vulnerable. Reference was made to a decision of this Court in State of Maharashtra v. Rajkaran (1987 Supp. SCC 183) in support of the stand. It was submitted that the concurrent findings of fact recorded should not be disturbed and in any event nearly two decades have passed and this is not a fit case for interference under Article 136 of the Constitution of India.

The rule has been amended by GSR 293(E), dated 23.3.1985 with effect from 24.9.1985. Rule 18 before amendment reads as follows:

"Memorandum and impression of seal to be sent separately - A copy of the memorandum and specimen impression of the seal used to seal the packet shall be sent to the Public Analyst separately by registered post and delivered to him or to any person authorised by him."

After amendment it reads as follows:

"Memorandum and impression of seal to be sent separately - A copy of the memorandum and specimen impression of the

seal used to seal the packet shall be sent to the Public Analyst in a sealed packet separately by any suitable means immediately but not later than the succeeding working day."

The new rule makes the following changes:

(i) The copy of the memorandum and specimen impression of the seal are now required to be sent in a sealed packet separately, which was not a requirement under the old rule.

(ii) The mode of sending now is by 'any suitable means', whereas under the old rule it was by registered post or hand delivery.

(iii) The time for sending the packet is now prescribed as 'immediately but not later than the succeeding day', but there was no such prescription of time under the old rule."

Rule 18 requires the Food Inspector; (i) to send (a) a copy of the memorandum; and (b) specimen impression of the seal used to seal in a sealed packet to the Public Analyst; (ii) to send this sealed packet separately by any suitable means (iii) to send the same immediately but not later than the succeeding working day. The expression 'separately' has to be understood on a conjoint reading of Rules 7, 17 and 18. Rule 7 postulates that Public Analyst on receipt of the packet containing the sample for analysis has to compare the seals on the container and the outer cover with specimen impression received separately and has to note the condition of the seals thereon. Reading Rules 17 and 18 together, it is clear that the word 'separately' used in Rule 18 has been intended to convey the sense that the copy of the memorandum and the specimen impression of the seal has to be sent independently of the articles that are required to be sent under Rule 17. In this connection, reference can be made to the observations made by this Court in Raj Karan's case (supra), wherein it was observed that it is mandatory that the materials referred in Rules 17 and 18 are to be separately sent to the Public Analyst. The object of Rule 18 is to ensure the accuracy of the seal on the sample sent to the Public Analyst by comparison with the specimen impression of the seal sent by the food Inspector separately. The report of the Public Analyst in terms of Rule 7(3) marked as Ext.PJ shows that he found the same intact and unbroken. The seal fixed on the container and on the outer cover of the sample tallied with the specimen impression of the seal separately sent by the Food Inspector. A presumption can be drawn that requirements of Rule 18 have been complied with. The presumption under Section 114 of the Indian Evidence Act, 1872 (in short 'the Evidence Act') in relation to regular performance of official acts applies to the report of a Public Analyst. However, this presumption is rebuttable. No effort was made by the accused to dislodge this presumption. There was even no suggestion to the Food Inspector (PW-1) who

exhibited the report that there is any untruth in the recital by the Public Analyst. It is relevant to note that under sub-section (5) of Section 13 of the Act any document purporting to be a report signed by a Public Analyst unless it has been superseded under sub-section (3) of the said Section or any document purporting to be a certificate to be signed by the Director of the Central Food Laboratory, may be used as evidence of the facts stated therein in any proceeding under the Act. It is urged that the memorandum and the specimen impression of seal were to be sent separately in different packets. On a plain reading of Rule 18, what is required is that a copy of the memorandum and specimen impression of the seal used to seal the packet shall be sent in a sealed packet (underlined for emphasis) separately to the Public Analyst. As indicated above, the word 'separately' refers to separate despatch of articles indicated in Rule 17, and Rule 18. The expression 'in a sealed packet' refers to both the copy of memorandum and the specimen impression of the seal. They are both required to be sent in a sealed packet. Plurality of packets is not provided for and obligated. What is required is that the copy of memorandum and specimen impression of the seal used to seal the packet are to be sent in a sealed packet separately and not with the articles required to be sent under Rule 17.

This Court in *N. Sukumaran Nair v. Food Inspector, Mavelikara* (1997 (9) SCC 101) dealt with requirements of Rule 18 and in paragraph 2 noted as follows:

"It has vehemently been urged by Mr. V. A. Bobde, learned Senior Counsel that compliance of Rule 18 was mandatory and since there was an infraction in the instant case, the view of the trial court deserves to prevail. We fail to see how there is violation of the said Rule. The Food Inspector as PW 1 was categorical that he had sent the specimen impression of the seal separately to the Public Analyst under sealed cover. It is true that he did not adduce in evidence the postal receipt vide which the specimen impression of the seal was sent separately. The Food Inspector could be dubbed wrong if his statement had been challenged in cross-examination. As is obvious, the Food Inspector deposed to the observance of the requirement of Rule 18 but, at best, can be said not to have introduced corroborative evidence to his word. But, if the word of the Food Inspector is not challenged in cross examination and is otherwise found corroborated from the report of the Public Analyst wherein the necessary recitals, even though in printed form, are available, compliance of Rule 18 becomes obvious. Such report by the Public Analyst is *ex facie* evidence. There are methods to challenge the same which were not resorted on. We are, thus, of the view that the High Court was justified in upsetting the order of acquittal on the aforesaid ground."

Additionally during trial PW-1 produced postal

receipts (Exts. PE and PG) with regard to the memos and Ext. PW1/A and Ext. PW1/B regarding despatch of the same sending of memos. The genuineness of the receipts was not questioned by accused no.1. Strangely, the trial court and High Court did not consider the evidentiary value of these documents.

When the evidence on record is considered in the background of the legal position highlighted above, the inevitable conclusion is that the Trial Court and the High Court were not justified in directing acquittal of accused no.1. So far as the acquittal of accused no.2 is concerned, the conclusions of the Trial Court and the High Court have been arrived at by properly appreciating the evidence and no interference is called for.

The occurrence took place nearly two decades back, and the Courts below acquitted the accused, though erroneously. Therefore, keeping in view the nature of violation and the peculiar facts and circumstances of the case while sentencing accused no.1 to undergo 6 months RI and fine of Rs.1,000/- we make it clear that if accused no.1 moves the appropriate government to commute the sentence of imprisonment, the same may be considered in the light of this Court's decision in N. Sukumaran's case (supra) subject to such conditions or terms as the government may choose to impose. For period of three months, the accused need not surrender to undergo sentence. During this period it shall be open to him to move the appropriate government for commutation. The fate of the order of commutation, if any, shall be operative. If no order in the matter of commutation is passed by the appropriate government, the accused no.1 shall surrender the custody to serve the remainder of sentence.

The appeal is allowed to the aforesaid extent.