

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1312 OF 2021
[Arising out of Special Leave Petition (Crl.) No. 5991 of 2018]

NARAYANA PRASAD SAHU

.....APPELLANT

v.

THE STATE OF MADHYA PRADESH

.....RESPONDENT

J U D G M E N T

Abhay S. Oka, J.

Leave granted.

1. The appellant has been convicted for the offence punishable under Section (16)(1)(a)(i)(ii) of the Prevention of Food Adulteration Act, 1954 (for short “the said Act of 1954”). The allegation against the appellant was of violation of clauses (i) and (v) of Section 7 of the said Act of 1954.

2. The case of the prosecution is that on 16th January 2002 the appellant was selling chana daal in weekly market in Kagpur when the Food Inspector came there and called upon the appellant to show

licence. However, the appellant failed to show any licence. The Food Inspector purchased 750 gms of chana daal from the appellant. The said quantity was divided into three parts and was sent for examination to Public Analyst. The report of Public Analyst showed that the chana daal was adulterated. Judgment and Order of conviction was rendered by the Judicial Magistrate First Class on 12th October 2007. The learned Magistrate convicted the appellant to undergo rigorous imprisonment for six months and to pay fine of Rs.1000/-. In default of payment of fine, he was directed to undergo rigorous imprisonment for one month. In appeal preferred by the appellant, the Sessions Court confirmed the conviction and sentence. The appellant preferred a Revision Application before the High Court, which has been dismissed by the impugned Judgment and Order dated 3rd May 2018.

3. The submission of the learned counsel appearing for the appellant is that as mandatorily required by sub-section (2) of Section 13 of the said Act of 1954, a copy of report of Public Analyst was not supplied to the appellant, as a result of which his valuable right to get the samples analysed by Central Food Laboratory has been defeated. He pointed out that according to the prosecution case, a copy of the report was allegedly sent to the appellant by registered post and endorsements made by the Postman showed that number of attempts

were made to serve the letter but the appellant was not available even after giving intimation and therefore, the letter was returned by the Postman. He submitted that the High Court has committed an error by holding that the appellant has refused to accept the copy of the report sent to him by registered post. He submitted that there is a complete violation of mandatory provisions of sub-section (2) of Section 13. He would, therefore, submit that the prosecution is vitiated. The learned counsel relied upon a decision of this Court in the case of **Vijendra v. State of Uttar Pradesh**¹ in support of his contentions. He also relied upon a decision of Allahabad High Court in the case of **Jameel v. State of U.P. and Ors.**²

4. The learned counsel appearing for the respondent-State supported the impugned judgments. He relied upon Rule 9B of Prevention of Food Adulteration Rules, 1955 (for short “the said Rules”) and submitted that the prosecution adopted one of the two permissible modes of sending the report by registered post to the appellant-accused. He submitted that endorsements on the postal packet containing the report showed that after giving an intimation to the appellant, the Postman unsuccessfully attempted to serve the report to the appellant on six occasions and only thereafter, returned the

1 (2020) 15 SCC 763

2 (1999) SCC online Allahabad 1547

envelope. He submitted that a presumption of service of the report has been rightly drawn by the High Court. He would, therefore, submit that no interference is called for.

5. We have carefully considered the submissions. Sub-sections (1) and (2) of Section 13 of the said Act of 1954 reads thus:-

“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 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”.

Under sub-section (2) of Section 13, it is mandatory for the Local (Health) Authority to forward a copy of the report of the Public Analyst to the person from whom the sample of the food has been taken in such a manner as may be prescribed. Further mandate of sub-section

(2) of Section 13 is that a person to whom the report is forwarded should be informed that if it is so desired, he can 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 analysed by Central Food Laboratory. The report is required to be forwarded after institution of prosecution against the person from whom the sample of the article of food was taken. Apart from the right of the accused to contend that the report is not correct, he has right to exercise an option of sending the sample to Central Food Laboratory for analysis by making an application to the Court within ten days from the date of receipt of the report. If a copy of the report of the Public Analyst is not delivered to the accused, his right under sub-section (2) of Section 13 of praying for sending the sample to the Central Food Laboratory will be defeated. Consequently, his right to challenge the report will be defeated. His right to defend himself will be adversely affected. This Court in the case of **Vijendra** (supra) held that mere dispatch of the report to the accused is not a sufficient compliance with the requirement of sub-section (2) of Section 13 and the report must be served on the accused.

6. Perusal of the judgments of the learned Magistrate and Sessions Court show that the clerk who dispatched the report was examined by

the prosecution. Though the prosecution has relied upon the remarks made by the Postman on the postal envelope, the Postman who has allegedly made the said remarks was admittedly not examined by the prosecution.

7. Rule 9B of the said Rules reads thus:-

“9B. Local (Health) authority to send report to person concerned--The Local (Health) Authority shall [within a period of ten days] after the institution of prosecution forward a copy of the report of the result of analysis in Form III delivered to him under sub-rule (3) of rule 7, by registered post or by hand, as may be appropriate, to the person from whom the sample of the article was taken by the food inspector, and simultaneously also to the person, if any, whose name, address and other particulars have been disclosed under section 14A of the Act:

Provided that where the sample conforms to the provisions of the Act or the rules made thereunder, and no prosecution is intended under sub-section (2), or no action is intended under sub-section (2E) of section 13 of the Act, the Local (Health) Authority shall intimate the result to the Vendor from whom the sample has been taken and also to the person, whose name, address and other particulars have been disclosed under section 14A of the Act, within 10 days from the receipt of the report from the Public Analyst.”

More than one mode was prescribed by Rule 9B for serving the report of Public Analyst on the accused. In the present case, after the postal packet was returned, not even an attempt was made to personally serve the report on the appellant.

8. On the basis of endorsements of the Postman appearing on the postal envelope containing the report, the High Court has recorded a finding of refusal on the part of the appellant to accept the report. The said finding is obvious erroneous as the endorsements on the postal envelope were not proved by examining the Postman. Moreover, the High Court has glossed over the mandatory requirement under sub-section (2) of Section 13 of serving a copy of the report on the accused. Evidence adduced by the prosecution was of mere dispatch of the report. Hence, the mandatory requirement of sub-section (2) of Section 13 was not complied with. Therefore, the conviction and sentence of the appellant cannot be sustained.

9. Accordingly, the appeal is allowed. The impugned Judgment and Order of the High Court dated 3rd May 2018 in CRR No. 303/2008 is hereby set aside and by allowing the Revision Petition, the conviction of the appellant is hereby set aside.

.....J
(AJAY RASTOGI)

.....J
(ABHAY S. OKA)

New Delhi;
October 29, 2021.