

Before : A. L. Bahri and S. S. Grewal, JJ.

STATE OF PUNJAB,—Appellant.

*versus*

KEWAL KRISHAN,—Respondent.

Criminal Appeal No. 191-DBA of 1983.

30th April, 1991.

*Prevention of Food Adulteration Act (37 of 1954)—S. 13(2)—Notice under S. 13(2)—Whether mandatory—Non-compliance of S. 13(2) would result in acquittal.*

*Held*, that a perusal of S. 13(2) of the Prevention of Food Adulteration Act would reveal that it is mandatory. A valuable right is conferred on the accused to get another sample of food analysed from the Central Food Laboratory, if the accused is not satisfied with the result of the analysis made by the Public Analyst. The report of the Central Food Laboratory is to supersede the report of the Public Analyst under the Act. If such a right is denied to the accused in any manner, prejudice would be caused. This provision only allowed a period of ten days within which the accused is supposed to approach the Court concerned for sending second sample kept by Local (Health) Authority to the Central Food Laboratory. If time is wasted by the accused in locating the Court, obviously he would be deprived of his right. The fact remains that in the present case the accused did not exercise such a right and his defence was prejudicated. The Court of Chief Judicial Magistrate is specifically designated and if in the notice under S. 13(2) of the Act, the Court of Judicial Magistrate is mentioned it would not signify that the case was pending the Court of Chief Judicial Magistrate as there were four Judicial Magistrates functioning in Gurdaspur. The Chief Judicial Magistrate was thus justified in acquitting the accused on this ground.

(Paras 4 & 5)

*Appeal from the order of the Court of Shri D. S. Chhina, PCS, Chief Judicial Magistrate Gurdaspur, dated 17th September, 1982 acquitting the accused.*

**Case No. 67/3**

**Charge Under Section 16(1) (a) (i) read with section 7 of Prevention of Food Adulteration Act, 1954.**

**Order Acquittal.**

*It has been prayed in the grounds of appeal against acquittal may be accepted and the accused/respondent may be convicted and sentenced according to law and also further prayed that warrant of arrest of the accused u/s 390 Cr.P.C. may kindly be issued.*

S. K. Sharma, DAG (Ph.), for the Appellants.

S. K. Taunque, Sr. Advocate with P. Diwan, Advocate, for the Respondents.

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**JUDGMENT**

*A. L. Bahri, J. (Oral)*

*Vide* this order three Criminal Appeals, Nos. 191-DBA, 195-DBA and 215-DBA of 1983 are being disposed of as the question debated is common regarding the defect of non-compliance of section 13(2) of the Prevention of Food Adulteration Act.

(2) Facts are taken from the case of Kewal Krishan (Crl. A. 191-DBA/1983). On October 21, 1981, Dr. Gurcharan Singh, who was exercising powers of Government Food Inspector purchased a sample of milk from Kewal Krishan accused. On analysis by the Public Analyst it was not found upto the standard prescribed. Hence prosecution of Kewal Krishan was launched by filing a criminal complaint under section 16(1)(a)(1) read with section 7 of the Prevention of Food Adulteration Act, 1954, (hereinafter called 'the Act'). A notice under section 13(2) of the Act (Exhibit DA) was served upon Kewal Krishan accused on December 15, 1981 calling upon him if he so desired to apply to the Court of Judicial Magistrate for sending the second sample for analysis by the Central Food Laboratory. It is the validity of this notice which is being questioned in this appeal.

(3) The Chief Judicial Magistrate, Gurdaspur, acquitted the accused on September 17, 1982, holding that the notice was not in accordance with the provisions of the law as stated above as the name of the Court where the case was pending was not communicated to the accused. It was stated that the case was pending in the Court of the Chief Judicial Magistrate, Gurdaspur, whereas in the notice the Court was merely described as Judicial Magistrate, Gurdaspur. There were four Judicial Magistrates functioning at Gurdaspur. Similar is the position in the two other cases wherein the Chief Judicial Magistrate had acquitted the accused on this very ground.

(4) Shri S. K. Sharma, D.A.G., Punjab, appearing on behalf of the State has argued that the notice served in these cases was in compliance of section 13(2) of the Act. In the alternative it has been argued that with little effort the accused would have come to know where cases under the Prevention of Food Adulteration Act were being dealt with as there was only one Court at Gurdaspur which was dealing with the cases under the Act. We do not find any merit in this contention.

State of Punjab v. Kewal Krishan (A. L. Bahri, J.)

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Section 13(2) of the Act reads as under:—

“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 person 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 14-A, 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 10 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.”

A perusal of the aforesaid provision would reveal that it is mandatory. A valuable right is conferred on the accused to get another sample of food analysed from the Central Food Laboratory, if the accused is not satisfied with the result of the analysis made by the Public Analyst. The report of the Central Food Laboratory is to supersede the report of the Public Analyst under the Act. If such a right is denied to the accused in any manner, prejudice would be caused. This provision only allowed a period of ten days within which the accused is supposed to approach the Court concerned for sending second sample kept by Local (Health) Authority to the Central Food Laboratory. If time is wasted by the accused in locating the Court, obviously he would be deprived of his right. The fact remains that in the present case the accused did not exercise such a right and his defence was prejudicated. The Court of Chief Judicial Magistrate is specifically designated and if in the notice under section 13(2) of the Act the Court of Judicial Magistrate is mentioned it would not signify that the case was pending the Court of Chief Judicial Magistrate as there were four Judicial Magistrates functioning in Gurdaspur. The Chief Judicial Magistrate was thus justified in acquitting the accused on this ground.

(5) Finding no merit in these appeals the same are dismissed.

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R.N.R.