

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 27TH MAY 2005 / 6TH JYAISHTA 1927

Crl.Rev.Pet.No. 247 of 1996()

CRA.144/1995 of ADDL.SESIONS COURT, THALASSERY
STC.314/1993 of JUDL.MAGISTRATE OF FIRST CLASS COURT, KUTHUPARAMBA
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REVN. PETITIONER:

K.BALAKRISHNAN, S/O.CHATHU,
KUNNUMMEL HOUSE, VERUMADAKKY, VELLARVALLY,
KANNUR DISTRICT.

BY ADV. SRI.KURIAKOSE PETER.T.,ABRAHAM P.GEORGE

RESPONDENTS:

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1. FOOD INSPECTOR, MOBILE VIGILANCE SQUAD,
KOZHIKODE.
 2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAULAM.

BY PUBLIC PROSECUTOR SRI.K.THAVAMONY

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 27/05/2005, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K.HEMA, J.

CRI.R.P.No.247 OF 1996

Dated this the 27th day of May, 2005

O R D E R

The petitioner is the first accused before the Judicial Magistrate of First Class, Kuthuparamba in STC.314 of 1993. He was tried for offence under Section 16(1) a (i) read with Section 7(i) and Section 2(ia) and (m) of the Prevention of Food Adulteration Act, 1954 and Appendix B.(A.18.06) to Rule 5 of the PFA Rules, 1955. He was convicted and sentenced to undergo simple imprisonment for a period of six months and to pay a fine of Rs.1000/- and in default of payment of fine the accused shall undergo simple imprisonment for a further period of six months under Section 16(1) a (i) read with Section 7(i) and Section 2(ia) and (m) of the Prevention of Food Adulteration Act, 1954 and Appendix B.(A.18.06) to Rule 5 of the PFA Rules, 1955. The said conviction and sentence were challenged in appeal before the Session's Court, Thalassery. But the appeal was dismissed, confirming the conviction and sentence. Hence this revision.

2. The first respondent filed a complaint before lower court alleging that petitioner sold adulterated green gram kept exposed for sale from the grocery shop bearing No.IX/258, where petitioner was working as salesman. PW1 took sample in accordance with the provisions of the PFA Act, complied with the legal formalities and filed a complaint against petitioner and owner of the shop as second accused, since sample was found to be adulterated. To prove the prosecution case, PWs 1 to 7 were examined and Exhibits P1 to P7 were marked. The accused examined DWs 1 and 2 and marked Exhibit D1.

3. Learned counsel for petitioner vehemently contended that the conviction is bad for want of notice under Section 13(2) of the PFA Act. According to the petitioner, he had not received any notice, as contemplated under Section 13(2) of the PFA Act and hence he has lost a valuable right to get the sample analysed by the Central Food Laboratory

and this has caused prejudice to him and therefore he is entitled for an acquittal. On going through the judgments of the courts below, I find that this point was argued and the same contention has taken before the lower courts also but those were rejected by the court. As per the evidence, notice under Section 13(2) was issued by registered post acknowledgment due to petitioner. Exhibit P25 is the cover addressed to the petitioner and Exhibit P26 is the copy of the intimation under Section 13 (2). On a perusal of the same would show that the notice was issued under Section 13(2) of the PFA Act to the petitioner. But it was returned with the endorsement "addressee left, present address not known, returned".

4. It is true that Exhibit P25 was not actually served. Hence it is strenuously contended that in view of the non-service of notice under Section 13(2), petitioner cannot be convicted. Section 13(2) of the PFA Act is mandatory and hence the non compliance vitiated the trial is the argument. Learned counsel for the petitioner also placed reliance upon the decision reported in **Satya Narain Gupta v. Amarjit** (1991 FAJ 182), **Bidyadhar Jena v. State of Orissa** (1991 CrLJ 2700) and **Food Inspector, Guntur v. B.H.Rao** (1994 CrLJ 1145) to argue that non service of notice under Section 13(2) is a serious illegality and hence the petitioner is to be acquitted on this ground itself.

5. As against this, the lower court has placed reliance upon a Division Bench decision of this Court reported in **Food Inspector v. Karingarappully Coop. M.S. Society Ltd.** (1986 KLT 174). As per the dictum laid down in the above decision, it is clear that non-service of notice by itself will not be sufficient to acquit the accused. It is laid down that Section 13(2) of the PFA Act is not mandatory, but only directory. The non compliance of the said provision may cause serious prejudice to the accused under certain circumstances. But, the accused can very well apply to the court to send one of the samples to the Central Food

Laboratory which is available in court. The report of the Central Food Laboratory supersedes the public analysis report and if a sample is found to be unfit for analysis by the Central Food Laboratory, it can be said that there is some prejudice caused to the accused by the delay on account of the non compliance of Section 13(2) of the PFA Act. But if he restrains from making any such application to the court to send the sample to the Central Food Laboratory, he cannot successfully contend that there has been prejudice merely because of non compliance or defective compliance with the provisions of law.

6. The petitioner has not taken any step to send the sample available in court to the Central Food Laboratory. He has not filed any application for the same. In the above circumstances, it cannot be said that the non service of notice under Section 13(2) would prejudice the accused and that he is entitled for acquittal. The mere non compliance of Section 13(2) is not a ground to acquit the accused. In the light of the Division Bench decision of this Court and on the facts and circumstance of this case, I find that non compliance of Section 13(2) of the PFA Act has not vitiated the trial and the petitioner cannot be acquitted on that ground.

7. Learned counsel for petitioner also contended that petitioner was not the salesman of the shop from which the sample was taken. According to the petitioner, he was working in a nearby hotel as a supplier and the Food Inspector wanted him to sign some papers to ensure sampling and he had signed in some papers. But he has nothing to do or sampling. DWs 1 and 2 were examined and Exhibit D1 was marked. Both the courts have considered the evidence of these witnesses in detail and came to the conclusion that the case set up by the petitioner cannot be accepted. The evidence of the Food Inspector was found reliable on this point and the court entered a finding against the petitioner. On going through the records, I do not find any reason to reverse the concurrent findings of the courts below on this point. I am satisfied that both the courts below have

considered the question in the right perspective and there is nothing on record to come to a different finding. No other point was argued in this revision.

In the result, this petition is dismissed.

K.HEMA, JUDGE

vgs.

K.HEMA, J.

CRL.R.P.NO.247 OF 1996

O R D E R

27.3.2005