

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1561 OF 2009
[ARISING OUT OF S.L.P. (CRL.) NO.5057 OF 2007]

MOHD. ZAFAR

.....

APPELLANT

VERSUS

STATE OF UTTARAKHAND

.....

RESPONDENT

O R D E R

Leave granted.

This appeal is directed against the concurrent judgments of conviction recorded by the Special Judicial Magistrate (E.O.), Roorkee whereby he had convicted and sentenced the appellant for having violated the provisions of Section 7(iii) of the Prevention of Food Adulteration Act read with Section 50(i) of the Rules framed thereunder and sentenced to 6 months rigorous imprisonment and a fine of Rs. 1,000/- under Section 16(1)(a)(ii) and under Section 7(i) of the Act to a further sentence of 6 months and a fine of Rs. 1,000/-, both the sentences to run concurrently. This judgment was confirmed by the IIIrd Additional Sessions Judge, Saharanpur by the judgment dated 19th August, 1987 and subsequently confirmed by the High Court of Uttarakhand by its judgment dated 17th April,

2006.

As per the prosecution case, the Food Inspector had taken a sample of milk from the appellant on 3rd April, 1979 which was found to be sub-standard.

The learned counsel for the appellant has primarily based his claim before this Court on the fact that the provisions of Section 13(2) of the Act had not been complied with inasmuch as that the report of the Public Analyst which was to be served on the appellant by the Local (Health) Authority had not been delivered to him and as such his option to have the second sample of milk analysed by the Central Food Laboratory had been foreclosed.

We have gone through the impugned judgments. We observe that this point had been raised repeatedly by the appellant's counsel at every state of the proceedings in Court. In the judgment of the Additional Sessions Judge, dated 19th August, 1987 it has been observed that the address given in the despatch register was defective inasmuch as the father's name of the appellant and the address were wrong. The courts below have, however, taken the view that as the said communication had been received by the grandfather of the appellant this was sufficient compliance with the requirement of law.

We find, however, that this is taking too simplistic a view of the matter. As would be clear, Section 13(2) of the Act gives a valuable right to an accused to have the sample re-examined by the Central Food Laboratory and this right should, therefore, not be taken away and that it was, accordingly, incumbent on the prosecution to show that the report had been sent to the appellant properly identifying him and also appropriately addressed so that a presumption would be raised as to its delivery.

We are, thus, of the opinion that even assuming for a moment (although this fact has been denied by the appellant) that the report had been received by his grandfather it would not mean sufficient compliance with the provisions of Section 13(2) as we are dealing with a criminal matter having extremely serious consequences for an accused. We find that the judgments of the courts below cannot be sustained on this very short ground.

The appeal is, accordingly, allowed and the appellant is acquitted of the charges levelled against. His bail bonds are discharged.

.....J
[HARJIT SINGH BEDI]

.....J
[DR. B.S. CHAUHAN]

NEW DELHI
AUGUST 18, 2009.

