

Ibrahim Vs. State of Maharashtra

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Court : Mumbai Aurangabad

Decided On : Aug-28-2014

Judge : M.T. Joshi

Appeal No. : Criminal Revision Application No. 221 of 2001

Appellant : Ibrahim

Respondent : State of Maharashtra

Judgement :

Oral Judgment:

1. Heard.

2. Present applicant who is convicted for the offence punishable under Section 7(iii) of the Prevention of Food Adulteration Act, 1954 (for short "the Act") read with Rule 50 of the Prevention of Food Adulteration Rules, 1955 (for short "the Rules) and the offence punishable under Section 16(1)(a)(ii) of the Act and sentenced to suffer simple imprisonment for six months and to pay a fine of Rs.1,000/- in default, to suffer further simple imprisonment for one month, has filed present Criminal Revision Application.

3. In brief, the case of the applicant is as under:-

The applicant was charged that he was operating a Bakery in the name and styled as 'M/s.New Royal Bakery' without any license and that the toast, which he was selling, was found to be adulterated one, when its samples were sent by PW 1 - Food Inspector to the Public Analyst as it contained Tartrazine.

As regards the next charge leveled against the applicant that the toast was found adulterated, the same was negated by learned Chief Judicial Magistrate, as the prosecution failed to prove that the statutory notice provided by Section 13(2) of the Act have been served upon the present applicant; and that, as has been held in number of cases, the chemical - Tartrazine is permitted in toasts.

As regards manufacturing of the bakery products without license, learned trial Judge as well as learned Sessions Judge concurrently held that the said offence is proved. In the circumstances, the minimum punishment that has been provided for that offence i.e. suffering simple imprisonment of six months and to pay fine of Rs.1,000/-, was imposed on the applicant

4. Mr.Amol Gandhi, learned counsel for the applicant, submits that, to prove the fact that the present applicant was operating said bakery, the testimony is only of PW 1 - Food Inspector. Though this witness stated that under the panchnama and in presence of an independent panch witness, the samples were collected, as detailed supra, no panch witness was examined to that effect. He further submits that the so called receipt at Exhibit 16 proved by the PW 1 - Food Inspector, cannot be termed as a receipt. The case of the present applicant was that he was merely working as an employee with another bakery known as Popular Bakery. He submits that PW 1 - Food Inspector was having friendly terms with the owner of the said bakery and since the applicant had left the services of said Popular Bakery, PW 1 - Food Inspector, in collusion with the owner of Popular Bakery, lodged a false case against present applicant. In the circumstances, he submits that present Criminal Application may be allowed.

5. On the other hand, learned APP submits that when the Courts below have arrived at concurrent finding of facts that present applicant was running the bakery without license, no interference in the said finding, in the limited jurisdiction of Criminal Revision Application, is warranted.

6. Upon giving consideration and upon going through the record and papers, in my view, the prosecution failed to bring, beyond reasonable doubt, that the applicant was, anytime, operating bakery in the name and styled as M/s.New Royal Bakery and therefore, present Criminal Revision Application is, hereby, allowed for the following reasons.

REASONS

7. It is an admitted fact that except PW 1 - Food Inspector, no other witness has been examined to prove that M/s.New Royal Bakery was operated by present applicant; and that he was present at the said bakery when, allegedly, PW 1 Food Inspector had collected the samples. PW 1 Food Inspector stated that the panchnama regarding all these activities was prepared (Exhibit 19) in the presence of an independent panch witnesses, however, no panch witness is examined.

8. In the case of State of Maharashtra Vs. Shri. Somdas Pandurang Wanjari and ors., 2012(O) BCI 808, this Court had an occasion to deal with a case, where the panch witness turned hostile and only the Food Inspector deposed to prove the charges leveled against the accused therein for the offences punishable under Section 2(ia)(a), 7(i), (v), 16(1)(a)(ii), 17 of the Act read with Rule 50 of the Rules. Benefit of doubt was therefore granted to the accused therein.

9. Considering the ratio laid down in the said decision, in my opinion, the prosecution has failed to prove, beyond reasonable doubt, that the present applicant had, anytime, operated any bakery without any license.

10. In the circumstances, the following order:-

a] Criminal Revision Application is allowed.

b] The judgments and order passed by learned Chief Judicial Magistrate as well as learned Sessions Judge are, hereby, set aside. Instead, the applicant is acquitted of the offence punishable under Section 7(iii) of the Prevention of Food Adulteration Act, 1954 read with Rule 50 of the Prevention of Food Adulteration Rules, 1955 and offence punishable under Section 16(1)(a)(ii) of the Act.

