

Anil Kumar Alias Anil Kumar Jaiswal Vs. State of Bihar

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Court : Patna

Decided On : Mar-15-1996

Judge : Loknath Prasad, J.

Appeal No. : Criminal Revision No. 180 of 1989 (R)

Appellant : Anil Kumar Alias Anil Kumar Jaiswal

Respondent : State of Bihar

Disposition : Revision Allowed

Prior history : Loknath Prasad, J. 1. This revision is directed against the judgment of conviction passed in Criminal Appeal No. 145 of 1986 by Shri P.N. Yadav 3rd Additional Sessions Judge, Hazaribagh through which the order of conviction and sentenced as awarded against the petitioner by Shri N.C. Gupta S.D. J.M., Hazaribagh in C.R. Case No. 1030 of 1982 against the petitioner was duly confirmed and upheld. 2. The fact in short for the purpose of this revision is that it is the prosecution case that the pet

Judgement :

Loknath Prasad, J.

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Hazaribagh through which the order of conviction and sentenced as awarded against the petitioner by Shri N.C. Gupta S.D. J.M., Hazaribagh in C.R. Case No. 1030 of 1982 against the petitioner was duly confirmed and upheld.

2. The fact in short for the purpose of this revision is that it is the prosecution case that the petitioner was running grossry shop in village Barkagaon within the Hazribagh and on 28.3.1982 the Food Inspector alongwith his witness, namely, Rauf Khan visited the shop of the accused and the expressed his desire and intention to purchase sample of Hatdi stored for analysis and after complying all the formalities, sample of Haldi stored for sale in the shop of the accused was obtained and it was kept in three separate phials and after proper sealing, one sealed sample was sent to public analyst who found the sample of Haldi adulterated and thereafter obtaining the sanction order for prosecution of the petitioner from the competent authority, the prosecution was launched against the petitioner under Section 16(1)(a) of the Food Adulteration Act (to be referred hereinafter as the Act) for the sake of brevity.

3. Initially the case was tried by Shri N.C. Gupta, S.D.J.M. Hazaribagh who vide his judgment dated 21.7.1986 found the appellant guilty under Section 16 (1)(a) of the Act and sentenced the petitioner to undergo rigorous imprisonment for six months and further he was. sentenced to a fine of Rs. 1, 000 and in default to undergo simple imprisonment for four months.

4. Being aggrieved and dissatisfied with the order of conviction, the petitioner preferred an appeal bearing No. 145 of 1986 which was finally decided by the 3rd Additional Sessions Judge, Hazaribagh vide his judgment dated 22.7.1989 and the conviction and sentence of the appellant-petitioner as awarded by the trial Court was confirmed and the appeal was dismissed. Being aggrieved and dissatisfied with the dismissal order, this revision has been preferred mainly on the ground that the court below erred in not appreciating the evidence on the record and also some of the mandatory provisions of the Act had not been complied and thus the entire prosecution is vitiated.

5. At the very outset, the learned Counsel for the petitioner submitted that the prosecution was launched under Section 16 (1)(a) of the Act after obtaining

sample of Haldi from the shop of the petitioner and one phial of Haldi was sent to public to analyst and public analyst submitted his report dated 9.8.1986 (Ext. 6) in which it was declared that the sample was adulterated and then the prosecution report was submitted under the Act as against the petitioner. It was contended that under the circumstance and in view of the provisions of Section 13(2) of the Act and Rule 9-A, it was the duty on the part of the local authority to send a copy of the prosecution report either by registered post or by hand, after filing the prosecution report. It was further submitted that these mandatory provisions are the safeguards for the interest of the persons concerned against whom the case is being instituted so that will get an opportunity to the other sample of the food articles duly tested by another agency i.e. through Central Laboratory. It was further contended that non-compliance of these mandatory provisions will vitiate the trial and reliance was placed upon some of the authorities of our own High Court reported in 1995(2) East CrC 368 and 1994(1) East CrC 196 and that of the Andhra Pradesh High Court reported in 1994 Cr.LJ 1145.

6. In view of the submissions made above, the evidence of Food Inspector who has figured as PW 1 was scrutinised and it appears that this very witness has not stated a single word to show that nor any document was filed to show that notice was sent to the petitioner and compliance of the provisions of Section 13(2) of the Act and that of Rule 9-A was done. Thus, it can be said that the mandatory provisions as mentioned above, which is a safeguard and give protection to the accused to get the sample re-examined by another forum was taken away due to the fact that no notice was sent that the sample was found adulterated.

7. Thus for the reasons mentioned above and in view of the authorities mentioned above, the trial of the petitioner was definitely vitiated and the conviction and sentence of the petitioner is liable to be quashed.

8. In the result, this revision is allowed and conviction of the petitioner recorded in G.R. Case No. 1030 of 1983 vide judgment dated 21.7.1986 by S.D.J.M. Hazaribagh and the order passed in Cr. Appeal No. 145 of 1986 by the 3rd Additional Sessions Judge, Hazaribagh are hereby set aside and the petitioner is exonerated from the charges levelled against him and he is discharged from the

liabilities of his bail bonds.

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