

Arun Kumar and anr. Vs. State of Bihar

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Court : Patna

Decided On : Oct-31-2002

Judge : S.N. Pathak, J.

Appeal No. : Criminal Revision No. 524 of 2001

Appellant : Arun Kumar and anr.

Respondent : State of Bihar

Disposition : Revision Allowed

Prior history : S.N. Pathak, J. 1. This revision is directed against the judgment dated 28.8.1995, passed by the S.D.J.M. Gaya in G.O. Case No. 20 of 1994 Tr. No. 637 of 1995. 2. The revisionist was sentenced and convicted under Sections 16(I)(a)(i) of the Food Adulteration Act, 1954, and he was sentenced to undergo R.I. for six months and he was also sentenced to pay fine of Rs. 1000/- and in default to undergo S.I. for two months. 3. It has been submitted by the revisionists lawyer that as alleged, P.W. 4 h

Judgement :

S.N. Pathak, J.

1. This revision is directed against the judgment dated 28.8.1995, passed by the S.D.J.M. Gaya in G.O. Case No. 20 of 1994 Tr. No. 637 of 1995.

2. The revisionist was sentenced and convicted under Sections 16(l)(a)(i) of the Food Adulteration Act, 1954, and he was sentenced to undergo R.I. for six months and he was also sentenced to pay fine of Rs. 1000/- and in default to undergo S.I. for two months.

3. It has been submitted by the revisionists lawyer that as alleged, P.W. 4 had gone to the shop of the revisionist and he took sample of Maida from his vendor, kept it in three bags and sent the same to public analyst who found it to be adulterated. However, the Food Inspector failed to take evidence of any independent witness at the time of taking the sample from the shop of the revisionist, Arun Kumar, nor any such witness was examined in support of the prosecution case. PW-1 was Head Assistant of the Civil Surgeon Office, Gaya. P.W. 2 is peon in the Civil Surgeon Office who accompanied the Food Inspector. P.W. 3 was tendered and P.W. 4 is the Inspector who is the informant of this case.

4. The revisionists lawyer referred me to Section 10(7) of the Food Adulteration Act, 1954, wherein it has been laid down that the Food Inspector who takes any sample from shop of any vendor shall call one or more person to be present at the time when the action is taken and take his or their signature. It has been further submitted that the aforesaid provision is mandatory and non-compliance of the said provision would render the prosecution invalid.

5. In view of the aforesaid submission relating to the mandatory provision of Section 10(7) of the Food Adulteration Act, I think that the prosecution of the revisionist was vitiated and perhaps the appellate Court and the trial Court did not take notice of this legal lacuna in the prosecution of the revisionist. So I think the judgment of the two Courts below suffered from illegality which necessitates interference from this Court. In the result, this revision is allowed and the judgment of the two Courts below are set aside and the revisionists are acquitted.