

Narat Mal Nahata Vs. State of Assam

Narat Mal Nahata Vs. State of Assam

SooperKanoon Citation : sooperkanoon.com/124881

Court : Guwahati

Decided On : Mar-26-2004

Judge : A.M. Saikia, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 20(1); [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 433

Appeal No. : Criminal Revision No. 638 of 1995

Appellant : Narat Mal Nahata

Respondent : State of Assam

Advocate for Def. : F.H. Laskar, Adv.

Advocate for Pet/Ap. : Z. Kamar, Adv.

Prior history : A.M. Saikia, J. 1. Heard Mr. Z. Kamar, learned counsel for the petitioner. Also heard Mr. F.H. Laskar, learned P.P. Assam. 2. The moot question involved in the Criminal Revision is whether a fresh consent under Section 20(1) of the Prevention of Food Adulteration Act, 1954 (for short 'the Act') is required after issuance of the Certificate by the Director, Central Food Laboratory. 3. Mr. Kamar, learned counsel for the petitioner has contended that petitioner's conviction under Section 16 read

Judgement :

A.M. Saikia, J.

1. Heard Mr. Z. Kamar, learned counsel for the petitioner. Also heard Mr. F.H. Laskar, learned P.P. Assam.

2. The moot question involved in the Criminal Revision is whether a fresh consent under Section 20(1) of the Prevention of Food Adulteration Act, 1954 (for short 'the Act') is required after issuance of the Certificate by the Director, Central Food Laboratory.

3. Mr. Kamar, learned counsel for the petitioner has contended that petitioner's conviction under Section 16 read with Section 7(1) of the Act and sentence to undergo rigorous imprisonment for 6 months and to pay fine of Rs. 1000 in default to undergo sentence for one month, awarded vide the judgment and order dated 21.6.1995 passed by learned Judicial Magistrate, Nagaon in C. R. Case No. 2963/92 which was confirmed ultimately by the learned Sessions Judge, Nagaon by his impugned judgment and order dated 18.9.1995 in Criminal Appeal No. 36(N)/95, is ex-facie illegal and bad in law on sole count that no fresh consent for prosecution of the petitioner was obtained after receipt of the report from the Central Food Laboratory, by which the earlier report of the public analyst was superseded and, therefore, the report of the Public Analyst become non-est and as such the consent for the prosecution of the petitioner was not a valid sanction, as a result of which, the whole trial against the petitioner was vitiated. According to him, on receipt of the report of the Public Analyst submitted after examination of a sample of jeera sent to him collected by the Food Inspector, P.W-1 on 20.7.92 from the grocery shop of the accused/ petitioner situated at Puranigudam opining the said sample to be adulterated and unfit for consumption, the Food Inspector wrote for consent for prosecution of the accused petitioner to the Local Health Authority as referred under Section 20 of the Act and thereafter a criminal proceeding was initiated against the petitioner. After initiation of the case, on the prayer of the accused petitioner before the court for analyzing the sample of jeera by the Central Food Laboratory, the sample was sent to the said Laboratory which after due analysis of the sample, submitted the report with the opinion that the sample of jeera was adulterated. His argument is that after receipt of such report

from the Central Food Laboratory, the earlier report of the Public Analyst become non-est and therefore fresh consent was necessary for initiation of the prosecution against the petitioner and the initiation of such prosecution with the consent given on the basis of earlier report of Public Analyst cannot be continued.

4. To bolster up his submission, the learned counsel for the petitioner has drawn my attention to a decision of this Court reported in (1987) 1 GLR 260 (State of Assam v. Subkaran Agarwalla) wherein it was held that since the Certificate issued by the Director, Central Food Laboratory under Section 13(3) of the Act supersedes the report given by the Public Analyst, the report of the Public Analyst became non-est and hence fresh consent under Section 20(1) of the Act is necessary and without such fresh consent the prosecution instituted within the consent given on the basis of Public analyst's report cannot be continued. But the law laid down in the Subkaran Agarwalla's case (supra), with all respect, is no longer a good law in view of the Division Bench Judgment of this Court reported in (1993) 2 GLR 298 (Om Prakash Sharma v. State of Assam). In that case in paragraph 16, this Court has categorically held that after receipt of the certificate from the Central Food Laboratory no fresh sanction of prosecution is necessary. The same view has also been expressed in the case of Dalmia Dairy Industries Ltd. v. State of Assam reported in (2000) 1 GLR 399 wherein this Court referring to a recent decision of the Apex Court in the case of Calcutta Municipal Corporation v. Pawan Kumar Saraf [1999 (2) SCC 400] in paragraphs 9 and 10 exclusively dealt with the scope of taking fresh sanction after receipt of the report/Certificate of the Director of Central Food Laboratory and the same, may be noticed as under :

'9. Now the next question that arises for consideration is the stage at which the sanction is required : In the case of State of Bihar v. P. P Sarma, 1992 (2) Supp. SCC 222 it was held that sanction can be granted at any time before the Court takes cognizance of the offence. The charge sheet can be filed even before the sanction. Thus, we find that consent is the condition precedent for taking cognizance by the Court. In the present case, the consent for prosecution was given by the competent authority on 30.6.1982. The cognizance, of the offence was taken by the trial court on 9.7.1982. Admittedly, on the date of giving sanction and also on the date of taking cognizance the report of the Public Analyst, Ext. 11

was available before the Court. The report of the Director of Central Food Laboratory is dated 30.10.1982. This report was received at the instance of the co-accused. Section 13 of the Act contains provisions regarding the report of the Public Analyst and Certificate of the Director of Central Food Laboratory. The law in this regard has been laid down by the Apex Court in a recent decision in the case of Calcutta Municipal Corporation v. Pawan Kumar Saraf, 1999(2) SCC 400. The Supreme Court held :

'When the statute says that the certificate shall supersede the report, it means that the report would stand annulled or obliterated. The word 'supersede' in law means 'obliterate, set aside, annual replace, make void or inefficacious or useless .. repeal' (Vide Black's Law Dictionary, 5th Edn.) Once the certificate of Director of the Central Food Laboratory reaches the court the report of the Public Analyst stand displaced and what may remain is only a fossil or it.

In the above context, the proviso to Sub-section (5) can also be looked at which deals with the evidentiary value of such certificate. The material portion of the proviso is quoted below :

'Provided that any document purporting to be a certificate signed by the Director of the Central Food Laboratory shall be final and conclusive evidence of the facts stated therein.'

If a fact is declared by a statute as final and conclusive, its impact is crucial because no party can then give evidence for the purpose of disproving the fact. This is the import of Section 4 of the Evidence Act, 1872 which defines three kinds of presumptions among which the last is conclusive proof.

'When one fact is declared by this Act to be conclusive proof of another, the court shall, on proof of one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.'

Thus the legal impact of a certificate of the Director of the Central Food Laboratory is three-fold. It annuls or replaces the report of the Public Analyst, it gains finality regarding the quality and standard of the food Article involved in the case and it

become irrefutable so far as the facts stated therein are concerned.'

10. When report of the Public Analyst stands superseded, question that arises for consideration is whether any consent given on the basis of the said Public Analyst will also become null and void and whether fresh sanction/consent will be required to be obtained on the basis of the report/ Certificate of the Director of Central Food Laboratory. In *Reckitt & Colman of India Ltd. (Supra)* this Court held that when the offence as disclosed by the report of the Central Food Laboratory is a distinct one, then a fresh sanction would be required. As stated above, consent for prosecution is required for taking cognizance of the offence by the Court and if the court takes cognizance of the offence and proceed with the matter, where is the need of taking fresh sanction? The only object of having a provision for sanction or consent is to safeguard the accused person from false and vexatious prosecution. When the Court is seized of the matter where is the scope for false and vexatious prosecution or unwarranted harassment to the accused? The certificate from the Central Food Laboratory is obtained at the instance of the accused only and if the report is in favour of the accused he is discharged/acquitted forthwith. As a matter of fact when the sample is sent to the C.F.L. the proceeding is kept in abeyance till the receipt of the certificate. There cannot be two opinions that provisions of Section 20 has been introduced in the Act to provide shelter or safeguard to the food adulterators who have become menace to the society. A narrow or technical approach may defeat the very purpose for which the Act has been enacted.'

5. Having regard to the above judicial pronouncement laying down the law on the issue involved in the case at hand and upon hearing the learned counsel for the rival parties, this Court is of the view that no fresh consent under Section 20(1) of the Act is necessary after receipt of the Certificate from the Central Food Laboratory for prosecution of the petitioner and the consent obtained on the basis of the report of the public analyst is sufficient for prosecution of the petitioner though a subsequent certificate has been issued by the Central Food Laboratory.

6. With the foregoing observations and discussions, this Court is of the considered opinion that the prosecution of the accused/petitioner is not hit by any illegality or infirmity on the ground of adequate consent/ sanction and accordingly this Court is

disinclined to upset the impugned judgment and order.

7. On the point of sentence, Mr. Kamar, learned counsel for the petitioner has submitted that since the occurrence took place in the year 1992, and the matter has been pending for a long period, it would not be appropriate to send the petitioner now to jail to serve sentence and accordingly their sentence may be commuted by imposing a fine in the higher side. In support of his submission, he has relied on the following decisions of the Apex Court as well as of this court:-

(i) Santosh Kumar v. Municipal Corporation and Ors. reported in (2000) 9 SCC 151.

(ii) Hanuman Mal Jain v. State of Assam, 2003 (1) GLT 617, and

(iii) Ranjit Kumar Sarkar v. State of Assam reported in (2003) 3 GLR 531.

8. In those judicial pronouncements, the sentence of imprisonment was converted to one of the fine with direction to the petitioner to deposit the fine amount within a stipulated period and also intimate regarding the deposit of such fine to the appropriate authority of the State Government who may formalize the matter by passing appropriate order under Section 433 cr. P.C. For the sake of convenience, Section 433 Cr. P.C. may be noticed as under:

'433. Power to commute sentence - The appropriate Goernment may, without the consent of the person sentenced, commute :

(a) a sentence of death, for any other punishment provided by the Indian Penal Code (45 of 1860) ;

(b) a sentence of imprisonment for life, for imprisonment for a term not exceeding fourteen years or for fine ;

(c) a sentence of rigorous imprisonment for simple imprisonment for any term to which that person might have been sentenced or for fine ;

(d) a sentence of simple imprisonment, for fine,'

9. From an ordinary reading of the above provision of law it appears that power to the commutation of sentence is within the exclusive domain of the appropriate Government and the power to commute sentence can only be exercised by the said Government authority. In a recent decision in a case of State Govt. of NCT of Delhi v. Prem Raj reported in (2003) 7 SCC 121 the Supreme Court has categorically disapproved the commutation of sentence of imprisonment by the High Court holding that the power to commute sentence has been exclusively vested with the appropriate Govt. under Section 433 Cr. P.C. and High Court has no power to pass such direction of commutation of sentence of imprisonment converting it to one of fine and also for direction to intimate that deposit of such fine amount to the appropriate Govt. i.e., State Govt. which may formalise the matter by passing an appropriate order under Section 433. Cr.P.C.

10. In view of the above precedent, this court is not inclined to accept the submission also advanced by Mr. Kamar and accordingly the same stands rejected.

11. At this stage, Mr. Kamar, the learned counsel for the petitioner has submitted that the petitioner shall approach the appropriate Govt. i.e State of Assam for the relief as is available under the law as envisaged under Section 433 Cr.P.C. but considering the facts and circumstances of the case, the court may be pleased to fix a time frame for such purpose and till then, since the petitioner has all along been on bail, the execution of the impugned sentence may be suspended. Submission is accepted. In the interest of justice, three months time from today is granted and during such period the impugned sentence shall not be executed.

12. With the above observations and direction, this revision petition stands disposed of accordingly.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com