

Arun Kr. Singh Vs. State of Assam

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Court : Guwahati

Decided On : Mar-03-2005

Judge : P.G. Agarwal, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 313; [Prevention of Food Adulteration Act, 1954](#) - Sections 2, 7, 13(2) and 16; Prevention of Food Adulteration Rules, 1954 - Rules 9, 20, 23, 29, 44 and 44A

Appeal No. : Criminal Revision No. 686 of 2001

Appellant : Arun Kr. Singh

Respondent : State of Assam

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

Advocate for Pet/Ap. : A. Baruah and B.L. Yadav, Advs.

Disposition : Petition dismissed

Judgement :

P.G. Agarwal, J.

1. Heard Mr. R.L. Yadav, learned Counsel for the petitioner and Mr. F.H. Laskar, learned Public Prosecutor, Assam.

2. This revision is directed against the judgment and order dated 10.10.2001 passed by the learned Sessions Judge, Golaghat in Criminal Appeal No. 48/2001, arising out of judgment and order dated 6.8.2001 passed by the learned Chief Judicial Magistrate, Golaghat in C.R. Case No. 10/95 under Section 16 of the Prevention of Food Adulteration Act.

3. In C.R. Case No. 10/95 the present-petitioner Sri Arun Kumar Singh along with one J.P. Singh were tried by the learned Chief Judicial Magistrate, Golaghat for commission of the offence under Section 16, read with Section 7 of the Prevention of Food Adulteration Act, for short the Act. The Prosecution case is that on 21.10.95, the Senior Food Inspector, Jorhat collected sample of Moth Dal from the vendor Arun Kumar Singh.

4. On analysis the sample of Moth Dal was found to be artificially coloured with Coaltar tartrazine, which is not permitted to be used in Moth Dal as per Rule 29 of the Prevention of Food Adulteration Rules. The trial Court, on conclusion of the trial convicted both the accused persons and sentenced them accordingly. Feeling aggrieved, the convicts preferred Criminal Appeal No. 14/2001 and the appellate Court acquitted the accused J.P. Singh, the alleged owner of the shop, but confirmed the order of conviction of the petitioner and sentenced him to imprisonment for one year and to pay a fine of Rs. 3,000, in default to further imprisonment for 3 months. Hence, the present revision.

5. In this case we find that there is evidence of Food Inspector as well as the other witnesses as regards the collection of sample of Moth Dal from the vendor Arun Kumar Singh. The prosecution has also brought on record the report of the Public Analyst, Ext. 13. The accused has also admitted the collection of sample by the Food Inspector and sale of Moth Dal to the Food Inspector by him on consideration. Learned Counsel for the petitioner accused has challenged the impugned order of conviction stating inter alia that the report of the Public Analyst has not been challenged and even if it is held that coaltar colour tartrazine was found in the Moth Dal, the accused cannot be held guilty as the sample was not adulterated. In support of the said plea the learned Counsel has placed reliance on a decision of this Court in the case of Shiv Nath Singh v. State of Assam 2002 (1)

GLR 234, wherein this Court observed:

Moreover, I am constrained to make the observation that in the said report of the Public Analyst (Ext. 7), there is no whispering that the food article, i.e., the sample is 'Bundiya Ladoo' is an adulterated food within the meaning of Section 2 of the Act of 1954 except the opinion that the sample contains non-permitted coal tar colour metaril yellow. It is the expert. Public Analyst, who is to give his opinion whether the sample food is adulterated or not within the meaning of Section 2 of the Act of 1954 but in the instant case, the Public Analyst did not give any opinion or finding that the food is adulterated as discussed above. There is an Explanation clause in Section 2 of the Act of 1954 which runs, thus:

Explanation - Where two or more articles of primary food are mixed together and the resultant article of food-

(a) is stored, sold or distributed under a name which denotes the ingredients thereof; and

(b) is not injurious to health, then, such resultant article shall not be deemed to be adulterated within the meaning of this clause.

Therefore, in my considered view this opinion of the expert, Public Analyst, is not clear, in other words, it is vague. Be that as it may, this Court need not go more into depth to other legal issues as suffice is made with the above observations for setting aside the impugned judgment of conviction passed by the learned Trial Court which was affirmed by the learned First Appellate Court.

6. The question raised was agitated before the learned appellate Court and the appellate Court had, thus, to say:

Section 2(i) defines 'adulterated'. Section 2(i)(c) deals with substitution of an article by inferior or cheaper substance which affects injuriously the nature, substance or quality thereof. In the Public Analyst's report there was no reference to this aspect. What would happen if the Public Analyst's report is in this regard even if Rule 44-A was not in operation, does not, therefore, fall for consideration in this case. On that score alone the High Court's judgment is indefensible and is accordingly set aside.

7. On a conjoint reading of Rule 23 and Rule 29 of the Prevention of Food Adulteration Rules it becomes clear that food colours can be used in the articles of food mentioned in Rule 20 and addition of any other colour material on any other food is prohibited. We, therefore, find that the presence of tartrazine in Moth Dal is not permitted under Rule 29 of the Prevention of Food Adulteration Rules, 1954 and, as such, the presence of tartrazine in Moth Dal comes under the definition of adulterated as defined in Section 2(ia)(j), which reads as follows:

(ia) 'adulterated' - an article of food shall be deemed to be adulterated - (j) if any colouring matter other than that prescribed in respect thereof is present in the article, or if the amounts of the prescribed colouring matter which is present in the article are not within the prescribed limits of variability;

8. We find that in Shiv Nath Singh (supra) this Court did not dispose of the matter on the above count and the acquittal was on other grounds and this was a mere observation only. We concur with the reasons given by the appellate Court, as quoted above, and hold that the very presence of yellow colour tartrazine in Moth Dal made the sample adulterated.

9. So far the other decisions relied on by the counsel, Dinesh Kumar v. State of M.P. : (2004)8SCC770 is concerned, we find that the above cases is not relevant and applicable to the present case as the case was decided on the ground that a particular notification under Rule 44(a) was not applicable in the State of M.P. at the relevant time. There is no such issue before us in the present case.

10. The next submission of the learned Counsel or the petitioner is regarding the alleged non-compliance of the provisions of Section 13(2) of the Act. The Food Inspector has deposed that before launching the prosecution, the notice under Section 13(2)F along with a copy of the Public Analyst Report was sent to the vendor, Ext. 18. Exts. 19 and 20 are the postal receipts regarding sending of the said copy to the vendors as well as to the owner of the shop. The witness, P.W.1 had not been cross examined on the above point. Learned Public Prosecutor has referred to the decision of the Apex Court in the case of Khem Chand v. State of Himachal Pradesh AIR 1994 SC 226 and the Apex Court had this to say:

In this appeal again the same point is urged and it is further contended that the accused was prejudiced inasmuch as there is nothing to show that the report of then Analyst was sent by registered post to the accused as required under Rule 9(j). We need not go into the question of law in this case. When the Food Inspector was examined, he deposed in his chief-examination that the report of the Analyst was sent to the accused by registered post. He was not cross-examined. The only inference that can be drawn is that the accused received the report. In such a case the question whether it was sent by registered post or otherwise, does not assume importance.

11. Coming to the facts of the present case we find that not to speak about the absence of cross examination of P.W.2, the accused petitioner Arun Kr. Singh in his statement under Section 313F Cr.P.C. has categorically admitted that he had received notice under Section 13(2) of the Act.

12. In view of the above, we find hardly any basis on the submission regarding alleged non-compliance of the provision of Section 13(2) of the Act.

13. No other question of law has been urged before us. The impugned order of conviction therefore needs no interference. The revision petition stands dismissed. Send down the records. The learned Chief Judicial, Magistrate, Golaghat shall take the accused petitioner into custody to serve out the sentence and pay the fine.