

Nikhil Paul Vs. State of Assam

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Court : Guwahati

Decided On : May-06-2004

Judge : P.G. Agarwal, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 20AA

Appeal No. : Criminal Revision No. 603 of 1996

Appellant : Nikhil Paul

Respondent : State of Assam

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

Advocate for Pet/Ap. : J.M. Choudhury, S.C. Biswas, K. Bhattacharjee and B.M. Choudhury, Adv.

Judgement :

P.G. Agarwal, J.

1. Heard Mr. S.C. Biswas, the learned counsel for the petitioner and Mr. F.H. Laskar, the learned Addl. P.P. for the respondent.

2. This revision is directed against the Judgment and Order dated 10.9.1996 passed by the Sessions Judge, Darrang at Mangaldai in Criminal Appeal No. 251 (D-4) 1985 dismissing the appeal preferred against the Judgment and Order

passed by the Chief Judicial Magistrate, Darrang, Mangaldai in C.R. Case No. 112/78.

3. The prosecution case is brief is that on 13.8.1977, the Area Food Inspector, Tezpur collected the sample of mustard oil from the grocery shop under the name and style of Tara Kanth Bhandar situated at Udalguri and on analysis, the said sample was found not in conformity with the standard laid down under the Prevention of Food Adulteration Act, for short the Act and the rules framed thereunder. The accused petitioner being the vendor was tried for commission of the offence Under Section 7 read with Section 16 of the Act, in C.R. Case No. 112/78 and on conclusion of the trial, the learned Chief Judicial Magistrate, Darrang at Mangaldai convicted the accused petitioner under the above section of law and sentenced the accused petitioner to imprisonment for one year and to pay a fine of Rs. 2,000/- in default further imprisonment for three months. Feeling aggrieved, the accused petitioner preferred Criminal Appeal No. 251 (D-4) 1985 before the Session Judge, Darrang, Mangaldai but to no effect and hence, the present revision.

4. Mr. S.C. Biswas, the learned counsel for the petitioner submits that he has not challenged the collection of sample or the report of the Public Analyst in view of the overwhelming oral and documentary evidence on record. It is submitted that the petitioner had raised the plea of warranty and the cash memo was produced before the Food Inspector and the manufacturer/distributor was arrayed as party; but as they were not traceable, they could not be prosecuted and the petitioner was convicted. The defence raised by the petitioner is covered by the provision of Section 19 of the Act and the burden was on the petitioner -accused that they purchased the article of food in question from the manufacturer or distributor or dealer with written warranty of the respective food articles while he was in the grocery shop and that he sold the same as purchased from the said manufacturer or distributor. There is concurrent finding of fact by both the courts below that the accused-petitioner failed to discharge his burden.

5. Mr. Biswas submits that the accused did not adduce any evidence and the cash memo was not brought on record and hence, we find that the defence has failed to

discharge the initial burden in establishing the defence plea of warranty.

6. The next submission of the learned counsel for the petitioner is that the accused petitioner was aged 18 years 4 months on the date on which the sample was collected and as such he may be released on probation.

Section 20-AA of the PFA Act reads as follows :-

'20-AA. Application of the Probation of Offenders Act, 1958 and Section 360 of the Code of Criminal Procedure, 1973 (Act 2 of 1974):- Nothing contained in the Probation of Offenders Act, 1958 (20 of 1958) or Section 360 of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply to a person convicted of an offence under this Act unless that person is under eighteen years of age.'

7. The above provision was initiated by the Act 3 of 1976 and came into force with effect from 1.4.1976. In order to apply the above provision of law, the accused must be under 18 years of age.

8. The next question that arises for consideration is the relevant date to be recalled for the purpose of extending the benefits of probation.

9. In the present case, there is no dispute at the Bar that the accused was aged 18 years 4 months on the date on which the sample was collected. Mr. Biswas submits that the age of the accused exceeds by four months only and this may be considered and the benefits of Section 20-AA of the Act may be extended to the accused petitioner. The provision of Section 20-AA of the Act is very specific that it will be applicable to the persons who are aged 18 years.

10. The crucial date for determining the age of the accused for the purpose of extending the benefits of Section 20-AA of the Act has not been provided in Section 20-AA of the Act. Admittedly, it can not be a date when the sample was collected. On plain reading, it can be stated that the question of extending the benefits of probation arises only when a person is convicted and as such the age of the accused becomes relevant. In the cases under the Juvenile Justice Act, the matter was considered by the Apex Court in the case of Arimit Das v. State of Bihar reported in AIR 2000 SC 2264 and the Apex Court held that the crucial date

for determining the question shall be the date on which the accused person is brought before the Court and the date of commission of offence was held to be irrelevant for the purpose. Even if we extend the above benefit, we find that the accused was more than 18 years of age when he was brought before the Court. Hence, in view of the admitted facts, we hold that the accused petitioner is not entitled to protection/probation Under Section 20-AA of the Act.

11. In view of the above, we find no merit in this revision petition and the order of conviction stands affirmed. As regards the sentence, the accused petitioner was sentenced to imprisonment for one year and to pay a fine of Rs. 2000/-. We reduce the sentence of imprisonment to six months and to pay a fine of Rs. 1,000/- in default further imprisonment for one month. As the incident had taken place in the year 1976 and long 25 years have elapsed and as the accused petitioner was aged 18 years 4 months, he may approach the appropriate Government Under Section 433 Cr PC and as such the order of conviction and sentence shall remain stayed for a period of three months in order to enable the accused petitioner to take necessary steps in the matter, failing which the accused -petitioner shall surrender before the Chief Judicial Magistrate, Darrang, Mangaldai after expiry of three months to serve out the sentence and pay the fine.

12. The revision petition stands disposed of accordingly. Send down the records.

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