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

Nazim Vs. State

Nazim Vs. State

SooperKanoon Citation : sooperkanoon.com/468362

Court : Allahabad

Decided On : Apr-18-1957

Reported in : AIR1957All829; 1957CriLJ1384

Judge : Chowdhry, J.

Acts : Uttar Pradesh Pure Food Act, 1950 - Sections 30; Uttar Pradesh Pure Food Rules, 1950 - Rule 4

Appeal No. : Criminal Revn. No. 1161 of 1955

Appellant : Nazim

Respondent : State

Advocate for Def. : M.M. Chaturvedi, Adv.

Advocate for Pet/Ap. : Rama Devi Gupta, Adv.

Disposition : Application allowed

Judgement :
ORDER

Chowdhry, J.

1. This is an application in revisionby one Nazim who was convicted by a First Class Magistrate of Sultanpur under Section 42 of the Pure Food Act for

contravention of the provisions of Section 30 of that Act, Section 30 lays down as follows:

'A person who wilfully obstructs any person acting in the performance of any duty under this Act or any rule, by-law, order or warrant made or issued thereunder, shall be guilty of an offence.'

2. In the, present case the charge against the applicant was that at about 6 a. m., on the 24-4-1953 he had obstructed a Food Inspector in the performance of his duty in that when the Food Inspector saw him pass by with some milk-In a bucket and asked him to stop he ran, and . when the Inspector sent his peon after him he threw away the milk, two or two and half seers in weight.

Rule 4 of the Rules framed under the Act contains the duties and power of the Food Inspectors. The provision of that rule relevant to the present case is contained in Clause (b) of the rule and it is to the following effect:

'A Food Inspector may .....take sample of an article of food offered or exposed for sale after informing the purpose for which it is being taken.'

3. The applicant's defence was a denial of the prosecution case and an assertion that the bucket in, question, was empty at the tune. On an appraisal of the prosecution and defence evidence produced in this case both the Courts below have come to the conclusion that the prosecution, case mentioned above was correct.

Accepting that finding of fact arrived at by the two Courts below it has been argued by -the learn-ed counsel appearing for the applicant that no-case against the applicant had still been made out. The various submissions made by the learned counsel may now be taken up seriatim.

4. The first point urged by the learned counsel is that in throwing away the milk from which the Inspector wanted to take a sample the applicant could not be said to have obstructed him, within the purview of Section 30 of the Act, in the performance of his duties. And in support of this proposition the learned counsel relied upon a decision of this Court reported in King Emperor v. Gajadhar, 7 All LJ

1174 (A). That was a case, where the accused was convicted of an offence under Section 186, I. P. C. What was found against, him was that when the process server, searched his house in order to effect- his arrest he ran away. On his finding it was held that the con-duct of the accused did not amount to intentional resistance or obstruction into the arrest, and that there must be an overt act of resistance or obstruction which could justify a conviction under Section 186 or 225, I. P. C.

Now there is this important distinction between liability of a person under Section 186, I. P. O and that under Section 30 of the Pure Food Act that if? a person sought to be made liable under the former provision merely runs away, he' cannot be said to have succeeded in obstructing the officer in Question in performing his duties since obviously it was still open to the process-server to follow him up and effect his arrest.

On the other hand, in the case of a liability like that under Section 30 of the Pure Food Act if a person throws away the milk from which the officer concerned sought to take a sample, the accused will be deemed completely to have obstructed the performance of the duty by the officer since, after the throwing of the milk by the ac- cused, there was no manner in which the officer could have performed his duties. Not only had the accused done the overt-act of throwing away the milk, but he had also completely obstructed, the performance of the duty by the officer.

5. It was also urged that there should have been resistance in the sense of some force having been used by the applicant. That would, however, amount to going beyond the requirements of Section 30. All that that section penalizes is willful obstruction, of any person acting in the performance of a duty under the Act. It does not say that the obstruction need necessarily have been by use of force. The use of the word obstruction itself does not carry any idea of force.

According to Sir James Murray's New English Dictionary one of the general meanings of the word obstruct is to impede, hinder or retard, and in its legal sense of obstructing process under law it means 'to commit the punishable offence of intentionally hindering the officers of the law in the execution of their duties'' Mere obstruction, therefore, does not carry the meaning or any idea of use of force.

I am, therefore, of the view that by throwing away the milk from which the Inspector sought to take a sample the applicant will Be deemed, within the intendment of Section 30 of the Pure Food Act, to have obstructed the Inspector in the performance of his duties under the Act, provided, of course, the Inspector could be said to have been performing his duty.

6. The next argument of the learned coun-sel was that the Inspector could not be said tohave been performing his duty. And in this con-nection the learned counsel referred to the aforesaid provisions of Clause (b) of Rule 4 which lays downthe duties and powers of Food Inspectors. Theargument was a two-fold one: (1) that the Inspector had not informed the applicant of thepurpose for which he wanted to take the sample,and (2) that there was no proof that the milkIn question was offered or exposed for sale.

7. Now, so far as the first contention goes, the applicant's conviction is based on the very circumstance that he prevented the Inspector from performing his duty. Before the Inspector could inform, the applicant what his purpose wasthe applicant took to his heels. It could not, inthe circumstance, be said that because the Ins-pector was unable to inform the applicant of hispurpose, the Inspector could not be said to havebe (sic) performing the duty for the obstruction ofwhich duty the applicant has been convicted.

8. The main argument of the learned counsel for the applicant, however, centred round the other contention, namely, that there was no proof that the milk in question was offered or exposed for sale. There is no doubt that the applicant could not be convicted for obstructing the Inspector in performing the duty enjoined upon him by Clause (b) of Rule 4 unless and until it was established by the prosecution that the article of food, in this case milk, out of which the Inspector wanted to take a sample was 'food offered or exposed for sale.'

In regard to this point there is no direct evidence on record. The prosecution evidence only was that the applicant had some milk in a bucket, that when he was asked to stop he ran, and that when the Inspector's peon was sent after him the applicant threw away the milk. The learned counsel appearing for the State submitted that the conclusion about the milk in question having been offered or

exposed for sale should be drawn from certain circumstances.

One such circumstance, it was pointed out,was that the applicant had immediately beforethe occurrence sold some milk, as admitted bythe defence witness. That witness went on tosay that the applicant had sold the entire milkto him and his bucket was empty. This Part ofthe statement of the defence witness has beenfound by the two Courts below to be incorrect, thefinding being that the applicant had thrown awaytwo or two-and-a-half seers of milk when chasedby the Inspector's peon.

That being so, it would not be permissible to lay that part of the statement of the witness under contribution in which he spoke' of having purchased some milk from the applicant. If the statement of the defence witness has been found to be unreliable in respect of certain facts, theapplicant should, not be held bound by what the witness, may have deposed in respect of certain other facts unless those other facts stand corroborated by some reliable evidence.

There is however no other evidence in cor-robotation of the sale to the defence witnesses. The circumstances of earlier sale is, therefore, not available against the applicant.

9. Another circumstance referred to by the learned counsel for the State was that when the applicant was asked to stop he ran, and when lie lound himself pursued by the Inspector's peon he threw away the milk. This conduct of the applicant may be said to be indicative of his guilty mind. The important question, however, is what is guilty mind? Did that conduct of the applicant necessarily mean that he was conscious of his guilt for the offence for which he has been convicted

In other words, did it necessarily show that the milk he was throwing away was to be offered or exposed for sale and was adulterated. It does not however seem possible to hold that that was the only reasonable inference to draw from the conduct of the applicant. He may have been taking the residuary milk in his bucket to his house for his own and his family's consumption, and not for sale, and threw it away because it was adulterated. He could not, however, be convicted of any offence for the mere possession of adulterated milk.

It would be too much to hold that if merepossession of adulterated milk was no offence theapplicant need not have entetrained any guiltymind, and he need not therefore have thrownaway the milk. That is a nicety of law which it would be too much to expect the applicant to beaware of. That being so, it could not be said that the circumstance of the applicant havingthrown away the milk was consistent, arid consistent only, with the guilt of the accused for theoffence for which he has been convicted,

The learned counsel for the applicant seems to be right in submitting that the prosecution should have shown that the milk in question was going to be offered or exposed for sale. For instance, the Food Inspector should have waited until the milk was actually offered or exposed for sale. If that was not possible for him to do in the circumstances of the present case by reason of the fact that the applicant had already had some inkling into the purpose of the officer, the officer himself was responsible for the same: he tried to take the sample in question at a time when the milk was neither being offered not exposed for sale.

In view of all the facts and circumstances of the case, I agree with the submission of the learned counsel for the applicant that there was nothing to show that the milk in question from which the Inspector wanted to take a sample was milk which was, or was even meant to be, offered or exposed for sale. That being so, the obstruction in question could not be said to he obstruction to the Inspector in the performance of his duty, and the applicant could not therefore be said to be guilty of the offence punishable under Section 30 of the Pure Food Act.

10. In the result, the application in revision is allowed and the conviction and sentence of the applicant are set aside and he is acquitted. Should the fine have been realised already, it shall be refunded.

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