

Praduman Kumar Jain Vs. State

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Court : Allahabad

Decided On : Apr-10-1979

Reported in : 1979CriLJ1138

Judge : P.N. Bakshi, J.

Appellant : Praduman Kumar Jain

Respondent : State

Judgement :

ORDER

P.N. Bakshi, J.

1. The applicant has been convicted under Section 7/16 of the Prevention of Food Adulteration Act and sentenced to 6 months' R. I. and a fine of Rs. 1000/-. In default of payment of fine, he was to undergo six months R. I. His conviction and sentence have been confirmed in appeal by the Sessions Judge, Moradabad, hence this revision.

2. According to the prosecution case the Food Inspector had purchased a sample of Bundi Ka Laddoo from the shop of the applicant on 3rd December, 72 at 12.30 p. m. He took 500 grams of the sample, divided it into three separate bottles, and sent one of which for analysis to the Public Analyst. The report of the Public Analyst disclosed that the sample was coloured with an unpermitted coaltar dye,

viz. metanil yellow colour index No. 138. After obtaining sanction for prosecution, the applicant was prosecuted and convicted as above, Both the courts below have held the prosecution case established. After a consideration of the evidence on the record and the circumstances of the case, I do not find any illegality or perversity in their findings to warrant interference in revision.

3. I have heard learned Counsel for the applicant. He has argued that the accused has denied the taking of sample of the Bundi Ka Laddoo from his shop. He has also denied his signatures on form No. 6 (Ex. Ka 1) as also the receipt Ex. Ka 3. Learned counsel has submitted that the prosecution has failed to discharge the burden of proving the taking of sample from the shop of the applicant. I have also carefully scrutinized the aforesaid documents and have also perused the statements of the prosecution witnesses.

4. The Food Inspector, Shri B.C. Goel, P. W. 1 has given the details of the prosecution case. He has sworn on oath that Ex. Ka 1 and Ex. Ka 3 were signed and thumb-marked by the applicant. Shri Ved Prakash (P. W. 2) has also corroborated his statement. He has also vouched that the receipt Ex. Ka 3 was thumb-marked and signed by the applicant in Urdu in his presence. He has also stated that the receipt was read out to the accused. The courts below have relied upon this evidence. Both these witnesses have been subjected to a lengthy cross-examination, but nothing has been elicited from their statements to indicate that they had any animus to falsely implicate the accused. The defence evidence, which has been led in this connection has also been considered by the courts below. The statement of the hand-writing expert had been rightly rejected on the ground that the photograph which were compared by the expert, were not prepared in his presence and supervision. As such the report submitted by him was worthless. It cannot be said that the reason given by the courts below for discarding the report of Shri R.R. Gupta was in any manner perverse or legally vitiated.

5. It has next been argued that the sanctioning authority has not applied his mind while granting sanction for prosecution. I am unable to agree with this submission. The food Inspector has stated that the report received from the public Analyst was

forwarded to Sri V.V. Pathak, District Medical Officer of Health, who granted the sanction. The sanction has been appended at the foot of the plaint. I have no reason to imagine that the facts given in the complaint and the report of the Public Analyst were not considered by Sri Pathak and that he affixed his signature blind-folded. In my opinion, the circumstances of the case warrant a justifiable inference that Shri Pathak had granted consent for prosecution after applying his mind to the facts of the case.

6. It is again argued that the total quantity of sample taken of Bundi Ka Laddoo was only 500 grams, which was divided into three equal parts, one of which was sent to the Public Analyst for his analysis and report. Under Rule 22 of the Prevention of Food Adulteration Rules, the Minimum quantity which is required to be sent for analysis was 500 Grams. It is, therefore, urged that the applicant has been severely prejudiced and the result of the analysis should not be accepted.

7. I have carefully examined this argument also, but find myself unable to agree with this submission. It has now been held by the Supreme Court in *State of Kerala v. A. Mohammad* : 1978 CriLJ925 that 'Rule 22 is directory and not mandatory....If the quantity sent to the public Analyst, even though it is less than that prescribed, is sufficient and enables the Public Analyst to make a correct analysis then merely because the quantity sent was not in strict compliance with the Rule will not result in the nullification of the report and obliterate its evidentiary value. If the quantity sent is less, it is for the Public Analyst to see whether it is sufficient for his analysis or not'. There is nothing in the report of the Public Analyst to indicate that the quantity sent to him for analysis was not sufficient. He has in very clear and unequivocal terms submitted his analysis report to the effect that the sample of Bundi Ka Laddoo was coloured with an unpermitted coaltar dye viz. metanil yellow colour index No. 138. In these circumstances, I do not find any reason to doubt that the sample sent to the Public Analyst was insufficient for analysis.

8. Counsel for the applicant has relied upon a decision of a single Judge of the Bombay High Court reported in 1979 Cri LJ 271, *State of Maharashtra v. Sriram Hotel* in which it has been held that "A combined reading of Section 11 and Rule

22 leads one to the conclusion that half of the quantity mentioned in Rule 22 should be regarded as sufficient for analysis of the Public Analyst. In case, therefore, the Food Inspector has sent a quantity of a sample not in accordance with the quantity mentioned in Rule 22 but somewhat more than half that quantity, the analysis carried out by the Public Analyst of the sample so sent should be adequate enough for the purpose of the case that may be launched on the basis of that report. This is the scheme contained in Section 11 of the Act read with Rule 22.' With all respect to the learned single Judge, I am unable to draw any such inference from a perusal of Section 11 of the Act read with Rule 22. There is no material on the record of the present case, to suggest that the quantity of Bundi Ka Laddoo even though less than the approximate minimum prescribed under the Rule was insufficient for analysis. In this view of the matter, I am of the opinion that the report of the Public Analyst cannot be doubted. In passing however, I may mention that Rule 22(B) has now been added by Notification No. G.S.R. 755 (E) dated 27-12-1977, which has become effective from that date. This Rule is to the following effect:

Notwithstanding anything contained in Rule 22 the quantity of sample sent for analysis shall be considered as sufficient unless the Public Analyst or the Director reports to the contrary.' In arriving at my conclusion in the instant case, I have not been influenced by Rule 22(B), but my decision is based upon the enunciation of law as propounded by the Supreme Court and the facts and circumstances of the case.

9. Learned counsel has lastly argued that the applicant is aged 60 years and a lenient view may be taken of the question of sentence. In this Court, he has filed an affidavit along with the medical certificate that the applicant is suffering from a heart disease and is advised rest for 4 weeks commencing from 5th April, 1979. I am unable to place any reliance on such vague and general certificate; nor am I prepared to accept the age of the applicant as 60 years. In his statement under Section 313, Cr. P.C., the applicant has not mentioned his age at all. No birth certificate has been attached. In these circumstances, a mere averment in the affidavit by Pradeep Kumar Jai aged about 24 years, the son of the petitioner that the age of his father was 60 years, is not enough to inspire confidence. Metanil

Yellow is not only an un-permitted coal tar dye, but is also injurious to health, as is clear from the evidence on the record. The applicant cannot be allowed to play fast and loose with the health of a citizen for the purpose of economic gain. In these circumstances, I am of the opinion that no interference on the question of sentence is called for.

10. There is no merit in this revision, which is hereby dismissed. The applicant is on bail. He shall be taken into custody forthwith to serve out the unexpired portion of his sentence of imprisonment. The ad interim order passed by this Court staying realization of fine is hereby vacated.

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