

State of U.P. Vs. Akhtar

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Court : Allahabad

Decided On : Apr-08-1991

Reported in : 1992CriLJ204

Judge : Palok Basu and ;U.K. Verma, JJ.

Acts : Prevention of Food Adulteration Act - Sections 7, 13(2), 16 and 16(1)

Appeal No. : Govt. Appeal No. 340 of 1979

Appellant : State of U.P.

Respondent : Akhtar

Advocate for Def. : I.H. Khan, Adv.

Advocate for Pet/Ap. : G.A.

Disposition : Appeal allowed

Judgement :

Palok Basu, J.

1. The State of U. P. has preferred this appeal against the order of the Sessions Judge Rampur dated 20-11-1978 where by he had upheld the conviction of the respondent-Akhtar under Sections 7/16 of the Prevention of Food Adulteration Act but reduced the sentence from one year R.I. to imprisonment till rising of the Court

and reduced the fine of Rs. 2000/- to that of Rs. 100/- only.

2. Sri Jagdish Tewari, learned A.G.A. has been heard in support of this appeal where as Sri I. H. Khan learned counsel appearing for the respondent has been heard on behalf of the accused. The entire record has been perused. Sri Tewari being conscious of the fact that the respondent-Akhtar was tried for alleged taking of sample on 18-7-1975 addressed the Court mainly on the question of sentence only as to whether in such cases learned Sessions Judge had power of reducing the sentence as noted above. He said that in case this question is decided in favour of the State on the given facts imposition of additional sentence shall not be insisted upon keeping in view that 17 years have already elapsed between taking of the sample and this date. One does not know-how the life of the respondent has gone to be settled by, now, If the maximum sentence in accordance with law may have been awarded to him at the appropriate time, he must have under gone that at least 16 years ago. Asking him to be sent to jail again for no fault of his after perhaps he has reached the evening of his life will be unreasonable as it is harsh to sacrifice substantial justice at the altar of technical justice. It was rightly pointed out by Sri Tewari that the fine as imposed by the Magistrate should in any case be restored.

3. The facts of the case are that on 18-7-1975 at about 8.30 a.m. the Food Inspector Sri M.S. Som checked and found the respondent-Akhtar selling milk in village Pahari, P. S. Civil Lines, District Rampur. He collected the sample and divided it into three equal parts and sent it for Chemical examination. The Public Analyst reported that the milk was deficient by 30% in fat contents and 48% in non-fatty solids. After obtaining sanction the respondent was prosecuted.

4. It may however, be noted that the respondent apart from other pleas of denial etc. raised a question that he had not been served with the notice as contemplated by Section 13(2) of the Prevention of Food Adulteration Act. The finding of the Magistrate as upheld by the Appellate Court is that since the registered notice was duly sent and the proof of post office receipt and sample having been duly produced, there was no force in the respondents contention to that effect.

5. Relying upon the prosecution evidence that was produced through P.W. 1 M.S. Som and corroborated by P.W. 2 Anwar Ahmad, the Magistrate convicted the respondent under Sections 7/16 of the Act and sentenced -him to one year R.I. with a fine of Rs. 2000/-.

6. In appeal the learned Sessions Judge had upheld the conviction but he made the following remarks while adjudicating on the question of sentence:--

'In the end, it has been argued on behalf of the accused/appellant that the sentence imposed upon him by the trial Court was excessive and unreasonable. The accused-appellant was a young man aged about 25 years and he had never been involved in any crime of the nature with which he had been charged in this case. He was a poor village rustic who might have been led by the consideration in these days of high prices to mix water with the milk. In my considered opinion, there exist sufficient and adequate reasons which bring the case under Section 16(1)(g) of the prevention of Food Adulteration Act and the ends of justice will be met in case the accused appellant is sentenced till the rising of the court and a fine of Rs. 100/-.

7. It was pointed out by Sri Tewari that the order of reducing the sentence passed by the Sessions Judge was in the teeth of mandatory provisions contained in Section 16 of the Act and there existed no adequate or special reason for passing the said order. This is true that the sessions judge has wrongly held that the case of the respondent was covered by Clause (g) of Section 16(1) of the Act. Infact the applicability of the provision (ii) did not arise in this case as the offence was not covered by the exceptions carved out there by. Even if the exception was applicable, the minimum sentence of three months R.I. was imposable. The order of the Sessions Judge is not correct. However, as noted above the matter having transgressed into archiac character, and, considering the totality of its facts and circumstances we uphold the argument of Sri Tewari that the Sessions Judge had wrongly interfered with the substantive sentence as above Sri I.M. Khan also vehemently pleaded that in all expectations the respondent has perhaps even forgotten the details of the case and it will not be just and proper to send him to jail all over again. He however, rightly pointed out that fine sentence as imposed by

the Magistrate if thought just and proper should be paid by the respondent in lieu of benefit he has to earn due to lapse of time.

8. In view of the aforesaid discussion this appeal succeeds in so far as the question of law is concerned. The Sessions Judge's order reducing the sentence of one year R.I. to imprisonment till rising of the court and a fine of Rs. 100/- is declared illegal. The respondent is, however, not sent to jail to serve out the minimum sentence because of the delay in deciding this matter but his sentence of fine of Rs. 2000/- as passed by the Magistrate is re-imposed. Respondent will have three months' time to deposit the said amount of Rs. 2000/-.

9. With the aforesaid observations this appeal is finally disposed of. In default of payment of fine the respondent will undergo one year R.I.

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