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Kesar Singh Vs. State

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Court : Allahabad

Decided On : Jan-23-1981

Reported in : 1981CriLJ488

Judge : Murlidhar, J.

Appellant : Kesar Singh

Respondent : State

Judgement :
ORDER

Murlidhar, J.

1. Rvisonnist Kesar Singh has been convicted under Section 7/16 Prevention of food Adulteration Act and sentenced to R.I for three months and a fine of Rs. 1000/'- in default further R. I. for one month,

2. The prosecution case was that on 12-1-1976, at about 1.00 p.m., he was found exposing for sale in his Parchun shop in Naugarh, District Varanasi adulterated Haldi. It was alleged that the sample of Haldi obtained by the food inspector was found coloured with the prohibited coal tar dye lead chromate. Both the Courts below have found the accused to be guilty.

3. In revision the learned Counsel for the revisionist pressed two points. It was alleged that the independent witness Vishwanath P. W. 4 had not supported the prosecution and therefore, there had been a breach of Section 10(7) of the Act. This contention is without any weight. Section 10(7) only obliges the food inspector to call one or more independent witnesses while taking a sample. This was done. That this independent witness Vishwanath did not support the prosecution at the trial does not detract from the fact that Section 10(7) was fully complied with. It is then a matter of appraisal of evidence whether the testimony of the food inspector could be believed in the face of the defection of the independent witness. In this case the Courts below have found on cogent evidence that the Haldi was exposed for sale in the revisionist's shop and the sample was taken by the food inspector and have disbelieved total denial of the revisionist who claimed that he had no shop, was merely an agriculturist and that the whole case was a total concoction. The Courts came to this conclusion on the evidence of food inspector Shambhoo Nath Srivastava P.W. 1 and Ramayan Singh P. W. 2 supported by documents prepared at the time or sample taking. This is not only a legitimate but proper finding of fact in, which no infirmity justifying interference in revision could be shown.

4. The only other point urged was that the sanction to prosecute by the health authority was defective. This sanction is Ex. ka 5 on record. It is on a cyclostyled form, the blanks being filled in ink and is signed by B. L. Arya, Dy. Chief Medical Officer, Varanasi in a different ink. Briefly translated it runs that in exercise of his powers under Section 20 of Prevention of Food Adulteration Act the Dy. Chief Medical Officer (Health) gave his consent to Jai Shanker Lal taking necessary judicial action against the revisionist (fully described) under Section 7/16 Prevention of Food Adulteration Act. Even the dale at the top is filled in the ink used for the other blanks. The oral evidence of Shambhoo Nath Srivastava about this sanction it to the effect that after receipt of the public analyst's report on the basis of the report he had forwarded all the papers regarding sample taking to the office of Dy. Chief Medical Officer (Health) at Varanasi. On their basis he had granted the sanction Ex, Ka. 5. The learned Counsel for the revisionist urged that the sanction in the present case did not show that the sanctioning authority had perused or considered any papers or even that any such papers had been

produced before him and his bare signatures smacked of mechanical routine signatures. Further that the food inspector's evidence only shows that the papers had been forwarded to the office and does not prove that the same were brought to the notice of the sanctioning authority. He has relied upon Mohd. Iqbal Ahmad v. State of Andhra Pradesh : 1979 CriLJ633 . It was held that it is incumbent on the prosecution to prove that a valid sanction has been granted by the sanctioning authority after it was satisfied that a case for sanction is made out constituting the offence. It should be done in two ways either by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction or secondly by adducing evidence aliunde to show the facts placed before the sanctioning authority and the satisfaction arrived with it. I am of the opinion that in the present case the aliunde evidence of the food inspector proves that the relevant document Ex. ka. 1 notice form 6, Ex. ka. 2 receipt and Ex. ka 3 public analyst's report had all been sent to the office of the sanctioning authority and he granted sanction on their basis. Even if we take it that the evidence of the food inspector does not go to the length of proving that these papers were before the sanctioning authority when he signed the sanction Ex. ka 5, once existence of these papers being in office prior to the according of the sanction Ex. ka 5 is proved in absence of any evidence to the contrary it can be presumed that the sanction was granted after consideration of these papers. Official acts are presumed to have been regularly performed and there is no indication of how otherwise the name and address of the revisionist and the offence (under Section 7/16 Prevention of Food Adulteration Act) for which sanction was granted had been iilled in. It will be impermissible speculation to say that the office filled up these particulars and the sanctioning authority mechanically signed without applying his mind to the facts of the case. The facts of the Supreme Court case were different. There the sanction order merely referred to Commissioner's note and did not even mention the offence referring to that also as the offence mentioned in the Commissioner's note. The note itself had not been produced nor was there any evidence that other original papers were before the Municipal board when it passed the sanction resolution. The present case is distinguishable on facts. In my opinion no sufficient ground had been made out to hold that the sanction Ex. ka 5 is vitiated by non-application of mind.

5. No other point was argued before me. The revision must, therefore, fail. Before parting I would like to observe that the Magistrate has imposed an erroneous sentence ignoring the minimum of six months' R. I, prescribed by law. As however the State appears to have acquiesced in this illegal sentence, nothing can be done about it now.

6. The revision is dismissed. The conviction and sentence of the revisionist are confirmed. The revisionist is on bail in pursuance of this Court's order dated 4-7-1980. He shall be got arrested forthwith to serve out the sentence according to law. The stay for realisation of fine is also vacated.

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