

BasIn Vs. State

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Court : Allahabad

Decided On : Nov-30-1978

Reported in : 1979CriLJ223

Judge : P.N. Bakshi, J.

Appellant : Basin

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 three months rigorous imprisonment and a fine of Rs. 500/-, In default of payment of fine he is to undergo further three months R. I. His conviction and sentence have been confirmed in appeal by the Sessions Judge, Saharanpur. Hence this revision.

2. Briefly stated the facts are that the Food Inspector Sri Gajram Singh purchased a sample of cow's milk from the accused applicant at about 8 A.M. on 30th April 1977. The sample was sent for analysis. The report of the Public Analyst indicated that the sample contained 6.6 per cent fat and 7.4 per cent non-fatty solids. The sample was thus deficient in non-fatty contents, according to the prescribed

standard. Both the courts below have concurrently held the prosecution case proved. These are findings of fact which cannot be disturbed in revision.

3. learned Counsel for the applicant has argued before me that the Additional Chief Judicial Magistrate, who has passed the impugned order of conviction, had no jurisdiction to try the accused. In support of his argument he has placed reliance upon Section 16A of the Prevention of Food Adulteration Act, 1954, which runs as follows:

Notwithstanding anything contained In the Cr.P.C. 1973 (2 of 1974), all offences under Sub-section (1) of Section 16 shall be tried In a summary way by a Judicial Magistrate of the first class specially empowered in this behalf by the State Government or by a Metropolitan Magistrate and the provisions of Sections 262 to 265 (both inclusive) of the said Code shall as far as may be, apply to such trial.

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year:

Provided further that when at commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding on a year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.

4. A perusal of the aforesaid section clearly indicates that a Judicial Magistrate first class has been empowered to try an accused summarily for an offence under Section 16(1) of the Prevention of Food Adulteration Act. He is also authorised to pass a sentence of imprisonment not exceeding one year. If, at any stage, he is of the opinion that the sentence of imprisonment exceeding one year should be passed, then the Magistrate after hearing the parties has to record an order to that effect and thereafter he will try the case in the manner provided by the Code. In

the instant case the sentence which has been passed by the Additional Chief Judicial Magistrate is three months R. I. and a fine of Rs. 500/- which is obviously much less than the sentence of imprisonment of one year, which he is authorised to pass in a summary trial under the aforesaid Act.

5. learned Counsel for the applicant has placed reliance on Section 262 Cr.P.C. and he has urged that under this section in a summary trial a sentence of imprisonment exceeding three months cannot be passed. This argument overlooks the fact that under Section 16A of the Prevention of Food Adulteration Act, the provisions of Sections 262 to 265 of the Cr.P.C. shall as far as may be, applied to such trial, Further Section 16A contains a clause to the effect that notwithstanding anything contained in the Code of Criminal Procedure, all offences under Sub-section (1) of Section 16 shall be tried in a summary way.... In these circumstances Section 262 Cr.P.C. cannot be a bar to the exercise of jurisdiction by the Judicial Magistrate under Section 16A of the Act. If at any stage the Judicial Magistrate is of the opinion that a higher sentence is called for, then he shall adopt a different procedure as per second proviso of Section 16A abovementioned.

6. The alternative submission that the Additional Chief Judicial Magistrate is not authorised to try the case summarily which can only be done by the Judicial Magistrate, has absolutely no legs to stand upon. Under Section 12(1) of the Code of Criminal Procedure, 1973, the High Court is authorised to appoint a Judicial Magistrate of the first class in every district to be a Chief Judicial Magistrate. Under Section 12(2) of the said Code the High Court can also appoint any Judicial Magistrate of the first class to be an Additional Chief Judicial Magistrate. Section 12(2) further runs to the effect that the Additional Chief Judicial Magistrate shall have all or any of the powers of a Chief Judicial Magistrate under this Code, or under any other law for the time being in force as the High Court may direct. It is thus obvious that the Additional Chief Judicial Magistrate would be as competent to try a case summarily under Section 16A of the Prevention of Food Adulteration Act 1954 as the Chief Judicial Magistrate or a Judicial Magistrate of the first class.

7. The sentence awarded to the applicant already errs on the side of leniency.

8. For the reasons given above, I do not find any force in this revision which is hereby dismissed.

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