Ram Nath Vs. the State

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Court : Allahabad

Decided On : Jan-06-1982

Reported in : 1982CriLJ1014

Judge : J.M.L. Sinha, J.

Appellant : Ram Nath

Respondent : The State

Judgement :
ORDER

J.M.L. Sinha, J.

1. This revision is directed against the judgment and order dated 20th April 1981, passed by the III Additional District Judge, Pilibhit affirming the conviction and sentence recorded against the applicant Under Section 7 read with Section 16 of the Prevention of Food Adulteration Act.

2. On 29th December, 1977, sample of turmeric was taken from the applicant's shop. Formalities as prescribed under the law were duty complied with. One part of the sample was sent to the public Analyst who reported that the sample was adulterated being coloured with lead cheromate the use of which was prohibited in colouring turmeric. A complaint was thereafter filed for the prosecution of the applicant. The de-Janice set up by the applicant was a total denial of the

prosecution case. The trial Court came to the conclusion that the charge Under Section 7 read with Section 16 of the Prevention of Food Adulteration Act was mad out against the applicant and, in the result, the High Court convicted him of the same and sentenced him to six months' rigorous imprisonment and a fine of Rs. 1000/-. Aggrieved against it the applicant filed an appeal. The learned III Additional Sessions Judge, who heard the appeal, dismissed it vide his judgment and order dated 20th April, 1981'. Dissatisfied with it the applicant has preferred this revision.

3. The first contention raised by the learned Counsel for the applicant before me was that there was no valid sanction for the prosecution of the applicant in this case inasmuch as the sanction was accorded in a machanical manner without any application of mind.

4. On a perusal of the record I find that Exh. Ka. 5 is. the draft complaint which was forwarded by the Food Inspector to the Chief Medical Officer requesting (or sanction being accorded for the prosecution of the applicant. This complaint contains all the facts relating to the case. It also mentibns that the notice, the receipt, the Public Analyst's report and the memorandum in form No. 7 were Annexed with it, The sanction order duly signed by the Chief Medical Officer is in a printed pro forma. This pro forma is printed on the same paper on which the complaint exists. In view of the fact that all the relevant facts relating to the case were mentioned in the complaint when it was forwarded to the chief Medical Officer for his sanction, and further in view of the fact that pro forma in which the sanction is accorded is printed on the same paper on which the complaint exists, it should be inferred that the Chief Medical Officer would have read what was stated in the complaint and would not have signed the, pro forma without doing so. It may not be out of place to mention that the necessary entries in the pro forma relating to the complaint have been made with a blue dot pen by the Food Inspector who signed with the same pen. The entries in the pro forma of the sanction order on the contrary have been made with a black dot-pen and, consequently, it is not possible to say that the Food Inspector had himself made the necessary entries in the pro forma relating to the sanction order, when he forwarded the complaint to the Chief Medical Officer and that the Chief Medical Officer signed the order like

an automaton. It may also not be out of place to mention that the Public Analyst report, which was a relevant document in connection with this case, also carries an endorsment by the Chief Medical Officer which shows that he had examined this document before according sanction for the prosecution of the applicant. This endorsement is in the following words-

F. I. to Prosecute,

Sd/- Makhan Lal

L. H. A 2-3-1978

5. learned Counsel for the applicant, in support of his contention referred me to the cases of Bhagwan Das v. State of U.P. 1978 FAJ 491(All, Bhoora v. State 1978 FAJ 494(All, Kishan Lal v. State 1978 All Cri R 265 : 1978 Cri LJ NOC 201(All)) Agan Lal v. State 1980 FAJ 14, G. P. Asthana v. Kishan, 1979 All Cri R 44(All, Lachham Singh v. State 1979 FAJ 23 : 1979 Cri LJ NOC 1(All) and Roshan Lal v. State. 1980 All Cri R 165. I have carefully gone through all these cases and find that each one of them is distinguishable.

6. In the case of Bhagwan Das v. State of U. P, (supra, the report of the Food Inspector and the order Under Section 20 of the Act were typed by the same typewriter. Even the number of endorsement and the words Izzatnagar at the top of the order were typed with the same typewriter with which the report was typed. Further, even though there was a column for date, no date was mentioned against it. On the basis of these facts the learned single Judge, who decided, the aforesaid case, came to the conclusion that the Food Inspector not only formulated the complaint but also wrote out the order Under Section 20 of the Act pre-supposing that the matter of sanction by the Medical Officer of Health was routine-matter and shall be automatically signed. So far as the present case is concerned, I have already pointed out earlier that, even though the pro forma of the complaint and the pro forma of the sanction order are printed, the entries in the pro forma of the complaint and the entries- in the panction order are in different ink. The Food Inspector entered the witness box and it could not be elicited in his cross-examination that the entries in the pro forma of the sanction order were made by

him. In view of these circumstances the observations made by this Court in the case of Bhagwan Das cannot apply to the present case.

7. In the case of Bhoora v. State, 1978 FAJ 494(supra) there was material in the sanction order itself to indicate that the Medical Officer had not applied his mind before signing the same. What happened in that case was that sanction was obtained for an offence said to have been committed on 3rd May, 1972 while no such offence was committed on that date. The correct date of the commission of the offence was 13th May. 1972. Obviously if the sanctioning authority had applied the mind to the facts of the case he would have discovered that mistake and would have either returned the papers for correct tion or would have said something in the sanction order to indicate the correct date of the commission of the offence. Besides the above there was the fact that the report by the Food Inspector and the sanction order Under Section 20 of the Act were typed on the same machine and some columns in the typed pro forma of the sanction order were left blank. It was under these circumstances that the sanction was held invalid, No such infirmity existed in the case before me. '

8. In the case of Kishan Lal v. State (1978 Cri LJ NOC 201(All))(supra) the date of the collection of the sample and the date of despatch of the sample to the Public Analyst in the sanction order were in the hand of the Food Inspector and both these dates wear incorrect and yet the sanction was accorded. It was under these circumstances that the sanction was held invalid.

9. In the case of Agan Lal v. State (1980 FAJ 14)(supra) all the columns of the sanction order, which was in a printed pro forma were filled in by the Food Inspector himself and there was no evidence to show that the relevant papers were placed before the sanctioning authority. The sanction was, therefore, held to be invalid. It may be mentioned at the costs of repetition that in the instant case the entries in the pro forma of the complaint and the entries in the pro forma of the sanction order are in different ink. This case can also, therefore, be of no help to the applicant.

10. In the case of G. P. Asthana v. Sri Krishna (1979 All Cri R 44)(supra) the complaint and the consent order were on different sheets of paper. The consent

order was in a cyclostyled pro forma and the entries therein had been made in ink different from the ink with which the sanctioning authority appended his signatures. There was nothing on the record to indicate that the sanctioning authority had examined the facts of the case before according sanction. The sanction was, therefore, held invalid with the following observations :

In the present case the document of consent does not contain the intrinsic evidence of application of mind by the sanctioning authority. There is also no other evidence on record to prove application of mind. Therefore, it has to be held that the prosecution of the accused was without valid consent.

To my mind there can be no analogy between this case and the case in hand. As already stated earlier in the case in hand the complaint and the sanction order exist on the same paper and not on different sheets of paper. The complaint was forwarded to the sanctioning authority after setting out all the necessary facts in it. Since the complaint was on the same paper on which the sanction had to be accorded the sanctioning authority would normally have looked into the facts stated in the complaint before signing the order. It would be too much to assume that the sanctioning authority would have closed his eyes while signing the sanction order and would not have looked up to see as to what was contained in that part of the same paper. That apart, in the instant case the report of the Public Analyst also carries the signatures of the sanctioning authority which too lends support to the fact that the sanctioning authority applied his mind to the facts before signing the sanction order. In my opinion, therefore, this case can also be of no help in the present case.

11. In the case of Lakshman Singh v. State (1979 Cri LJ NOC 1)(AH)(supra) the sanction was in printed pro forma. There was a mention in the sanction order of the expression: 'sealed bottle' and also of Rules 23 and 28. There was. however, no sealed bottle in that case. The sample was taken in a packet and not in a bottle, Further, Rules 23 and 28 had no relevance. It was under these circumstances that the sanction was held to be invalid. In the case of Roshan Lai v. State ((1980) All Cri R 165)(supra) the report of the Food Inspector did not mention as to what were the relevant papers sent along with the report to the

sanctioning authority. There was a column for mentioning the annexed papers and it was left blank. this Court, therefore, held that there did not exist sufficient material to indicate application of mind by the sanctioning authority and accordingly held the sanctions invalid. There is no such infirmity in the case before me.

12. It may not be out of place at this stage also to refer some other decisions of this Court in which the validity of the sanction order was challenged but the sanction was held to be valid. In the case of Jai Singh v. State, 1980 F. A, J. 10:1980 All LJ 394, the sanction order was on a typed pro forma. It was, however, mentioned in that order that the papers along with the Food Inspector's report had been seen. The contention raised on behalf of the applicant that the sanction was accorded mechanically was, therefore, repelled and the sanction was held to be valid.

13. In the case of Chandra Pal v. State, (1980 F. A. J. 17) the validity of the sanction was challenged on the ground that the relevant entries in the pro forma of the sanction order were made by the Food Inspector. In view, however, of the fact that the Food Inspector gave out that he had sent all the papers to the District Medical Officer (Health) and there was no cross-examination on that point the contention was rejected and the sanction was held to be valid.

14. In the case of Krishan Lal v. State (1980 F. A. J. 313) the challenge against the validity of the sanction was negatived because it transpired from the record that the Food Inspector had sent all the papers along with his report to the Chief Medical Officer and the Food Inspector had deposed that the sanction was accorded by the Chief Medical Officer after perusing the relevant papers.

15. In the case of Ram Sewak v. State (1980 F. A. J. 433, ' the challenge against the validity of the sanction was negatived by this Court because it was apparent on a perusal of the record that before grant of the sanction the District Medical Officer of Health had seen the Public Analyst's report.

16. In the case of Banke v. State (1979 FAJ 88(All)) the challenge to the validity of the sanction order was negatived because the order granting the sanction showed

that the papers submitted by the Food Inspector had been perused besides the fact that the Medical Officer himself put down the date under his signatures and he also initialled a correction.

17. In the case of Malkhan v. State (1979 FAJ 176) challenge against the validity of the sanction was negatived for the reason that the complaint and the sanction order existed on the same paper and the sanctioning order clearly stated that all the relevant papers had been seen.

18. Thus having examined the authorities on either side and the facts of the present case I have no doubt that the sanction accorded in this case cannot be held to be invalid on the ground that it was accorded without any application of mind.

19. learned Counsel for the applicant next urged that Section 10 Sub-section (7) of the Act was not complied with by the Food Inspector and the conviction accordingly stands vitiated. Section 10 Sub-section (7) merely requires that the Food Inspector shall call one or more persons to be present while collecting the sample and shall take their signatures. Ex. Ka. 2 is the document prepared by the Food Inspector in evidence of the collection of the sample. This carries the signatures of one Ram Pal Sharma and L. T. I. of one Ram Swarup son of Mithat Lal. With these signatures existing on the document Ext. Ka. 2, it cannot be successfully urged that Sub-section (1) of Section 10 of the Act had not been complied with. It is true that out of the aforesaid two persons one, namely Rampal Sharma was an employee of the Health Department to which the Food Inspector belongs. It cannot be gainsaid that the Food Inspector was not well advised in taking him as a witness of the collection of the sample. Ram Pal Sharma was no I however, the only person before whom the sample was collected. There was another person named Ram Swarup, who was present and even that would meet the requirement of Sub-section (7) of Section 10 of the Act. It may also be added here that even if it is shown in a particular case that Sub-section (7) of Section 10 of the Act has not been complied with that will not vitiate the conviction if the Food Inspector has offered an explanation for that omission and if his evidence otherwise does not suffer from any infirmity.

20. learned Counsel then urged that Sub-section (2) of Section 13 of the Act was not complied with. The argument fails to bear any scrutiny. Man Mohan Lai the Food Inspector (P.W. 1) made statement on oath that a copy of the report of the Public Analyst had been sent to the applicant with a covering letter. The prosecution also examined Ram Swarup, the clerk of the office of the Chief Medical Officer who too, made a statement on oath to the effect that a copy of the report of the Public Analyst was sent to the applicant under registered cover with a covering letter dated 23-8-1978. He also filed the postal receipt connected with the registered letter sent to the applicant. The contention raised is, therefore, rejected.

21 learned Counsel next urged that when the sample of turmeric was collected by the Food Inspector the applicant had told the Inspector that the turmeric had to be cleaned before use. learned Counsel pointed out that an endorsement to that effect was made on the back of the document Ex. Ka 1 as well as on the document Ex. Ka. 2. learned Counsel urged that, consequently, it cannot be held that the applicant was selling or keeping for sale adulterated turmeric for human consumption. The argument does not carry any substance. It was established by the evidence on record, and had been concurrently accepted by the two courts below, that the turmeric, out of which the sample was taken by the Pood Inspector, was adulterated being coloured by a prohibited dye. It was thus coloured turmeric which the applicant was keeping for sale. The mere fact that when he was caught. selling the coloured turmeric he gave out that the turmeric was to be used after being cleaned, one be of no consequence whatsoever. Once he was caught selling coloured turmeric he had to say something to save himself and it was with that end in view that he made the aforesaid statement after the sample had been collected it is not the applicant's case that there was any signboard etc. on the shop saying that turmeric had been coloured with prohibited colour .for decoration or preservation and that it should not be used without being washed. The contention raised is accordingly rejected,

22. learned Counsel lastly urged that a lenient view may be taken on the question of sentence. learned Counsel pointed out that since the turmeric is a primary agricultural produce, it is open to this Court to reduce the sentence. Assuming that it is so, it cannot be ignored that the application used a prohibit colour. Obviously,

the mixture of that colour is prohibited by law because it is harmful to human health. Further, the applicant did not show any remorse at any stage of the trial. During the trial he denied the entire prosecution case, including the fact of collection of the sample from his shop. There is thus no mitigating circumstance whatsoever in favour of the applicant. The sentence of six months' rigorous imprisonment and a fine of Rs. 1000/- is the normal sentence to be awarded Under Section 7 read with Section 16 of the Prevention of Food Adulteration Act. In the absence of any mitigating circumstances in favour of the applicant it will not be a proper exercise of discretion to reduce the sentence.

23. This revision accordingly fails in toto and is hereby dismissed. The applicant is on bail. He shall be taken into custody and sent to jail to serve out his sentence. Bonds furnished by him stand cancelled.