

Ram Niwas Vs. State

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Court : Allahabad

Decided On : Jan-20-1995

Reported in : 1995CriLJ3491

Judge : O.P. Pradhan, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 7 and 16; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Crl. Revision No. 76 of 1983

Appellant : Ram Niwas

Respondent : State

Judgement :

ORDER

O.P. Pradhan, J.

1. This revision is directed against the judgment and order dated 10-1-1983, passed by Sessions Judge,, Bahraich whereby he dismissed the appeal of the revisionist and maintained conviction and sentence, awarded by the Special Judicial Magistrate in Criminal Case No. 632 of 1981 in connection with an offence under Section 7/16 of the Prevention of Food Adulteration Act.

2. The prosecution case briefly stated is that on 30-1-1981, the Food Inspector, Abdul Gaffar went to the shop of the revisionist, Ram Niwas situate at Kaiserganj at about 12.15 p.m. and purchased a sample of 'Ajwain' weighing 300 grams. He also issued a receipt of Rs. 2.40 to the Revisionist, who, however, refused to sign or accept the same. Similarly, the notice as per Ext. Ka-3 was also refused by the revisionist. He divided the sample in three parts and filled up each part in three bottles which were duly sealed and one of them was sent to the Public Analyst together with Form No. 7 on 30-1-1981 and the remaining two bottles were sent to the Chief Medical Officer, Bahraich. The Public Analyst reported on 9-3-1981 that there was an inorganic matter to the extent of 4.01% against the prescribed 2% while there was organic matter to the extent of 6.6% against the prescribed 3%. Thus the sample collected by the Food Inspector was found adulterated. The sanction for prosecution of the revisionist was accorded on 10-4- 1981 and the complaint was filed on 13-4-1981 in the competent Court. The accused-revisionist was put on trial under Sections 7; 16 of the Prevention of Food Adulteration Act. He denied the accusation against him and pleaded false implication. In support of the prosecution, Abdul Gaffar P.W. 1 and Ram Singh P.W. 2 were examined. The Court witness. Ram Saneehi was also examined. The accused-revisionist. however, did not produce any oral or documentary, evidence in his defence. The learned Magistrate after consideration of the material, placed before him, found the accused-revisionist guilty under Sections 7/16 of the said Act and sentenced him to undergo six months R.I. and pay a fine of Rs. one thousand and in default thereof to undergo three months more R.I. There was an appeal against this order of conviction and sentence by the accused but this appeal was also dismissed on 10-1-1983 by the learned Sessions Judge who maintained the conviction and sentence imposed upon the accused-revisionist by the trial Court. Feeling aggrieved by the appellate Court's judgment and order, this revision has been preferred by the accused Ram Niwas.

3. I have heard the learned counsel for the revisionist as also the learned A.G.A. and also gone through the material on record.

4. Even though several points have been pressed in service by the learned counsel for the revisionist but this revision can be disposed of on a lone point

which is really of substance and vitiates the conviction and sentence, awarded to the revisionist. I therefore, proceed to dwell upon the said point. It appears from the perusal of the lower court record that the accused was put questions before proceeding with the trial as regards the case against him. The accused denied the allegations at that stage and thereafter, the evidence was adduced against the accused. After the prosecution evidence was concluded, the accused was examined under Section 313, Cr. P.C. on 22-7-1982 as also on 4-10-1982. A perusal of the questions put to the accused for his examination under Section 313, Cr.P.C. clearly indicates that omnibus questions were put to him and the adverse material and circumstances appearing against him were not specifically put to him during his examination under Section 313, Cr.P.C. For example, the first question which was put on 22-7-1982 was:- 'AAP NE GAWAHAN KE BAYAN SUNE, KAYA KAHNA HAI' Other two questions which were put to the accused the very same day related to the opportunity of defence etc. Likewise on 4-10-1982, the first question put to the accused under Section 313, Cr. P.C. in relation to the evidence of C.W. 1 was:- 'AAP NE C.W. 1 KA BAYAN SUNA HAI, KAYA KAHNA HAI'? Other two questions put on this date related to the opportunity of defence. It would, therefore, appear that the accused was not confronted during his examination under Section 313, Cr.P.C. with the adverse material and circumstances appearing against him. In any case, the incriminating material which had to be put to the accused was not at all put to him and thus no opportunity was given to him to explain the same. It has been laid down by a number of times by the Apex Court that the provisions of Section 313, Cr.P.C. embody fundamental principle of 'Audi Alteram Partem'. This provision has been held to be mandatory and it casts a duty on the Court to afford an opportunity to the accused to explain the incriminating material against him (See : 1992 CriLJ3454 , State of Maharashtra v. Suhkdeo Singh).

5. In sum it is clearly established that this salient principle, contained in Section 313, Cr.P.C. was followed by the trial Court in its violation rather than in its observance. The appellate Court too did not notice this violation of the mandatory provision. This by itself vitiates the trial of the accused and the conviction recorded against him, cannot be sustained.

6. The incident is of 30-1-1981 and we are in January, 1995. The learned Government Advocate also conceded that it would not be worthwhile and proper to remit the case to the Court below for rehearing after the said span of time. It appears expedient under the facts and circumstances of the case to set aside the conviction and sentence, awarded by the Courts below and acquit the accused in respect of the charge, levelled against him.

7. In the result, this revision succeeds and the conviction and sentence, imposed upon the accused revisionist by the Courts below, namely, the Special Judicial Magistrate and the Sessions Judge, Bahraich are hereby set aside. The accused-revisionist stands acquitted of the charge, levelled against him. He is already on bail. He need not surrender and his surety bonds are cancelled.

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