

Mool Chand Vs. State of U.P.

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Court : Allahabad

Decided On : Feb-10-2006

Reported in : 2006CriLJ2594

Judge : R.K. Rastogi, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 7, 16, 16(1) and 13(2);
Essential Commodities Act - Sections 3 and 7; Crimiminal Procedure Code , 1974
- Sections 313 and 428; Indian Penal Code (IPC) - Sections 302

Appeal No. : Cri. Revn. No. 1799 of 1986

Appellant : Mool Chand

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : A.B.L. Gaur, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

R.K. Rastogi, J.

1. This is a revision against the judgment and order dated 18-9-1986 passed by Sri N.S. Shamsheri then Additional Sessions Judge/Special Judge, Meerut in Criminal Appeal No. 140 of 1985, Mool Chand v. State of U.P. and Anr.

2. The facts relevant for disposal of this revision are that on 4-10-81 Mr. O.P. Agarwal then Food Inspector, Meerut took a sample of curd from the appellant who was selling it claiming to have been made from buffalo milk, the sample was sent to the Public Analyst who reported that the sample was deficient in non-fatty solids by 9%. Then a complaint was filed against him by the Food Inspector after obtaining sanction from the Chief Medical Officer, Meerut. A copy of the report of Public Analyst was sent to the accused from the officer of the C.M.O. by registered post. However, no steps were taken by the accused for re-examination of the sample.

3. The Accused pleaded not guilty. He was charged under Section 7/16(1)(a)(i) of the Prevention of Food Adulteration Act (hereinafter referred to as the Act). The prosecution examined Mr. O.P. Agarwal, Food Inspector as P.W. 1 and Mr. Budh Prakash Sanitary Supervisor, Nagar Maha Palika as P.W. 2 who was an eye witness of taking sample of curd. No other evidence was produced by the prosecution. The accused denied prosecution case in his statement under Section 313 Cr.P.C but did not produce any defence evidence.

4. Learned Magistrate, after hearing of the case, came to the conclusion that the charge Under Section 7/16 of the Act was sufficiently¹ proved against the accused and so he convicted the accused for the above offence'and sentenced him to six months' R.I. and to a fine of Rs. 1000/- Aggrieved with that Judgment and order the accused filed Criminal Appeal No. 140 of 1985. The above appeal was heard and decided by Mr. N.S. Shamshery, then Addl. Sessions Judge/Special Judge, Meerut, who pointed out in his judgment that this fact was not sufficiently proved that a copy of the report of the Public Analyst was sent to the accused as required under Section 13(2) of the Act, and therefore he remanded the case for evidence on this point. Aggrieved with that judgment and order remanding the case the accused filed the present revision.

5. I have heard learned Counsel for both the parties and have perused the record.

6. Learned counsel for the revisionist made only one submission before me. He submitted that under the provisions of the Criminal Procedure Code it is not permissible to provide any opportunity to the prosecution to fill lacuna in its evidence. He contended that the above order passed by the learned Addl. Sessions Judge amounted to filling up lacuna in prosecution evidence and so the same is liable to be set aside. On the other hand the learned A.G.A. submitted that the order passed by the learned Sessions Judge does not amount to filling up lacuna in the evidence and the order passed by the learned Sessions Judge is completely justified. The learned Counsel for the revisionist cited before me a ruling of this Court in Gopi Chand v.State : 1969 Cri LJ 1153. In this case the accused applicant Gopi Chand was convicted under Section 3/7 of the Essential Commodities Act. In an appeal filed by Gopi Chand the learned Sessions Judge Agra passed an order directing the trial court to record evidence on the question of relationship between Jadhav Ram Gopi and also their business relationship. This order was challenged before this Court, and it was observed by this Court that order passed by the appellate court was vague as it did not indicate as to what evidence was to be taken by the trial court and who were the witnesses to be examined for that purpose. It was further observed that Section 428 Cr. P.C is not meant of filling up the laches left by the prosecution or for allowing it to indulge in fishing of evidence. This Court, therefore, allowed the revision and set aside the order of remand passed by the appellate court issuing a direction to the appellate court to re-hear the appeal and decide the case on merits on the basis of the evidence already on record.

7. The learned Counsel for the revisionist also cited before me a ruling of the Jammu & Kashmir High Court in State v. Zilla Singh 1973 Cri LJ 1384. In this case the accused was charged under Section 302 I.P.C. and he was acquitted by the Addl. Sessions Judge. The State filed an appeal against that order of acquittal. It may be mentioned that during trial, statements of Durrjey Garchan (P.W.10) and Sonam Namgal (P.W.11) were recorded by the Court but the Photographs of the deceased were not shown to them to corroborate this fact that the accused were accompanying the deceased. This circumstance of not showing the photograph of the deceased to P.Ws. 18 and 19 was held by the trial court to be fatal to the prosecution case and the trial court further observed that an inference could be

drawn that if these photographs had been shown to the aforesaid witnesses they might not have supported the prosecutions case. Hence, the prosecutions moved an application before the High Court for permission to show the photographs of the deceased to the aforesaid prosecution witnesses. The High Court rejected that application with these observations that no opportunity could be given to the prosecution to fill up the lacuna in its evidence.

8. I have carefully gone through both these rulings. Now let me consider as to how far these rulings are applicable to the facts of the present case.

9. So far as the ruling in the case of Gopi Chand (supra) is concerned it is to be seen that the order in the above case was very vague and it did not mention as to who was to be examined. Hence it was held that such a vague application for Additional evidence could not be allowed.

10. So far as the ruling in State v. Zilla Singh (supra) is concerned, it is to be seen that in this case the prosecution had moved an application to recall P.Ws. 18 and 19 for identifying the photographs of the deceased and since the prosecution had failed to get these photographs identified by the aforesaid witnesses, it was held that grant of permission to the prosecution for this purpose amounted to filling up lacuna in the prosecution evidence and so such a permission could not be accorded.

11. It was submitted by the learned A.G.A. that the facts of both these rulings are quite different from those of the present case and therefore the aforesaid rulings do not apply to the facts of the present case.

12. It is, however, to be seen that in the present case the position is that the Food Inspector Mr. O.P. Agarwal had stated in his statement that after receipt of report of the Public Analyst, Copy of it was sent to the accused revisionist by the officer of the C.M.O. He further stated that since the report was not dispatched in his presence, he did not have any personal knowledge of this fact whether the report was sent from the office of the C.M.O. or not. On a perusal of the judgment of the trial court the above plea regarding non receipt of the report as required under Section 13(2) of the Act does not appear to have been taken before the court, nor

there is any finding on this point in the judgment. This plea appears to have been raised for the first time before the appellate court and so when this plea was pressed before the appellate court, it passed an order for taking additional evidence on the point whether the report was sent to the accused by registered post or not. It is to be seen that it is not an act of fishing or procuring evidence by the prosecution. If the report had been dispatched vide registered post, the receipt of its registration must be available in the office of the C.M.O., and if it had not been sent then there would not be any evidence of its dispatch in that office. So only this fact is to be ascertained from the documents already on record, in the office of the C.M.O. and it is not possible to prepare any evidence of dispatch of the report if it had not been actually dispatched. The procurement of such documentary evidence cannot be termed to be a fishing act or an attempt to fill up lacuna in the prosecution evidence. In the case of Zilla Singh (supra) the prayer of the prosecution was to permit its witnesses P.Ws. 18 and 19 to depose after seeing the photographs whether they recognized the persons in those photographs or not. Now it is to be seen that it was a matter of oral evidence as to whether they recognised those photographs of the deceased or not, and grant of such a permission to produce such an oral evidence amounted to permission to the prosecution to fill up lacuna. But in the present case this fact is to be ascertained from documentary evidence of independent departments of the Government i.e. the C.M.O. and the post office as to whether the report was sent to the accused or not, and this order does not amount to permission to fill up lacuna in the prosecution evidence. Learned Addl. Sessions Judge committed no illegality nor error while granting this permission. The order passed by him does not suffer from any illegality. The revision, in this way, has got no force and is liable to be dismissed.

13. The revision is, accordingly, dismissed. The judgment and order dated 18-9-1986 passed by Sri N.S. Shamsheri then Additional Sessions Judge/Special Judge, Meerut in Criminal Appeal No. 140 of 1985, Mool Chand v. State of U.P. and Anr. are hereby confirmed.