

Kailash Chandra (In Jail) Vs. State of U.P. and anr.

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Court : Allahabad

Decided On : Aug-22-2001

Reported in : 2002CriLJ665

Judge : S.K. Agarwal, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 7, 16 and 19(2);
Prevention of Food Adulteration Rules - Rule 37

Appeal No. : Crl. Revn. No. 108 of 1987

Appellant : Kailash Chandra (In Jail)

Respondent : State of U.P. and anr.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : A.N. Misra, Adv.

Disposition : Revision allowed

Judgement :
ORDER

S.K. Agarwal, J.

1. This revision was filed by the applicant against his conviction by the trial Court under Sections 7/16 of the Prevention of Food Adulteration Act and consequent

sentence of 6 months' R.I. and a fine of Rs. 1,000/-. The applicant was convicted by the trial Court for the violation of Rule 37 of the Act because the quantum of salt found by the Public Analyst was marginally in excess from the quantity shown on the label.

2. The facts of the case are that on 3-5-1985 Sri Rameshwar Prasad, Food Inspector, had taken samples of Sabji Masala packets at 11.00 a.m. from the shop of the accused named as 'Vikas Traders' in Katra Bazar, Lalitpur. He prepared the requisite form and receipt after paying the price of the sample. These papers were signed by the accused. Nine packets were taken. Three different sets of samples were prepared, one of which was sent to the Public Analyst. The report of the Public Analyst shows that the salt contained in the sample was found to be 6.1% as against 5% shown on the label. The prosecution in support of its case has examined four witnesses, viz. P.W. 1 Rameshwar Prasad. P.W. 2 V.P. Verma, Food Inspector who had submitted the report for obtaining sanction, P.W. 3 Sujat Khan Supervisor, who accompanied the Food Inspector at the time of taking the sample, and P.W. 4 D.P. Babele, a clerk in the office of the Chief Medical Officer, Lalitpur, who has proved that the documents were dispatched from his office. He has proved that the papers received by him were produced before the C.M.O., who granted sanction after their perusal.

3. The applicant has denied the allegations levelled against him and stated that 9 packets of Sabji Masala was taken from him by the Food Inspector. The Food Inspector had told him that the company manufacturing these packets would be challaned. On this assurance he signed the document, as desired by the Food Inspector. He has also examined his brother Mahendra Kumar as D.W.1. Mahendra Kumar has stated that he runs a shop of Mewa, Masala, etc. Sabji Masala in dispute was sold by him to his brother, who is running a shop of Gur, Shakkar, tea etc. He has also filed both the licences. The licence pertaining to the applicant is dated 16-2-1982. He has also proved the cash memo issued by him to his brother, the accused-applicant, to show that the accused had purchased 12 packets of Sabji Masala from his shop. These circumstances show that the accused was a mere consumer of Sabji Masala and not a vendor of the same. The cash memo is Ext. Kha-1 on the record. He further stated that Sabji Masala sold

by him was purchased from M/s. Vikas Traders, Ghaziabad, and thereby he had claimed the benefit of Section 19(2) of the Prevention of Food Adulteration Act.

4. The claim of the Food Inspector is that the sample was purchased by him from the shop of the applicant. This fact is falsified by the licence. The applicant held a licence only for Gur, Shakkar and tea, whereas his brother is engaged in the sale and purchase of Masalas, Mewa (dry fruits), etc.

5. P.W. 2 Sujat Khan failed to identify the applicant, instead in the witness-box he identified his brother Mahendra Kumar (D.W. 1). This is a serious lacuna in the prosecution case against the applicant. It further creates serious doubt in his presence at the spot at the time of taking of sample.

6. Learned Sessions Judge has observed that the two brothers are facially bearing abundant resemblance. Thus, there was every possible justification for this witness for getting confused. This is written in favour of this witness. In my opinion, this is a serious lapse and cannot be met in this manner.

7. The next point that arose in this case is whether the sale by a person, who himself is purchaser of the impugned article for his own use to the Food Inspector will amount to sale as a vendor or not. No doubt the Food Inspector has come up with a case that he had taken the sample from the shop of the applicant but the licence filed by accused runs against it. Both the shops are in adjoining localities, separated by 100 steps, I do not find any valid reason for disbelieving the statement of the applicant in the face of these facts and circumstances. There is no proper reason for discarding the statement of his brother D.W. 1 Mahendra Kumar, specially when he has filed the cash memo issued by him to the applicant for the sale of 12 packets of Sabji Masala, out of which 9 packets were taken by the Food Inspector. No public witness was taken by the Food Inspector. The learned Judge has made the absence of public witness of the locality by believing the statement of the Food Inspector that as soon as he started taking sample from the shop of the applicant, all other shopkeepers downed their shutters and ran away. This is wholly unbelievable. Markets are not closed in this manner. From the statement of the Food Inspector this is apparent that there were many shops. They may have declined to be a witness against a neighbouring shopkeeper, but the

shutters were downed and the shopkeepers ran away from the market does not inspire my confidence. This further goes to support defence contention that sample was taken from him while he was on his way either to his house or to his shop. The Food Inspector being the Inspector of the area must be knowing the fact that the applicant had a shop of Gur, Shakkar and tea. The licence filed by his brother (D.W. 1) proved this fact beyond doubt. In the circumstances the fact that the applicant was keeping only these packets at his shop for sale does not stand scrutiny. In the result it cannot be said under any circumstance that the sample was taken from the shop of the applicant. On the other hand what the applicant stated appeared to be true that the sample was taken from him while he was on his way after purchasing the Sabji Masala from his brother's shop. Admittedly, the shops were in two different localities. This Sabji Masala was purchased by him for his own consumption. In the circumstances, any such sale to the Food Inspector by a consumer will not amount to sale as a vendor. It is true that if the Food Inspector would have prosecuted the manufacturer whose name was printed very well on the packets there would have been some substance, but that is not done. In the circumstances, there is some substance in the contention of the applicant that he was told that the sample was taken for prosecuting the manufacturer.

8. In the circumstances, the conviction of the applicant cannot be sustained as the sale is not in accordance with law. Apart from it the packets so sold as sample contain salt above 5%. It is not known what was the weight of the sample that was taken up for analysis. The Public Analyst's report does not show the weight of the article taken by him for analysis. Therefore, it cannot be determined positively that the sample contain salt 6.1% which was in excess of the quantum exhibited by its manufacturer on the packet. Nine packets were taken. It is not noted anywhere in any of the two judgments what was the weight of the one packet, whether they were packets of 50 gms. each or 100 gms. or 200 gms. In the circumstances mere excess of salt in the sample is of no consequence. Moreover, the Masala had various articles like Zira, Hing, Saunf, Mircha, etc. etc. All these articles themselves contain natural salt. When such Sabji Masala is dissolved in any substance presence of salt contents are bound to rise. No edible article is devoid of salt. Salt is present in each one of them. Therefore, also it is difficult to hold, in the circumstances, that presence of salt in 6.1% in the sample is in excess from

the quantum of salt printed on the label. Moreover, the sample was contained in sealed packets. It was also taken in the same condition'. It's manufacturer was Vikash Traders, Ghaziabad. This offence could be made out only against its manufacturer or its dealer who sold it admittedly to this applicant.

9. In the result, the conviction of the applicant cannot be upheld. This revision is, therefore, allowed. The applicant is acquitted of the charge for which he was tried and convicted. He is on bail. He need not surrender. His bail bond is cancelled and sureties are discharged.

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