

Abhai Kumar Vs. State of U.P. and anr.

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Court : Allahabad

Decided On : Sep-02-2002

Reported in : 2003CriLJ195

Judge : Onkeshwar Bhatt, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 16 and 23; Prevention of Food Adulteration Rules, 1955; Code of Criminal Procedure (CrPC) , 1974 - Sections 433(C)

Appeal No. : Crl. Revn. No. 1439 of 1986

Appellant : Abhai Kumar

Respondent : State of U.P. and anr.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : R.N. Sharma and ;Tapan Ghosh, Advs.

Judgement :

ORDER

Onkeshwar Bhatt, J.

1. This revision is directed against the judgment and order dated 7-8-1986, passed by the IVth Additional Sessions Judge, Agra in criminal appeal No. 148 of 1984.

By the impugned judgment and order conviction and sentence of the revisionist passed in Criminal Case No. 1060 of 1981 on 30-6-1984 has been upheld. The revisionist was sentenced to one year rigorous imprisonment and to fine of Rs. 1000/- and in default of payment of fine to undergo further simple imprisonment for six months.

2. Sri R.N. Sharma, learned counsel for the revisionist and the learned A. G. A. for the State have been heard.

3. On 6-9-1978 the revisionist was found selling mustard oil at his shop. The sample was purchased by the Food Inspector, Sri B.P. Kulshrestha. The mustered oil was found adulterated. On the request of the revisionist-accused one phial of sample was sent to the Central Food Laboratory which also found it adulterated.

4. It has been contended that the courts below have ignored the prescribed limit and have wrongly held that the sample of mustered oil was adulterated. Appendix-B of the rules under the Prevention of Food Adulteration Rules contains the item of Mustered Oil in A. 17.06. The rules provides that mustered oil shall conform to the following standards:--

(a) Butyro-refractometer reading at 40 C 58.0 to 60.5 (b) Saponification value 168 to 176 (c) Iodine value 96 to 108

5. These standards have undergone a change by notification No. GSR 532 dated 22-2-1969, the standard of iodine value is 96 to 110 which has been substituted by Notification No. GSR 205 of 13-2-1974 which came in effect from 23-5-1974. As stated above the sample in the case was taken on 6-9-1978 when notification No. GSR 205 of 13-2-1974 was in operation. According to the report of the Central Food Laboratory the saponification value in the sample was 180.0, iodine value 110.5 and butyro-refractometer reading 40 C was 59.8. So far butyro-refractometer reading is concerned a standard prevailing at the time when the sample was taken was 58.0 to 60.5. Since the sample contains 59.8 it was within the prescribed standard. So far as iodine value of the sample is concerned the prescribed standard prevailing at the relevant time was 96 to 110. Iodine value in the sample was found 110.5, which means that it exceeded the limit by .5. The

Saponification value has ' been found by the Central Food Laboratory as 180 which exceeds the prescribed standard for 168 to 177. Even if the contention of the revisionist that contents the iodine value by 0.5 is too negligible and should be ignored is accepted the sample exceeds in saponification value by 3 degree because the prescribed value was 168 to 177, therefore, the contention of the revisionist that according to the new standard which came into force from 23-5-1974 the sample collected by him was not adulterated is not acceptable and is rejected.

6. The offence in this case has been taken place in the year 1978 and about 24 years have elapsed since then. It is contended by the revisionist that it is appropriate case for commutation of sentence.

7. Reliance has been placed on the case of N. Sukumaran Nair v. Food Inspector, Mavelikara, reported in (1997) 9 SCC 101 : (1995 Cri LJ 3651). The case of Sukumaran Nair (supra) has been followed by this court in Criminal Revision No. 1682 of 1985, Hira Lal v. State of U.P. (decided on 3-3-2000) and in the case of Sita Ram v. U.P. State, (2001) 42 All Cri C (H) 6. Since more than 24 years have passed over when the offence was committed, it will not be just to send the revisionist in jail. The appropriate Government is empowered under Section 433(c) of the Code of Criminal Procedure to commute the sentence of rigorous imprisonment into that of fine.

8. Considering the facts and circumstances of the case the sentence of imprisonment of the revisionist is commuted to fine of Rs. 4000/- to be deposited by the revisionist in the trial court within three months from today. The above sum of Rs. 4000/- is in addition of the fine already imposed on the revisionist by the trial court. The trial Court will intimate the State Government the fact of deposition of fine along with copy of the receipt thereof and on deposit of fine aforesaid the State Government may pass appropriate order under Section 433(c) of the Code of Criminal Procedure.

9. In case revisionist accused fails to deposit the fine within the period aforesaid, he shall serve out the sentence imposed upon him.

10. The revision stands disposed of accordingly.

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