

Altaf Vs. the State of U.P.

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Court : Allahabad

Decided On : Apr-21-1999

Reported in : 2000CriLJ4979

Judge : M.C. Jain, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 7, 13(2), 16 and 20A; [Probation of Offenders Act, 1958](#); Code of Criminal Procedure (CrPC) - Sections 360

Appeal No. : Cri. Revn. No. 1378 of 1984

Appellant : Altaf

Respondent : The State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Rajesh Tandon and ;K.D. Tripathi, Advs.

Disposition : Revision dismissed

Judgement :

ORDER

M.C. Jain, J.

1. A sample of milk was collected by the Food Inspector on 28-12-1978 at 7,15 a.m. from the revisionist Altaf and after completion of all the formalities prescribed by law and rules, one of the parts of sample was sent to public analyst who found the sample to deficient in respect of milk fat to the extent of 25% and non-fatty solids to the extent of 36%, as per report dated 10-2-1979. After necessary sanction for prosecution, the Food Inspector filed complaint against the revisionist in the Court of Magistrate on 12-7-1979. On trial, the Magistrate concerned convicted the revisionist under. Section 7/16 of the Prevention of Food Adulteration Act (hereinafter referred to as the Act) and sentenced him to rigorous imprisonment for a period of six months and to pay a fine of Rs. 1000/-. He was to suffer further imprisonment for three months in case of default in payment of fine. Such judgment was passed by the Magistrate concerned on 30-4-1981. Aggrieved, the revisionist before this Court preferred Criminal Appeal No. 101 of 1981 which was decided by the Addl. Sessions Judge (Special Judge), Nainital on 2-7-1984. The appeal failed and conviction and sentence passed by the Magistrate came to be confirmed. Against the judgment of the Appellate Court passed in the said appeal On 2-7-1984, the accused Altaf preferred this criminal revision.

2. I have heard the learned counsel for the revisionist/accused and the learned A.G.A. representing the State respondent.

3. There are two principle arguments of the learned counsel for the revisionist. In the first instance, it has been urged that there was delay of seven months in sending the copy of the report of public analyst to the accused and because of such inordinate delay, there is violation of Section 13(2) of the Prevention of Food Adulteration Act and the accused /revisionist has been deprived of his valuable right to get another part of the sample analysed by the Central Food Laboratory. It has been pointed out that occurrence took place on 28-12-1978; the public analyst gave his report dated 10-2-1979; the complaint was filed on 12-7-1979 and the copy of the report, of public analyst was sent to the accused revisionist on 28-7-1978. Reliance in this regard has been placed from the side of revisionist on the following three rulings *Kaloo v. State of U.P.* 1996 (33) All Cri C 10, *J.P. Chaturvedi v. The State of U.P.* 1997 (34) All Cri C 444 and *S.P. Agrawal v. State*

of U.P. 1997 (33) All Cri C 513 : 1997 All LJ 2142.

4. On the other hand the argument of learned A.G.A. is that the accused/revisionist never applied to the Court below to get another part of the sample analysed by Central Food Laboratory and as such he cannot complain of any prejudice in this behalf on the premise of the alleged non-compliance of the provision of Section 13(2) of the Prevention of Food Adulteration Act.

5. On a careful consideration, I am of the opinion that none of the rulings relied upon by the learned counsel for the accused/revisionist comes to his aid under the facts and circumstances of the present case. In the first case of *Kaloo v. State of U.P.* 1996 (33) All Cri C 10, referred to above, the milk sample was collected on 25-7-1974 and on being sent to the public analyst was received by him on 30-7-1974. The complaint was filed on 8-11-1976 i.e. more than two years after the sample was analysed. Notice of the report of public analyst was sent to the accused on 4-4-1977 i.e. after three years of the taking of the sample. On the request of the accused second part of the sample was sent to the Central Food Laboratory, where it was received on 24-5-1979. It was analysed in that laboratory on 11-6-1979 i.e. five years after the collection of the sample. The contention in that case was that constituents of the sample after lapse of such a long period must have deteriorated. Thus, the delay involved was of four years eleven months and seventeen days which was found to be fatal to the prosecution case. Moreover, in that case there was vast difference in the report of the public analyst and Central Food Laboratory as regards non-fatty solids in the sample. The same was 4 % as per report of public analyst and 6.9% as per the finding of the Director, Central Food Laboratory. The situation in the present case is obviously different. There was no delay, what to say of inordinate delay, in sending the copy of the report of public analyst to the accused (which was sent on 28-7-1979). The occurrence itself had taken place seven months earlier on 28-12-1979. The sample, when analysed by public analyst, was found to be fit for analysis. That part, the accused, after receipt of the copy of report of public analyst, did not apply for analysis of another part of sample by the Central Food Laboratory.

6-7. Similarly, second case of J.P. Chaturvedi (1997 (34) All Cri C 444) cited by the revisionist's counsel would also be of no avail to the revisionist. That was a case of alleged adulteration in Vanaspati. There was long delay in analysis by the Central Food Laboratory and possibility of increase in the contents of Oleic acid on account of oxidation could not be ruled out and the applicant was not to be blamed for that. According to the report of public analyst of U.P. Government, the content of Oleic acid was 0.16 per cent but the sample did not contain Vitamin 'A'. According to the report of Central Food Laboratory, the sample contained Vitamin 'A' but it contained free fatty acid as Oleic acid to the extent of 0.67 per cent.

8. Third case of S.P. Agrawal v. State of U.P. 1997 All LJ 2142, referred to above, relied upon by the learned counsel for the revisionist was of alleged adulteration in Ice-cream and it was held that the same deteriorated within two months. Two samples of different variety of the Ice-cream were taken on 28-11-1981. One of the complaints was filed in the Court on 6-7-1982 and the other on 13-9-1983. Thus, in one case the prosecution was launched after seven months eight days of taking of the sample and in another case it was launched after 21½ months of the taking of sample and by that time the sample got deteriorated. After launching of the prosecution, the petitioner had applied for sending the sample to Central Food Laboratory, Calcutta for analysis. It was found that the petitioner had been deprived of his valuable right of getting the sample analysed by the Central Food Laboratory, because of delay in launching the prosecution.

9. The result is that none of the three rulings relied upon by the revisionist's counsel can help in support of his contention of violation of Section 13(2) of the Act. There was no delay on the part of the prosecution in providing to him the copy of the report of public analyst. Moreover, it may also be observed that he did not apply for getting analysed the second part of the sample by the Central Food Laboratory and as such no prejudice was caused to him. Reference in this regard may be made to the Ganga Bishun v. State of U.P. (1982) 1 FAC 195 (All) in which it has been held that if the report of public analyst is served on the accused after two years and the accused does not make any application for sending sample to the Director, Central Food Laboratory, no prejudice is caused to him. In the present case, the sample was fit for analysis when it was examined by the

public analyst as mentioned by him in his report dated 10-2-1979, a copy whereof was sent to the accused by registered post on 28-7-1979. It is crystal clear that no prejudice has been caused to him.

10. The second argument of the learned counsel for the revisionist is that after dismissal of the appeal by the Appellate Court on 2-7-1984, the revisionist remained in jail for about two weeks before being ordered to be released on bail on 16-7-1984. The learned counsel has made reference to two decisions of the Court rendered by Hon'ble R.K. Singh, J., namely, *Bachchi Lal v. State of U.P.* 1996 (33) All Cri C 251 and *Bhageloo v. State of U.P.* 1996 (33) All Cri C 567. It has been pointed out that those were also the cases of Prevention of Food Adulteration Act and in each of the two cases the sentence of imprisonment was converted into one of the period already undergone with certain amount of fine.

11. Learned A.G.A. has countered this argument by stating that where the statute provides for minimum punishment, there can be no question of punishing the guilty person of less than the minimum sentence of imprisonment' when the charge stands proved. This argument has substantial force. I wish to point that there is no discussion in any of two rulings relied upon by the learned counsel for the revisionist as to the provision contained in the Prevention of Food Adulteration Act regarding imposition of minimum imprisonment to guilty person. May be that the provision of imposition of minimum sentence of imprisonment contained in Prevention of Food Adulteration was not brought to the notice of Hon'ble R.K. Singh, J. and it escaped attention. Therefore, offence being proved against the revisionist to the hilt, it is not possible to let him off with punishment of imprisonment already undergone by him. In this approach, I am fortified by a recent decision of the Apex Court in the case of *Jagdish Prasad v. State of U.P.* 1998 (2) EFR 585 : 1999 All LJ 238 wherein it has been ruled that once the Offence is proved, the minimum sentence has to be imposed. It was also a case of Section 7/16 of the Prevention of Food Adulteration Act of adulteration in curd. It was submitted before the Apex Court that the offence had taken place in 1979 and the appellant's father, who was the owner of the shop, had died and, therefore, some leniency should be shown to him. This contention was repelled. Therefore, the argument is not acceptable that the revisionist be let off with the sentence of

imprisonment already undergone by him. It may also be pointed out that Section 20A of the Prevention of Food Adulteration Act even excludes the application of [Probation of Offenders Act, 1958](#) and Section 360 of the Cr.P.C. to a person convicted of an offence under this Act.

12. The net result is that the revision is devoid of substance. The conviction and sentence passed against the revisionist by the learned Magistrate, as upheld by the Appellate Court, is sustainable. The revision is liable to be dismissed.

13. The revision is, accordingly, dismissed. The revisionist is on bail. His bail is cancelled and sureties discharged. He shall surrender before the Court concerned for serving out the sentence awarded to him by the trial Court as affirmed by the Appellate Court and shall also be liable to pay a fine of Rs. 1,000/- imposed on him, recovery whereof was suspended during pendency of this revision.

14. The office shall send a copy of this judgment to the Court below for compliance and the record of the Lower Court shall also be returned.

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