

Ramesh Vs. State of U.P.

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Court : Allahabad

Decided On : Sep-02-2002

Reported in : 2002CriLJ4575

Judge : Onkareshwar Bhatt, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 7, 13(2) and 16; Code of Criminal Procedure (CrPC) , 1974 - Sections 433

Appeal No. : Criminal Revn. No. 639 of 1986

Appellant : Ramesh

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Ravindra Singh, Adv.

Judgement :

ORDER

Onkareshwar Bhatt, J.

1. This revision is directed against the judgment and order dated 17-3-1986 passed by the Special/Additional Sessions Judge, Ghaziabad in Criminal Appeal No. 196 of 1985. By the impugned order conviction and sentence of the revisionist

under Sections 7/16, Prevention of Food Adulteration Act (hereinafter called the Act) has been maintained. The revisionist has been sentenced to undergo six months rigorous imprisonment and to pay a fine of Rs. 1000/-and in default of payment of fine to undergo further simple imprisonment for three months. The order of conviction and sentence has been passed by the then Judicial Magistrate, Ghaziabad on 4-10-1985 in case No. 1921 of 1983.

2. Heard Sri Ravindra Singh, learned counsel for the revisionist and the learned A.G.A. for the State.

3. According to the prosecution case on 23-4-1982 Food Inspector, Sri J. P. Sharma, checked the milk carried by the revisionist in two drums for sale. According to the revisionist it was milk of buffalo. After observing all the formalities the Food Inspector purchased some milk from the revisionist which on analysis was found adulterated.

4. The report of the public analyst is of 26-5-1982. The prosecution case was instituted on 5-5-1983 in the Court. It has been contended that after receipt of the report of the Public Analyst, dated 26-5-1982 the case was instituted on 5-5-1993 and thus there is delay of about 11 months when the prosecution was launched. The contention is that the revisionist was deprived of his right of sending or challenging the report, of the Public Analyst the Director of Central Food Laboratory. Reliance has been placed on the case of Satrughna Behera v. Puri Municipality reported in 1968 Cri LJ 123. Further reliance has been placed on the case of Ram Saiwan Singh v. State of U.P. reported in 2000 (41) All Cri C 118.

5. After institution of the case against the revisionist on 5-5-1983 registered notices were sent to the revisionist on 6-5-' 1983, 9-5-1983 and 13-5-1983 which were not served on the revisionist. However, the letters contained correct address of the revisionist. The Courts below have rightly found that there was sufficient compliance of provisions of the Act of sending the notice along with the report of Public Analyst to the revisionist. It has also been found that on 6-7-1983, when the revisionist appeared in Court, he did not move any application to get the sample analysed by Central Food Laboratory.

6. The Supreme Court in the case of *Ajitprasad Ramkishan Singh v. State of Maharashtra* reported in AIR 1972 SC 1631 1972 Cri LJ 1026 has observed that 'according to Section 13(2) of the Prevention of Food Adulteration Act the appellant, should have made an application if he wanted part of the sample available with him to be sent to the Director for analysis. If in pursuance of the application part of the sample was sent to the Director and he had reported that the part of the sample was incapable of analysis for the reason that it was decomposed, the revisionist could perhaps have contended that he was deprived of his right to have the sample analysed by the Director on account of the laches of the complainant and that he should be acquitted.'

7. In the present case there is nothing on record to show that the revisionist applied to the Court for sending the sample to the Central Food Laboratory.

8. The Supreme Court again in the case of *Tulsiram v. State of M.P.* reported in 1985 (22) All Cri C 28 : AIR 1985 SC 299, wherein it has been held that :

The real question is, was the Public Analyst's report sent to the accused sufficiently early to enable him to properly defend himself by giving him an opportunity at the outset to apply to the Court to send one of the samples to the Central Food Laboratory for analysis. If after receiving the Public Analyst's report he never sought to apply to the Court to have the sample sent to the Central Food Laboratory, as in the present case, he may not be heard to complain of the delay in the receipt of the report by him, unless, of course, he is able to establish some other prejudice.

9. According to the ratio of *Ajit Prasad* AIR 1972 SC 1631 and *Tulsiram's* case AIR 1985 SC 299 (*supra*) the revisionist will not be heard to complain about the delay because he never applied to the Court for sending the sample to the Central Food Laboratory for analysis. Therefore, this submission has no force.

10. It has also been contended that sample in this case was taken in the year 1982 and more than 20 years have elapsed since then. It is contended by the revisionist that it is appropriate case for commutation of sentence.

11. Reliance has been placed on the case of N. Sukumaran Nair v. Food Inspector, Mavelikara reported in (1997) 9 SCC 101 : 1995 AIR SCW 3229. 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 20 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.

12. Considering the facts and circumstances of the case the sentence of imprisonment of the revisionist is commuted to fine of Rs. 5000/- to be deposited by the revisionist in the trial Court within two months from today. The above sum of Rs. 5000/- 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.

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

14. The revision stands disposed of accordingly.

15. Let a copy of this judgment be sent to the Chief Judicial Magistrate, Ghaziabad for follow up action.