Dev Raj Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Feb-18-1991

Reported in : 1991CriLJ2439

Judge : S.K. Chawla, J.

Acts : Prevention of Food Adulteration Act, 1954 - Sections 7(1), 11(1), 13(2B), 13(2E), 16 and 16(1); ;Prevention of Food Adulteration Rules, 1955

Appeal No. : Criminal Revn. No. 666 of 1984

Appellant : Dev Raj

Respondent : State of Madhya Pradesh

Advocate for Def. : P.C. Paliwal, Govt. Adv.

Advocate for Pet/Ap. : Fakhruddin, Adv.

Judgement :
ORDER

S.K. Chawla, J.

1. By this revision the accused challenges his conviction and sentence under Section 7(1) read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954, recorded by the trial Court and affirmed by the appellate Court.

2. The prosecution case was that on 11-7-81 at about 7.45 a.m. applicant Devraj was carrying milk on a cycle contained in 2 cans, when Food Inspector Phiroz Khan (P.W. 1) stopped him near the Rest House at Khandwa. The Food Inspector purchased sample of milk from him measuring 660 ml. The sample was put into 3 glass bottles after adding prescribed quantity of formalin in each. The bottles were duly packed and sealed. One of the bottle was sent by the Food Inspector to Public Analyst, Bhopal for analysis. The Public Analyst vide his report, Ex. P-10, reported that the sample milk contained Fat 2.5% and SHP 5%. Milk was said to be buffalo milk. It was below standard and hence was adulterated. Both the Courts below accepted the prosecution story. The applicant was convicted under Section 7(1) read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act by the two Courts below. The sentence awarded by the trial Court was R. I. for one year and a fine of Rs. 1000/-, in default, R. I. for 6 months. The appellate Court reduced the sentence of imprisonment to 6 months and while maintaining the fine of Rs. 1000/- reduced the sentence in default to R. I. for 3 months.

3. The first point urged by learned counsel for the applicant was that the Food Inspector after sending first part of the sample for analysis had, for unexplained reason, also sent second part for analysis. In such circumstances there was contravention of the provisions of Sub-section (2-E) of Section 13 of the Act, under which second part of sample could have been sent only by the Local (Health) Authority. The report of Public Analyst (Ex. P-10), it was urged, related to the part subsequently sent while the previous report of Public Analyst relating to the first part was suppressed by the prosecution. As such, the conviction of the applicant based on the report of Public Analyst (Ex. P-10) was bad.

4. There is no substance in the above argument. The entire argument was founded on the fact that it is written in the report of Public Analyst, Ex. P-10, that sample of '2nd part' was received for analysis. It was argued merely on this basis that the Food Inspector had earlier sent to the Public Analyst part marked 1st part and thereafter for some inexplicable reason had sent part marked 2nd part for analysis. I find that the provision of Section 11(1)(e)(i) merely requires that one of the parts of the sample has to be sent by the Food Inspector to Public Analyst for analysis. That provision does not require that the part so sent should be one

marked 1st part. Whatever be the mark put on the parts all that the provision requires is that one of the three parts should be sent by the Food Inspector to Public Analyst for analysis. It would be absolutely wrong to infer from the mere fact that because part marked '2nd part' was sent for analysis, the part marked 1st part must have also been earlier sent for analysis. It was not elicited even in the evidence of Food Inspector Phiroz Khan (P.W. 1) that he had first sent one of the parts of the sample for analysis and thereafter another part for analysis. The record proved in the case also shows that this was not even possible. There is an endorsement on memorandum, Ext. P-9, on behalf of Local (Health) Authority that it had received from the Food Inspector 2 sealed bottles, i.e., two parts of the sample and two copies of that memorandum. In that situation, after one part of the sample had been sent to the Public Analyst, another part of the sample could have been, and as contemplated by the provision of Section 13(2-B) should have been, sent only by the Local (Health) Authority. The Food Inspector having already sent one part to the Public Analyst and having parted with two parts of the sample to Local (Health) Authority, had nothing left with him, arid could not have repeated the performances by trying to send another part of the sample on a second occasion.

5. The appellate Court, i.e., Additional Sessions Judge Khandwa, assumed without any basis that the Food Inspector had occasion to send parts of the sample twice to the Public Analyst. It misled itself merely because '2nd part' is written in the report of Public Analyst as the one received by him from the Food Inspector for analysis. The appellate Court reasoned that serial No. of the sample, which was No. 23/81, appeared in the memorandum sending the sample for analysis, Ex. P-9, as also in the report of analysis, Ex. P-10, given by the Public Analyst, and, therefore, the same sample was analysed which was taken by the Food Inspector from the applicant. This was not even questioned and was also not in doubt. What was sought to be urged, but was absolutely without any basis, was the argument that the Food Inspector had sent parts of the sample twice for analysis. This, as already explained based merely on the circumstances that '2nd part' is written in the report of analysis, Ex. P-10, as the part received for analysis, cannot be accepted. There was nothing, absolutely nothing, to show that the Food Inspector had earlier sent part marked '1st part' for analysis. Food Inspector Shri Khan (P.W.

1) did not say so in his evidence. The fact that he had parted with two parts of the sample to Local (Health) Authority also made it impossible for him to have repeated the exercise second time. The first point taken by learned counsel for the applicant is, therefore, rejected.

6. It was next urged that while the Food Inspector described the sample as buffalo milk, the report of Public Analyst, Ex. P-10, described the sample received as that of buffalo-cow milk. The identity of the sample being not in doubt, it is obvious that the description of the sample as 'Buffalo-Cow milk' in Ex. P-10 was a misdescription. This caused no prejudice to the accused. The standard of mixture of buffalo and cow milk is even lower than that of buffalo milk and that of cow milk is still lower. The sample taken from the accused did not even attain the standard prescribed for cow milk. The standard for cow milk is Fat 3.5% and SNP 8.5% vide Item No. A.11.01.11 in Appendix B of Prevention of Food Adulteration Rules, 1955; while the sample taken from the accused attained the standard of Fat 2.5% and SNP 5%. The sample was thus adulterated even taking the lowest standard into consideration.

7. In final submission, the learned counsel for the applicant prayed for leniency being shown to the applicant, particularly because the crime is very old one said to have been committed at least 9 years back and also because the applicant who was aged about 50 years at that time, is now aged about 60 years, sending of whom back to prison will be gratuitous cruelty and also serve no useful purpose. I find that Section 16 of the Prevention of Food Adulteration Act was recasted by Act No. 34 of 1976 which came into force on 1-4-1976. The provision of the recasted section applies to offences committed after 1-4-76 when the recasting was done. The scheme of the recasted section is that with respect to offences falling under Section 16(1), a minimum sentence of 6 months and a fine of Rs. 1000/- is prescribed. If special and adequate reasons are mentioned and the offence falls within the first proviso to Section 16(1), like the offence under consideration in this case, then a lesser minimums sentence of 3 months and a fine of Rs. 500/- is prescribed. But in no case, meaning thereby that even when adequate and special reasons exist, any sentence lesser than the lower minimum sentence, can be given. In other words sentence below 3 months imprisonment

and a fine of Rs. 500/- cannot be given in any case.

8. Learned counsel for the applicants cited Braham Dass v. State of Himachal Pradesh, AIR 1988 SC 1789 : (1988 Cri LJ 1816) and Sureshchand v. State of Haryana, 1985 FAJ 388 (Punj and Bar) to support his contention that sentence even lesser than the lower minimum may be visited upon an accused. In neither of these decisions the question about quantum of sentence that may be lawfully passed for offences falling under recasted provisions of Section 16(1) was either raised or decided. A precedent is binding authority only on the question raised and decided by it. Reference may be made in this connection to the case of Rajpur Rudameha v. State of Gujarat, AIR 1980 SC 1707 : (1986 Cri LJ 1246). Unless the Court applied its mind and analysed a particular provision of law, mere general observations in the ruling cannot be applied when occasion for interpreting that provision arises. See Ravel and Co. v. K.G. Ramchandran, AIR 1974 SC 818. The placing of reliance on the two decisions by learned counsel for the applicant was, therefore, of no avail.

9. In the present case, there exist adequate and special reasons to take a lenient view. The crime was committed, as already indicated, about 9 years back and the applicant is also a pretty old man. Yet, no sentence lesser than the lower minimum of 3 months imprisonment and a fine of Rs. 500/- can be imposed under the law.

10. In view of the foregoing discussion, the revision is partly allowed. The conviction of the applicant under Section 7(1) read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act is maintained. The sentence is however reduced to R. I. for 3 months and a fine of Rs. 500/ -, in default to further R. I. for one month. With this modification in the sentence, the revision is dismissed.