

Janpal Singh Vs. State of U.P.

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Court : Uttaranchal

Decided On : Sep-23-2005

Reported in : 2006FAJ112

Judge : B.C. Kandpal, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 7, 10(7), 13(2), 16 and 20A; Code of Criminal Procedure (CrPC) - Sections 244

Appeal No. : Criminal Revision No. 680 of 2001

Appellant : Janpal Singh

Respondent : State of U.P.

Advocate for Def. : Sudhir Chaudhary, A.G.A.

Advocate for Pet/Ap. : A.S. Gill, Adv.

Disposition : Revision dismissed

Judgement :

B.C. Kandpal, J.

1. This criminal revision arises out against the judgment and order dated 07-01-1985 passed by Additional Sessions Judge (Special Judge), Nainital in Criminal Appeal No. 208 of 1982 thereby upholding the conviction and sentence of 6 (six)

months rigorous imprisonment and a fine of Rs. 1,000/-and in default of payment of fine further rigorous imprisonment for a period of three months as recorded by the Judicial Magistrate, Nainital vide order dated 07-09-1982 in Criminal Case No. 494 of 1981 under Section 7/16 Prevention of Food Adulteration Act.

2. Brief facts giving rise to this revision are that on 28-02-1978 Food Inspector - Sri S.S. Chilwal stopped the revisionist at about 08:15 a.m. on the Nainital Road crossing Rudfapur. The latter was carrying milk for sale. The Food Inspector served the revisionist with a notice in Form No. VI of his intention to take a sample and then purchased a sample of 660 ml. of milk after paying its price. The sample was sealed in a separate clean bottle. The memorandum was also prepared and thereafter one part of the sample along with the memorandum was sent to the public analyst for analysis. The remaining two parts were deposited with the Local Health Authority. After receipt of the report of the public analyst it revealed that the milk fat was found to be 5.7% and non-fatty solids 7%. Thus, the milk fat was deficient by 5% and non-fatty solids by 22%.

3. The Food Inspector obtained the sanction for prosecution and thereafter filed a complaint before the Magistrate. Food Inspector was examined before the learned trial court under Section 244 Cr.P.C. and on enquiry, the revisionist denied the allegations. Thereafter, the charge under Section 7/16 Prevention of Food Adulteration Act was framed to which the revisionist pleaded not guilty.

4. The prosecution examined Sri S.S. Chilwal (RW.1)-Food Inspector, Sri C.D. Bhatt (RW.2)-Clerk in the office of Local Health Authority and Sri Durga Singh (RW.3) in whose presence the sample was taken. The revisionist did not adduce any evidence in his defence.

5. The trial court relying upon the prosecution evidence and after hearing counsel for both the parties, convicted the revisionist and passed the aforementioned sentence vide judgment and order dated 07-09-1982.

6. Against the aforesaid judgment, an appeal was preferred which was also dismissed vide judgment and order dated-07-01-1985 and the conviction and sentence recorded by the trial court was maintained.

7. Feeling aggrieved by the impugned judgment passed by the appellate court, this revision has been preferred before the Allahabad High Court, which has been transferred to this Court after creation of new State, for disposal.

8. I have heard learned Counsel for the revisionist as well as learned A.G.A. for the State and perused the record.

9. The first contention which has been raised by the learned Counsel for the revisionist is that the mandatory provision of Section 13(2) of the Act has not been complied with, because the letter of intimation along with copy of report of public analyst was not sent on correct address of the revisionist. Hence, he was deprived of his statutory right to get the other part of the sample analyzed by the Director Central Food Laboratory.

10. I do not agree with this contention. Sri C.D. Bhatt (RW.2) was examined before the trial court and he has stated that the copy of the report of the public analyst and the letter of intimation Ex.Ka.7 was sent to the appellant at his address and the perusal of the letter of intimation Ex.Ka.7 shows that the complete address of the accused/revisionist was mentioned therein. Mere fact that in the postal receipt, the clerk of the post-office did not write the complete address would not mean that complete address was also not written on the envelope, which contained the letter of intimation.

11. It is important to mention here that Sri C.D. Bhatt (P.W.2) was not cross-examined on this point by the accused/revisionist to show that the registered envelope was not sent at the correct address of the accused.

12. I am therefore, of the view that the prosecution has clearly established that the provision of Section 13(2) of the Act had been complied with.

13. The next point which was argued by the learned Counsel for the revisionist is that Food Inspector did not comply with the provision of Section 10(7) of the Act as he did not procure any independent witness at the time of taking sample.

14. Again I do not find any force in this argument. Record reveals that Sri S.S. Chilwal(RW. 1) - Food Inspector as well as Sri Durga Singh (RW.3) have

categorically stated in their deposition that before taking sample, the Food Inspector made, an attempt to procure independent public witnesses but the persons present at the spot refused to be a witness of the transaction. It is therefore, established that the Food Inspector made efforts to procure independent witnesses before taking the sample. Hence, in case, if the independent witnesses refused to become a witness of the transaction, the provisions of Section 10(7) of the Act is stood fully complied with and the proceedings on this count could not be vitiated.

15. Learned counsel for the revisionist has further argued that the revisionist being minor, deserve the benefit of Section 20A(a) of the Prevention of Food Adulteration Act. In this regard, I may mention that the revisionist has not produced any of the documents before this Court by which I may come to the conclusion that the revisionist was minor on the date of the occurrence. The revisionist has neither taken this plea before the trial court nor before the appellate court nor has placed any iota of evidence at the revisional stage in this regard. Therefore, no benefit on this count can be accorded to the revisionist at this stage.

16. On the basis of the assessment of aforesaid position, I do not find any force in this revision. The revision is accordingly dismissed.

17. The impugned judgment and order dated 07-01-1985 passed by Additional Sessions Judge (Special Judge), Nainital in Criminal Appeal No. 208 of 1982 thereby upholding the conviction and sentence of 6 (six) months rigorous imprisonment and a fine of Rs. 1,000/- and in default of payment of fine further rigorous imprisonment for a period of three months is hereby confirmed.

18. The interim stay order dated 11-10-1985 passed by this Court stands vacated.