

Sudeep Kumar Dutta Vs. State of Orissa

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Court : Orissa

Decided On : Jan-17-1994

Reported in : 1994(I)OLR190

Judge : R.K. Patra, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 16(1) and 20

Appeal No. : Criminal Revision No. 216 of 1992

Appellant : Sudeep Kumar Dutta

Respondent : State of Orissa

Advocate for Def. : Sisir Das, Addl. Govt. Adv.

Advocate for Pet/Ap. : P.K. Mishra, K.C. Pati, B.K. Nayak, B. Sahoo, R.N. Dash, A.K. Misra and B.C. Panda

Disposition : Revision allowed

Judgement :

R.K. Patra, J.

1. On the allegation that the petitioner had exposed adulterated buffalo milk for sale for human consumption, he was prosecuted Under Section 16(1)(a)(i) of the [Prevention of Food Adulteration Act, 1954](#) (in short 'the Act') in the Court of the

Sub-divisional Judicial Magistrate, Panposh. The Trying Magistrate held that the petitioner had kept buffalo milk in his hotel for preparation of food articles which were exposed for sale for human consumption in the hotel and accordingly convicted and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs, 1000/-, against the said conviction and sentence, appeal was preferred by the petitioner which ended in dismissal. In this revision, the petitioner seeks to assail the aforesaid conviction and sentence.

2. Prosecution case is that on 12-9-1986 at 10 a. m, the Food Inspector of N. A. C. (C. T. & S, T.), Rourkela inspected the hotel in the name and style of 'Dutta Hotel' of the petitioner at Diesel Colony, Bondhomunda. The petitioner being the proprietor of the hotel was present at that time. The Food Inspector suspected adulteration in Buffale milk, chilly powder and besan which were stored for preparation of food articles like sweets, seo, chatni etc. He served statutory notice on the petitioner and after disclosing his identity, purchased 750 grams of buffalo milk, necessary formalities were complied with in the matter and sample was duly sent to Public Analyst for examination. The Public Analyst reported that the sample of the buffalo milk was adulterated. After obtaining the sanction, the petitioner was prosecuted which has ended in his conviction and sentence as aforesaid.

3. The petitioner denied the charge in its entirety.

4. On behalf of the prosecution, two witnesses were examined. PW 1 was the Food Inspector and PW 2 was the Sanitary Inspector.

5. Shri P.K. Mishra, learned counsel for the petitioner although has raised several contentions in assailing the conviction it may not be necessary to note them here as the matter can be disposed of on the first submission which is that consent granted by the authority Under Section 20 of the Act for prosecuting the petitioner is vitiated as there was total non-application of mind and the conviction is illegal and bad in law.

6. In order to appreciate this contention, it is necessary to refer to the relevant portion of the prosecution report submitted by PW 1 which reads as follows :

'On 12-9-1986 at about 10 A. M. after disclosing indentity to the accused-proprietor Sri Sudip Kumar Dutta I inspected his hotel styled as 'Dutta Hotel' situated in Diesel Colony, Bandhamunda. I checked and found that the accused-proprietor Sri Sudip Kumar Dutta exposed sweets, Seo, Chatni etc., for sale for human consumption in his hotel and he stored edible oils, besan, turmeric powder and chillies powder and buffalo milk etc, in his hotel to manufacture therefrom sweets, seo, and chatni etc, for sale for human consumption. Out of the above food articlcs, I suspected buffalo milk, chillies powder and besan to have been adulterated.....'

The aforesaid clearly indicates that the, buffalo milk in question was kept by the petitionej for the purpose of preparing therefrom sweetmeat which was meant for human consumption. That is also his case in his testimony as PW 1. He has stated that 'the accused stored buffalo milk, chilly powder and besan to prepare the above food articles.'

7. The moot question is what materials were placed before the authoiity for obtaining consent 'under Section 20 of the Act. Ext. 8 is the consent/sanction order which reads as follows :

'I, Dr. C. C, Behera, Chief District Medical Officer, Sundargarh and prosecution Sanctioning authority Under Section 20 of P. F. A. Act, 1954 have gone through the relevant documents and Prosecution report submitted by Sri Mohapatra, Food Inspector, N. A. C (CT & ST) Rourkela. I applied my mind and fully satisfied. I do hereby give written consent to prosecute Sri Sudip Kumar Datta, Proprietor of Datta Hotel, Diesel Colony, At/PO, Bandhamunda, Dist. Sundargarh under Sec. 16(1)(a)(i) in contravention of Section 7(i) of P. F. A. Act, 1954 and Rules there- under for storing and exposing adulterated Buffalo Milk for sale for human consumption.' (emphasis laid)

From the aforesaid it is evident that the authority granted consent to prosecute the petitioner for having stored and exposed adulterated buffalo milk for sale for human consumption but the prosecution report on the other had alleged that the petitioner had stored and exposed the buffalo milk in question to manufacture there- from sweet meat. It is not the case of the prosecution that the petitioner had

stored and exposed buffalo milk for sale as such for human consumption. It is well settled that the provisions relating to sanction (consent) under the Act should be observed with complete strictness. Ext. 8. shows that the concerned authority having 'gone through the relevant documents and prosecution report and on being satisfied, accorded consent for prosecution As the facts constituting the offence do not appear on the face of Ext. 8 it is for the prosecution to show by leading evidence that facts relating to storing and exposing of adulterated buffalo milk for sale as such were also placed before the authority. PW 1 has proved Ext. 8. In his evidence, he does not say that besides the prosecution report any other material was placed before the sanctioning authority to enable him to form the requisite opinion. In absence of any such evidence, it has to be held that there was no material available before the concerned authority to accord consent for prosecution of the petitioner 'for storing and exposing adulterated buffalo milk for sale for human consumption.' Prosecution report alleges that buffalo milk was stored to manufacture therefrom sweets for sale for human consumption. Storing for sale of buffalo milk as such for human consumption is different- from storing buffalo milk to manufacture therefrom sweets for sale. This is a case in which there was no material before the authority to accord consent for prosecution for the offence of storing and exposing adulterated buffalo milk for sale for human consumption. In view of this, the consent is invalid in law. Valid consent being condition precedent to the prosecution Under Section 28 of the Act and in view of my findings recorded above, the conviction of the petitioner cannot be upheld.

8. In the result, the conviction and sentence of the petitioner are hereby set aside. He is acquitted of the charge.

Criminal revision is accordingly allowed.