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Court : Orissa

Decided On : May-29-1972

Reported in : 1973CriLJ361

Judge : K.B. Panda, J.

Appellant : Surendranath Pradhan

Respondent : The State

Judgement :

ORDER

K.B. Panda, J.

1. The petitioner has been convicted under Section 16(1)(a) of the Prevention of Food Adulteration Act (Act 37 of 1954). hereinafter referred to as the Act, and sentenced to undergo R.I. for 4 months and to pay a fine of Rs. 301/-, or, in default, to undergo R.I. for a further period of one month, and the same has been confirmed in first appeal.

2. Facts of the case may be stated in brief; Petitioner runs a grocery shop at Mendhasal in P.S. Chandka, Dist, Puri. On 4.1.1968 the Food Inspector (P.W. 1) after giving due notice (Ex. 1) to the petitioner purchased 375 gms, of mustard oil exposed for sale, from a tin as the former suspected the same to be adulterated. The Price of the oil Rs. 1.87 was paid and acknowledged. After observing due

formalities, sample of the said mustard oil was sent in a bottle to the Public Analyst who as per his report (Ex. 4) found the oil to be adulterated. Accordingly prosecution was launched against the petitioner who was convicted and sentenced as aforesaid.

3. The plea of the petitioner was that the oil in question was not meant for human consumption and was kept at one corner in the backside of the shop in an earthen pot for burning purposes. It was further suggested that a false case has been foisted against him at the instance of one powerful congress leader (Raghunath Badjena) as the petitioner himself belongs to a rival political group.

4. On his conviction, at first the appeal was heard by Shri A.P. Guru, Addl. Sessions Judge, Puri, who remanded the case as Ex.1 which was the notice to the petitioner, had not been brought to the notice of the petitioner in his examination under Section Cr.P.C. After remand the petitioner examined two more defence witnesses, but the same conviction and sentence stood.

On the second occasion, the first appeal was heard by Shri A.K. Patra, Addl. Sessions Judge, Puri, who also confirmed the conviction and sentence. Hence this criminal revision.

5. In the memorandum of revision, twenty grounds have been taken, most of which are either irrelevant or vague. The concurrent finding of fact of the Courts below is against the petitioner. They held that samples were taken from the mustard oil tin exposed for sale for human consumption. The notice (Ex. 1) given to the petitioner is very clear on the point and the petitioner himself has signed the notice when served on him. In this background, I see nothing perverse in the finding of the Courts below so as to displace the same. The plea of the petitioner has been rightly rejected as an after-thought.

6. The only point urged on behalf of the petitioner by Mr. Panda, the learned Counsel for the petitioner, was that the prosecution had failed to discharge the onus of proving that the oil in question was kept for human consumption. The positive evidence being that the Inspector suspected the mustard oil for sale to be adulterated and thereafter gave proper notice and took samples from the tin on

payment of price, leaves no scope for any such stereotyped contention. Here the Food Inspector was not purchasing burning oil as contended by the petitioner. Nor had he paid the price of Rs. 1.87 for purchasing 'burning oil'. The authorities cited, viz., the case of Haribans Singh v. Health Officer Baripada Municipality 1971 (2) Cut WR 126 and the case of K. Bhim Raju v. The State 38 (1972) Cut LT 396 : 1972 Cri LJ 1405, on behalf of the petitioner do not come to his rescue. In short, I find nothing in favour of the petitioner to interfere and as such the revision is dismissed.

7. But what weighed in my consideration most is the sentence inflicted by the Court below. In case of a conviction under Section 16(1)(a) of the Act, the penalty to be imposed shall not be less than six months but which may extend to six years and with fine which shall not be less than one thousand rupees.

Unfortunately Sri P.S. Panda, the S.D.M. Bhubaneswar, who twice tried and convicted the petitioner (2nd time on remand) and the Addl. Sessions Judge Sri A.P. Guru and thereafter Sri A.K. Patra did not care to notice it. It is under certain circumstance that the Court may 'for any adequate and special reason to be mentioned in the judgment impose a sentence of imprisonment for a term of less than six months.' Obviously there is not a word in any of the judgments why this lesser sentence was awarded far less 'any adequate and special reasons'.

Thus a question arises if enhancement notice should be given. But in view of the fact that the petitioner has already undergone the troubles of this protracted criminal proceeding against him for the last four years and further in view of the fact that he appears to be a first offender there being no evidence to the contrary, I refrain from giving enhancement notice.

8. Before leaving this judgment, I must say that law has been made purposely very rigorous since food adulteration is an anti-social act. If let loose, it would eat into the very vitals of the nation. But more often than not the big wholesalers dealing in thousands of tins and bags in Malgodowns, from whom the petty dealers get the articles, are not pursued, but the small fries in the interior. Adulteration, if any, is done by these whole-salers who suck the blood of the nation but escape while these petty dealers become the victims. I do not mean to suggest thereby that

there might not be cases where small dealers also indulge in these anti-social acts at their level. But their number is much less. This aspect weighed in the minds of high judicial authorities and on their observation the Legislature introduced Section 14 by way of amendment as per Act No. 49 of 1964 which was to be given effect to from 1.3.1965. It provides that 'no manufacturers, distributors and dealers of any article of food shall sell such article to any vendor unless he gives a warranty in writing in the prescribed form about the nature and quality of such article to the vendor.' When the vendor is faced with any difficulty, he can under Section 14A or even otherwise disclose the name of the vendee and produce the warranty to establish his innocence. As it appears, the general public are not aware of this wholesome measure with the result that no warranty is given or demanded. This would go a great way to protect small dealers. Hardly any advantage is taken of it and they go on in their hackneyed got-up defence which is unacceptable.

9. In this particular case, I could have reduced the sentence by giving adequate reasons; but the plea taken by the petitioner gives no scope for the same. Justice, as the saying goes, is blind. The petitioner, even if innocent, forfeits the right to any sympathetic consideration in view of the defence taken. As such, I uphold the conviction and sentence.