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Court : Orissa

Decided On : Nov-04-1985

Reported in : 1985(II)OLR559

Judge : J.K. Mohanty, J.

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

Appeal No. : Criminal Revision No. 534 of 1981

Appellant : Govinda Panda

Respondent : State of Orissa

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : B. Panda and G. Tripathy

Disposition : Petition dismissed

Judgement :

J.K. Mohanty, J.

1. This revision has been filed against the order dated 23. 10. 1981 passed by the Additional District and Sessions Judge, Ganjam-Boudh, Berhampur, by which he dismissed the appeal (though modified the sentence) preferred by the petitioner against the order of his conviction under Section 16(1)(a)(i) of the Prevention of

Food Adulteration Act (for short 'the Act') and sentence of rigorous imprisonment for one year and fine of Rs. 1,000/- in default to undergo rigorous imprisonment for three months, passed by the Judicial Magistrate First Class Digapahandi.

2. Prosecution case is that at about 8, 30 a. m. on 21. 4. 1978 the Food Inspector (P. W. 1) along with his Peon (P. W. 2) and a Sanitary Inspector (P. W. 3) visited the shop of the accused-petitioner in village Dabara where the petitioner was selling dal, spices, oil, etc. P.W.1 disclosed his identity to the petitioner and inspected the food articles. He suspected the til oil and turmeric powder to be adulterated. So he purchased 375 grams of til oil and 450 grams of turmeric powder after paying the price. He divided each of the samples into three equal parts. Thereafter he kept each part in a clean and dry bottle and sealed and labelled the same. He asked some of the outsiders who were present there to be witnesses to the taking of samples etc., but they did not oblige and left the place. The samples of til oil and turmeric powder are sent to the Public Analyst for examination. The Public Analyst found the samples to be adulterated. After receipt of the reports of the Public Analyst, prosecution was launched against the petitioner after complying with all formalities.

3. The plan of the petitioner was that though he was a dealer in grocery articles and had obtained licence for the same, he had discontinued his business in grocery articles since 1969 and had closed his shop due to misunderstanding with his partners. On the date of visit of P. W. 1 he had no shop and the articles had not been exposed for sale. The articles from which samples were taken had been kept for his domestic consumption. His further plea was that this case has been started on mere suspicion that he still continued to be a dealer and was the owner of the grocery shop in question.

4. Prosecution examined three witnesses, P. W. 1 is the Food Inspector, P. W. 2 is his Peon and P. W. 3 is a Sanitary Inspector. The trial Court, after considering the evidence on record, held that the petitioner was the owner of the shop and was selling the food articles which were kept for human consumption. Basing on the report of the Public Analyst that the samples were adulterated, the trial Court held the petitioner guilty and convicted and sentenced him as mentioned above. The

appeal preferred by the petitioner before the Additional Sessions Judge, Berhampur, was dismissed. However, the sentence was reduced to rigorous imprisonment for one month and fine of Rs. 500.

5. Mr. G. Tripathy, learned counsel appearing for the petitioner, raised the following points:

(i) The increase in the free fatty acid in the til oil was due to natural causes and the delay in analysing the sample.

(ii) Due to nonmention of the date of analysis of the samples in the reports (Exts. 5 and 6), the reports have lost their evidentiary value and conviction cannot be based on such reports.

(iii) As the turmeric powder was not properly mixed, room for doubt exists that while the article was exposed for sale, some dust must have got in to the upper layer. So the petitioner is entitled to the benefit of doubt.

(iv) No chance was given to the accused while he was examined under Section 313 Cr. P. C. to explain the nature of adulteration which has caused a great prejudice to him and the benefit should be given to him.

(v) No outsiders were called to be present at the time when the samples were collected ; thus there is clear violation of Section 10(7) of the Act.

(vi) The samples were not taken in clean and dry bottles; as such there is non-compliance of Rule 14 of the Prevention of Food Adulteration Rule and the petitioner is entitled to its benefit.

6. In support of his first contention, learned counsel relied on a decision reported in 1985 (I) OLR 313 (State of Orissa v. S. Dandasi Patro) and submitted that due to the delay in analysing the sample of the til oil, there might have been increase in the percentage of free fatty acid as celiac acid. In this case the sample was taken on 21. 4.1978. The sample was received by the Public Analyst on 24. 4. 1978. The report (Ext. 6) is dated 6. 6. 1978. There is no mention in Ext. 5 as to when the sample was analysed. In the absence of any mention about the date of analysis of

the sample, the date on which the report has been signed, i.e. 6. 6. 1978 may be taken as the date of analysis. In this view of the matter, there is delay of more than one month in analysing the sample. According to serial A. 17.11 of Appendix-B of the Act, free fatty acid as celiac acid in the til oil will not be more than 3%. But in this case the free fatty acid as celiac acid was found to be 10.6% i. e. more than three hundred percent of the prescribed standard. But in the reported case the excess was found to be 2. 52% i. e. not more than 100% and it was held :

'It cannot be said that the delay in analysing the sample had no relation to the excess percentage of fatty content in the oil...'

In this case the excess percentage of fatty content is much higher which cannot be said to be within the permissible range of variation.

7. The next point raised is regarding the nonmention of the date of analysis of the samples in the reports. Reliance has been placed on a decision reported in 1983 F. A. J. 283 (The State of Maharashtra v. Gangadhar Kishan Paitwar). In that case the report had not contained the date of analysis and the Public Analyst who was examined, was unable to state the actual date. But in this case the Public Analyst has not been examined .No doubt, there is no clear mention about the date of analysis in the reports (Ext. 5 til oil, and Ext. 6 turmeric powder). But the reports have been signed on 6. 6. 1978. In the absence of any mention about the specific date of analysis, it can be taken that the date on which the reports have been signed is the date of examination of the samples.

8. Learned counsel for the petitioner urged that before taking the sample, the contents of turmeric powder were not properly mixed up. So the sample is not the true representative of the contents of turmeric powder and room for doubt exists that while the article was exposed for sale, some dust might have got into the upper layer and the petitioner is entitled to the benefit of such doubt. He relied on a decision reported in 1933 F. A. J. 189 (Charanji Lai v. The State of Punjab). In that case the sample of Haldi powder contained ash insoluble in dilute HCL to the extent of 1.96% as against the maximum permissible limit of 1.5%. The sample also contained grit to the extent of 0.56%. It was held that as there is nothing on record to show that before taking the sample the contents of Haldi powder were

properly mixed up, the sample may not be the true representative. The benefit of doubt was given to the accused. But in this case as per Ext. 6 the total ash content was found to be 16.6% by weight as against the permissible limit of 9% (as per serial A.05.20 01 of Appendix-B). Similarly, the ash insoluble in the HCL was found to be 9.8% by weight as against the prescribed standard of 1.5% by weight. According to the report of the Public Analyst, the sample was adulterated as it did not conform to the standard for turmeric powder under P. F. A. Rules in respect of both total ash and ash insoluble in hydrochloric acid. There is no evidence that the sample is not the true representative of the turmeric powder sold by the petitioner. Moreover, it does not stand to reason that a person selling food articles for human consumption will keep those exposes and allow dust together on the articles and yet claim the benefit of the same. However, in this case no grit has been found by the Public Analyst, But the total ash and the ash insoluble in HCL is very high and excessive. So the question of giving the benefit of doubt to the petitioner does not arise.

9. Regarding the point that the accused was not given any chance to explain the nature of adulteration, on persual of the records I find that no prejudice has been caused to the accused. He has been given enough opportunity to explain the allegation made against him. Moreover, he has received the copies of the reports of the Public Analyst much earlier and has not challenged the same. So this point has no merit.

10. The next point urged by the learned counsel for the petitioner has no merit as there is clear evidence of P. W. 1 that when he asked some of the outsiders present at the place to be witnesses to the taking of the samples etc., they did not oblige and left the place.

11. Learned counsel for the petitioner also urged that the samples were not taken in clean and dry bottles. But the concurrent finding of both the Courts below is that the samples were taken in dry and clean bottles and I do not see any reason to differ from such finding.

12. After considering the argument of both sides and in the facts and circumstances of the case I am of the view that the prosecution has proved the

case against the petitioner beyond reasonable doubt and this revision has no merit. However, the case was started in the year 1973, more than seven years have elapsed in the mean time. So, I think, it is not desirable to send the petitioner to jail once again I am of the opinion that the period of imprisonment already undergone along with a fine of Rs. 2,000/- (two thousand), in default to undergo rigorous imprisonment for three months, will meet the ends of justice.

13. In the result, therefore, this revision is dismissed subject to the modification in sentence as indicated above.

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