Basudev Pandey Vs. State of Orissa

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Court : Orissa

Decided On : Jan-09-1998

Reported in : 87(1999)CLT136; 1999CriLJ4052; 1998(II)OLR491

Judge : P.K. Misra, J.

Acts : Prevention of Food Adulteration Act, 1964 - Sections 13(2) and 20; General Clauses Act - Sections 27 and 37; Evidence Act - Sections 114; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Revision No. 768 of 1994

Appellant : Basudev Pandey

Respondent : State of Orissa

Advocate for Def. : Addl. Standing Counsel

Advocate for Pet/Ap. : H.S. Mishra and S.S. Patra

Disposition : Petition allowed

Judgement :

P.K. Misra, J.

1. The petitioner in this revision challenges the order of conviction and sentence passed by both the Courts below convicting the petitioner under Section 16(1)(a)

(i) and (iii) of the Prevention of Food Adulteration Act (hereinafter called the 'Act') and sentencing him to undergo R.I. for one year and to pay fine of Rs. 1,000/-, in default, to undergo R.I. for three months on each count with a direction that both the sentences would run concurrently.

2. Prosecution case is as follows : On 20.4.1991, the Food Inspector (P.W.I) along with his Peon (P.W. 2) visited the grocery shop of the petitioner situated at village Ingsa and found that the licence of the petitioner had not been renewed after 31.12.1989. The Food Inspector suspected that Atta and refined rice-bran oil exposed for human consumption were adulterated. After disclosing his intention and identity, he served notice and purchased 600 grams of Atta and 375 grams of refined rice-bran oil on payment of Rs. 11.25 paise. Samples were duly taken and sent for chemical analysis which were on analysis found to be below the standard prescribed and accordingly, the prosecution was lodged after obtaining consent from the appropriate authority.

3. The accused denied about the occurrence and claimed that a false case had been foisted against him.

4. The prosecution, apart from examining P.Ws. 1 and 2, also examined P.Ws. 3 and 4, the independent witnesses, in whose presence the alleged seizure had been effected. The Courts below relying upon the evidence of P.Ws. 1 and 2 convicted and sentenced the petitioner, as aforesaid.

5. In the present revision, the learned counsel for the petitioner has raised the following three contentions:

(1) There has been non-compliance of the provisions of Section 13(2) of the Act, inasmuch as copy of the Report of the Public Analyst had not been served on the petitioner;

(2) The prosecution is vitiated as the consent as required under Section 20 of the Act had not been given after due application of mind; and

(3) In view of the evidence of prosecution witnesses themselves, such as P.Ws. 3 and 4, to the effect that the accused person did not have any shop, the question of

violating the provisions of the Act did not arise.

6. In the present case, admittedly, the prosecution has not proved any postal acknowledgment signed by the accused to prove about the service of copy of the report of the Public Analyst which had been sent by registered post. The learned counsel for the State, however, relying upon the provisions contained in Section 27 of the General Clauses Act as well as Section 114 of the Evidence Act contended that since copy of the report of the Public Analyst had been sent by registered post in the address of the accused person, as evident from Ext. 12, as well as evidence of P.W. 1, and in view of the letter of the postal authority as per Ext. 28 indicating that the registered letter had been served on the accused-petitioner, the findings of the Courts below to that effect should not be disturbed. The learned counsel for the State has also relied upon the decision of this Court reported in (1995) 9 OCR 370 : (Kirtan Bhoi v. State of Orissa) in support of the aforesaid contention. In the present case, the petitioner in his examination under Section 313, Code of Criminal Procedure, has merely denied to have received the copy of the report of the Public Analyst. However, no evidence has been adduced on behalf of the accused person to rebut the presumption available under the General Clauses Act as well as Section 114 of the Evidence Act. As observed by the Division Bench of this Court, when it is proved that registered letter has been posted after being duly stamped in the address of a person, a presumption arises that such letter must have been served on the addressee. The evidence adduced on behalf of the prosecution to the effect that the report of the Public Analyst had been posted by registered post as per the postal receipt has not been successfully challenged by the petitioner in any manner in cross-examination. The mere denial of the accused in his statement under Section 313, Code of Criminal Procedure, cannot have the effect of rebutting the statutory presumption available under the provisions of the General Clauses Act. In such view of the matter, I do not find any merit in the first contention of the counsel for the petitioner.

7. The second contention raised by the counsel for the petitioner is equally devoid of merit. Law is now well settled that prosecution has to prove that valid consent has been accorded for launching a prosecution after application of mind by the authority required to give such consent under Section 20 of the Act. However, in

the present case, it is found from the consent order (Ext. 22) that the appropriate authority has applied his mind to all the relevant documents and given consent for prosecuting the petitioner. The findings of the Courts below on this score appear to be based on discussion of the relevant materials on record and are not liable to be reversed in exercise of revisional jurisdiction.

8. The last contention of the counsel for the petitioner, however, appears to be substantial, P.Ws. 3 and 4 who had witnessed the alleged purchase and seizure have given a go-by to the prosecution case and surprisingly enough they have not been cross-examined by the prosecution at all. To be more precise, P.W. 3, a Sanitary Inspector of Agalpur P.H.C. had accompanied the Food Inspector (P.W. 1) to the village. He has stated in examination-in-chief itself :

'..... On that day the shop of the accused was closed.....Being directed by the Food Inspector after going through the contents of the papers I signed in some papers. I signed Ext. 1 in the house of accused on 20.4.1991. The accused was absent at that time. The accused has no shop.....'

The aforesaid underlined portion of the evidence in examination-in-chief itself sounds a death-knell to the prosecution case to the effect that P.W. 1 had purchased the articles from the shop of the accused on the date of occurrence. Surprisingly enough such evidence of P.W. 3 has not been sought to be contradicted by prosecution by declaring him hostile and cross-examining him. Similarly P.W. 4, who is stated to be an independent witness has not stated anything about the purchase in his examination-in-chief. In cross-examination by the accused, he stated that the accused has read upto Class-IV and unable to write English. He further stated, 'The accused's grocery shop closed since from the year 1989'. Even if such statement in cross-examination went completely against the prosecution case, no attempt has been made by the prosecution to further examine him or cross-examine him to clarify the position. Since P.Ws. 3 and 4 have not been cross-examined at all by the prosecution, it must be taken that the prosecution stands by the statements made by these witnesses specially in their examination-in-chief. Though the evidence of P.Ws. 1 and 2 fully supports the prosecution case, the evidence of P.Ws. 3 and 4, more particularly that of P.W.

3, fully annihilates the prosecution case. The prosecution cannot ask the Court to resolve this conundrum by introducing two divergent stories through its own witnesses. Of course, if the latter two witnesses would have been declared hostile and cross-examined by the prosecution, the matter would have been different. However, keeping in view the fact that the evidence of P.Ws. 3 and 4 has remained unassailed by the prosecution, it is difficult to accept the evidence of P.Ws. 1 and 2 overlooking completely the evidence of P.Ws. 3 and 4. Thus, there is no escape from the conclusion that on the state of evidence on record as proved through the mouths of P.Ws. 3 and 4, the prosecution has been completely demolished and cannot be accepted.

9. The learned counsel for the State, however, submitted that evidently due to oversight or may be due to some other undisclosed reason, the Public Prosecutor conducting the case has not been able to cross-examine P.Ws. 3 and 4 who had not supported the prosecution case and as such the matter may be remanded to the trial Court to give further opportunity to the prosecution to cross-examine those two witnesses. I am afraid, such a submission is not acceptable at the present stage. The aforesaid defect in the evidence of witnesses had been pointed out before the trial Court as well as the appellate Court. The prosecution could have taken steps to cross-examine those two witnesses by filing appropriate application either in the trial Court or even subsequently in the appellate Court. The incident itself is of the year 1991 and about seven years have elapsed in the meantime. The Public Analyst has not found that the articles were injurious to health though the articles were below the prescribed standard. The petitioner was merely a retailer in a remote village of Bolangir. He has already faced sufficient harassment by fighting litigations in three Courts. Therefore, it would not be in the interest of justice to remand the matter for re-trial on this aspect after such long lapse of time.

10. For the aforesaid reasons, I allow this revision and set aside the order of conviction and sentence.