

Rameswar Prasad Sharma Vs. State

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Court : Orissa

Decided On : Nov-17-1994

Reported in : 1995CriLJ1525

Judge : A. Pasayat, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 16(1), 20 and 20(1); Prevention of Food Adulteration Rules, 1955 - Rule 44A; [Prevention of Corruption Act, 1947](#) - Sections 6

Appeal No. : Criminal Revision No. 266 of 1987

Appellant : Rameswar Prasad Sharma

Respondent : State

Advocate for Def. : B. Das, Addl. Standing Counsel

Advocate for Pet/Ap. : D.P. Dhal, Adv.

Disposition : Application allowed

Judgement :

A. Pasayat, J.

1. Petitioner faced trial before the learned Sub-divisional Judicial Magistrate, Anandapur (in short, 'SDJM) on the accusation that he had exposed Buta dal for

sale which on analysis by the Public Analyst was found to be adulterated to attract culpability under the provisions of [Prevention of Food Adulteration Act, 1954](#) (in short, the 'Act').

2. In a nut shell the prosecution case is as follows:

On 25-6-1984, at about 10.30 a.m. the Food Inspector Anandapur (PW. 3) inspected the grocery shop of the petitioner at village Jarada where edible oil, spices, dal etc. meant for human consumption were exposed for sale. Suspecting the Buta dal kept for sale to be adulterated, the Food Inspector served notice on the accused-petitioner expressing his intention to take sample to be examined by Public Analyst, purchased 750grains of Buta dal and paid its price. The sample collected was divided into three equal parts and each part was kept in clean and dry bottle, and after properly sealing, labelling and wrapping with paper, and putting seal of the Chief District Medical Officer, Keonjhar, and after observing all formalities required to be taken in the matter of collection of sample, sent one sample bottle to the Public Analyst. After analysis, Public Analyst submitted a report to the effect that sample of Buta dal was a mixture of Bengal-gram dal and khesari dal. Latter is prohibited item so far as sale is concerned. After receiving report of Public Analyst, prosecution report was submitted by PW. 3 after obtaining written consent from the Chief District Medical Officer (in short, 'CDMO'), as required under Section 20 of the Act alleging contravention of provisions contained in. Rule 44-A of the Prevention of Food Adulteration Rules, 1955 (in short, the 'Rules'), thereby attracting punishment under Section 16(1)(a)(i) of the Act.

3. Accused-petitioner denied the accusations and took on several stands.

4. Placing reliance on the evidence of witnesses examined to further prosecution case, learned SDJM found accused guilty and convicted him under Section 16(1)(a)(i) of the Act and. sentenced him to undergo rigorous imprisonment for six months. In appeal, conviction and sentence were maintained by the learned Sessions Judge, Keonjhar.

5. Two points are urged in support of the revision application- (a) admixture of Bengalgram dal and Khesari dal with Buta dal cannot fasten culpability under the

Act; and (b) the sanctioning authority had without application of mind given the consent. The learned counsel for State on the other hand supported the judgment of conviction and sentence.

6. Buta dal is a cereal/pulse and comes within the definition of 'food grains' vide item 18.06 of the Appendix 'B' of the Rules, the contention of the petitioner is that Khesari gram is inedible, and therefore, its percentage having not exceeded 3 percent as prescribed under item 18.06 itself, Buta dal conformed to the standard required under the said item. An article whose sale is prohibited cannot be equated with an article of food which is unfit to be eaten. Therefore, the courts below had rightly held that the sample collected was adulterated.

7. Further question is whether the written consent given was bereft of application of mind. The document in question is Ext. 8, and reads as follows:

'Sanction of prosecution report under P.F.A. Act. 1954.

In exercise of powers vested in me under Notification No. 27968/H. dt. 10-9-76, I, Dr. D. N. Bal, CDMO, and Local Health Authority, Keonjhar district, have gone through the prosecution report, relevant documents and materials placed before me. I applied any mind and realising the prima facie of the offence consent prosecution against the alleged Food Vendor, i.e.....

(1) Rameswar Prasad Sharma s/o Sibnarayan Prasad Sharma, At/P.O. Jarda, P.S. Ramachandrapur, Dist. Keortjhar,

Under Section 20(1) of the PFA Act, 1954.'

According to the petitioner, materials which were placed have not been disclosed, and it is not clear as to what was the contravention for which consent was given. Written consent as required to be given under Section 20 of the Act is not an empty formality, and there has to be application of mind. These aspects are highlighted in Mohammad Yakub Khan v. State of Orissa, (1992) 5 Orissa Cri R 54, and Mangtaram Agrawal v. State of Orissa, (1994) 77 Cut LT 484 :(1994 Cri LJ 1912). Whether there has been application of mind has to be decided on the facts of each and so straitjacket formula can be prescribed. The facts brought on record

are to be analysed and conclusion has to be arrived at by the Court to see whether the authority has applied its mind to conclude that a prima facie case existed. Merely because an authority authorised to give consent has indicated that he has perused the records and has considered the materials, it cannot be laid down as a rule of universal application that there was no application of mind. Law reposes a confidence on public officers and it is presumed that they discharge their duties with accuracy and fidelity and therefore whatever acts they do in discharge of their public duty shall be taken to be true. It depends upon the public duty of the person who does the act. Therefore, when the officer giving written consent has stated that he has perused the relevant records before giving the same, it has to be presumed that the statement was correct, unless the person who raises the dispute about correctness of recording places material on record to dislodge the presumption. Sanctity attached to the statement of an official relating to his official duty otherwise will be of no consequence.

8. In 'the case at hand there is not even a whisper of suggestion that the relevant records were not produced before the concerned authority. It was open to the accused to raise such a plea by questioning the witness who produced written consent by way of suggestion that relevant records were not placed for consideration of the authority. In a case concerning food adulteration, primacy is attached to the Public Analyst's Report. If that has been considered by the authority, it cannot be said that relevant records were not placed for consideration before sanction was given. These aspects were highlighted in Mangtaram Agrawal's case (1994 Cri LJ 1912), (supra).

9. Sub-section (1) of Section 20 specifies persons who may institute a prosecution and persons with whose consent a prosecution may be instituted. It makes necessary consent of the prescribed authority or person authorised a condition precedent to the institution of proceedings. There is no requirement in law that the written consent must be in particular form. All that Sub-section (1) of Section 20 requires is that the consent should be written and be of the prescribed authority or person authorised in that behalf. It implies that the sanctioning authority or person has applied its or his mind sufficiently to the facts of the case to make the consent a real and not a mere pretence or an idle formality. All that is required is that

alleged offence and the offender should be known before the consent is given. Passing of a quasi-judicial order giving reason for according consent is not required. Great amount of confusion is created between consent and sanction. The word 'sanction' is used in Section 6 of the [Prevention of Corruption Act, 1947](#), and carries altogether different legal concept. Consent implies concurrence from sanctioning authority, while sanction confers an authority. Where there is material to show that relevant papers were placed before the sanctioning authority and/or no dispute is raised in that regard, and he has given consent for! prosecution stating that all relevant papers were taken into consideration. It cannot be said that the consent was without application of mind. Non-specification of papers/documents in such a case is of no consequence.

10. In the aforesaid background it is to be seen whether there has been application of mind. Though in view of what has been indicated in the quoted portion of the consent (Ext. 8), it is clear that documents and materials were placed before him, one thing is significantly missing. It is stated by the CDMO that he applied his mind and realising 'prima facie of the offence' consent was given. This, in my opinion, is not sufficient to hold that there was application of mind. The order should at least broadly indicate the nature of accusation. It would be better if the provision of the statute is indicated. In the consent order there is even no mention as to what was the offence. Mere mention 'of the offence' as done does not convey any sense. The inevitable conclusion is that the conviction, and consequentially the sentence cannot be maintained.

The revision application is allowed.

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