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Sewa Ram Vs. State

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Court : Delhi

Decided On : Jul-31-1970

Reported in : AIR1971Delhi95; 1971CriLJ465

Judge : Om Prakash, J.

Acts : Prevention of Food Adulteration Rules, 1955 - Rule 7(3); Prevention of Food Adulteration Act, 1954 - Sections 2, 13(2) and 16

Appeal No. : Criminal Revn. No. 18 of 1968

Appellant : Sewa Ram

Respondent : State

Advocate for Def. : Y. Dayal, Adv.

Advocate for Pet/Ap. : R.P. Kathurai, Adv

Judgement :
ORDER

1. This revision petition is directed against an order of the learned Additional Sessions Judge, Delhi, affirming on appeal, the conviction of the petitioner, under Section 16 read with Section 7 of the Prevention of Food Adulteration Act (hereinafter referred to as the Act.)

2. On October 10, 1966, Food Inspector Nand Kishore, P. W. 1 had purchased 600 grams of chashew nuts, on payment of 60 paise, from the shop of the petitioner located in Main Market, Moti Nagar, Delhi, for the purpose of analysis, after giving notice Ex. P.B., to the petitioner. The cashew nuts purchased, were divided into three parts and each part was sealed in a dry and clean bottle. One of the sample bottles was sent to the Public Analyst for analysis. The report of the Public Analyst was that the sample sent was insert-infested and that the infestation was 100%. In the opinion of the Public Analyst the sample sent was adulterated and was unfit for human consumption. The report of the Public Analyst is Ex. P. E. Thereupon, complaint Ex. P. G., under Sections 7/16 of the Act, was filed by Shri Ved Prakash, P. W. 2, who was duly authorised to do so, by a resolution of the Delhi Municipal Corporation. It was alleged, in the complaint that the petitioner had stored cashew nuts for sale which were found insert-infested and adulterated.

3. The petitioner denied the allegations made against him. He denied that he had sold cashew nuts to Food Inspector Nand Kishore, P. W. 1. He further denied that the cashew nuts in his shop were insert-infested. He also denied that any bottle containing sample of cashew nuts had been given to him. The petitioner also denied that the notice Ex. P.B. or the memo of sale of cashew nuts Ex. P.C. bore his signature.

4. At the trial, the prosecution produced Food Inspector Nand Kishore, P.W. 1, Shri Ved Prakash, P. W. 2, Shri. Madan Lal Gulati, P.W. 3 and Food Inspector of Sukh Mahinder Singh, P.W. 4 Shri Ved Prakash proved the complaint Ex. P. G. Food Inspectors Nand Kishore, P. W. 1 and Sukh Mahinder Singh P.W. 4 supported the prosecution story. Shri. Madan Lal Gulati, P.W. 3 an independent witness, also supported the prosecution story. He also proved the writing `A' to `A' on the back of Ex. P.W. 1, had purchased 600 grams of cashew nuts from the petitioner against payment of 60 paise and that the cashew nuts were divided into three parts and were put in three clean bottles. The petitioner produced one witness, Nihal Singh, D.W. 1, a clerk in the Delhi Municipal Corporation Cooperative Store. This witness had brought the register of membership of the Cooperative Store. The name of Food recorded in the register as a member of the

Cooperative Store. On an application, made by the petitioner, the sealed bottle containing the second part of cashew nuts, in possession of Food Inspector Nand Kishore, P.W. 1 was sent to the Director, Central Food Laboratory, Calcutta, for test. The report of the Director was that the sample bottle had been completely smashed and broken and that the sample was decomposed and fungus-infested, and unfit for analysis.

5. The learned Magistrate held that the prosecution had established that Food Inspector Nand Kishore P.W. 1, had purchased cashew nuts from the shop of the petitioner and that the cashew nuts were found to be insect-infected and hence adulterated. The petitioner was convicted under Sections 7/16 of the Act and was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.2,000.

6. The petitioner went up in appeal. The appeal was heard by the learned Additional Sessions Judge. The counsel for the petitioner had not challenged the conviction before the learned Additional Sessions Judge. He had only made a request for reduction in sentence. The learned Additional Sessions Judge. He had only made a request for reduction in sentence. The learned Additional Sessions Judge scrutinised the prosecution evidence and came to the conclusion that the petitioner had stored for sale insect-infested cashew nuts and that his conviction under Section 7/16 of the Act was justified. The learned Additional Sessions Judge, while maintaining the conviction reduced the sentence to six months' rigorous imprisonment and to a fine of Rs.1,000.

7. The petitioner has come up in revision.

8. The first contention, raised by the learned counsel for the petitioner, was that Food Inspector Nand Kishore, P. W. 1 had failed to comply with the mandatory provisions of Section 10(7) of the Act and that the trial and conviction of the petitioner had been vitiated. Section 10(7) of the Act reads:-

'(7) Where the Food Inspector takes any action under Clause (a) of sub-s (1), sub-section (2), sub-section (4) or sub-section (6) he shall, call one or more persons to be present at the time when such action is taken and take his or their signatures.'

The contention of the learned counsel for the petitioner was that no independent witness was present at the time when Food Inspector Nand Kishore, P.W. 1 had purchased cashew nuts from the petitioner. The contention is without any substance. Shri Madan Lal Gulati, P. W. 3, who was an independent witness (and this was not challenged by the learned counsel for the petitioner) had stated that that Food Inspector Nand Kishore, P. W. 1, had paid the price of cashew nuts in his presence. He had further stated that the cashew nuts were divided into three parts and each part was put into a bottle. According to the witness, the bottles were sealed in his presence. A suggestion was put to he witness, in cross-examination, that neither cashew nuts were taken nor the price was paid, in his presence. The witness repudiated the suggestion, Shri Madan Lal Gulati, P.W. 3, had made the endorsement marked `A' to `A' on the reverse of Ex. P.C. The endorsement reads as under:-

'Today at about 11.30 A.M. Shri. Nand Kishore F. I. M. C.D. purchased 600 grams of cashew nuts (kajoo) from Shri. Sewa Ram s/o. Shri Sukha Singh, Shop No. 8, Main Market, Moti Nagar, Delhi, for 00.60 P. (sixty P. only). The purchased material was put in three clean and dry bottles (regularly?). Bottles were sealed in my presence. A copy of notice and one sealed bottle and 0.60P in cash were given to the shopkeeper in my presence.

Sd/- M. L. Gulati

8.10.96.

Address: Shop No. 22, Main Market,

Moti Nagar, Delhi.

The evidence of Shri. Madan Lal Gulati, P.W. 3 and the endorsement `A' to `A' on Ex. P.C. clearly establish that he was present at the time of the purchase of cashew nuts from the petitioner by Food Inspector Nand Kishore, P.W. 1. Food Inspector Sukh Mahinder Singh, P.W. 4 was also present at the time of purchase. It follows that the provisions of Section 10(7) of the Act was fully complied with.

9. The next contention, of the learned counsel for the petitioner, was that the provisions of Rule 7 and 18 of the Prevention of Food Adulteration Rules were not complied with and that the conviction of the petitioner was rendered had because of non-compliance. Rule 7 runs as under:-

'7. Duties of public analyst, (1) on receipt of a package containing a sample for analysis from a Food Inspector or any other person for the public analyst or any Officer authorised by him shall compare the seals on the container and the outer cover with specimen impression received separately and shall note the condition of the seals thereon.

(2) The public analyst shall cause to be analysed such samples of articles of food as may be sent to him by a food inspector or by any other person under the Act.

(3) After the analysis has been completed he shall forthwith supply to the person concerned a report in Form Iii of the result of such analysis'

Rule 18 reads as under:-

'18 Memorandum and impression of seal to be sent separately:- A copy of the memorandum and a specimen impression of the seal used to seal the packet shall be sent to the public analyst separately by registered post or delivered to him or to any person authorised by him.'

10. The memo Ex. P.D. which is addressed to the Public Analyst states that a copy of the memo and a specimen impression of the seal used to seal the sample were being sent by hand. Food Inspector Nand Kishore, P.W. 1 who had personally delivered the sample for analysis and the impression of the seal used at the office of the Public Analyst had proved the memo Ex. P.D. It is clear that the provisions of Rule 18 aforesaid were complied with.

11. Regarding non-compliance with the provision of Rule 7 aforesaid the contention of the learned counsel for the petitioner was that the report Ex. P.E. of the Public Analyst did not state that the seals on the sample bottle and the outer cover were compared with the specimen impression received separately. Now, sub-rule (3) of Rule 7 provides that the Public Analyst is to submit the report in

Form III. That Form does not require that the Public Analyst should state in the report that he had compared the seals on the container with the specimen impression. It was, thereforee not obligatory on the Public Analyst to state in Ex. P.E. that he had compared the seals on the sample bottle with specimen impression. Incidentally, it may be noted that the memo Ex. P.D. bears the endorsement, by an officer of the office of the Public Analyst that the seals were noted and compared.

12. Another contention, urged by the learned counsel for the petitioner, was that the petitioner had been deprived, on account of the fault of the prosecution, of his statutory right, conferred by Section 13(2) of the Act, to get the sample tested by the Director of the Central Food Laboratory and that the conviction of the petitioner was bad on this account. The contention has no substance. As already stated, the petitioner had made an application that the sample bottle, in possession of the Food Inspector, may be sent to the Director Central Food Laboratory, Calcutta. The learned Magistrate ordered the Food Inspector to produce the sample bottle in his possession. The sample bottle was produced by the Food Inspector and was examined by the learned Magistrate in the presence of the counsel for the petitioner. The seals on the sample bottle were found to be in act. The sample was, then sent to the Director Central Food Laboratory, Calcutta. It appears that the sample bottle was completely smashed during transit. The Director had reported that as the sample bottle had been smashed, the sample was unfit for analysis. The Director had asked that the third counter-part of the sample might be sent to analysis and report. The learned Magistrate had put to the petitioner that the sample bottle which had been sent to the Director, Central Food Laboratory, Calcutta, had been broken during transits and that the petitioner should produce the sample bottle in his possession for being sent to the Director. The petitioner denied that any sample bottle was given to him. The matter rested there. In face of the aforesaid facts, it is futile to maintain that the petitioner was deprived of his right under Section 13(2) of the Act for any fault of the prosecution.

13. Lastly, the learned counsel for the petitioner urged that the sentence, even as reduced by the learned Additional Sessions Judge, was harsh and severe and should be reduced further. The learned counsel pointed out that the petitioner was

a petty shopkeeper and had purchased cashew nuts from the market. The learned counsel further pointed out that insects in cashew nuts were not visible to the naked eye. The learned counsel referred to in this connection, to the statement of Food Inspector Sukh Mahinder Singh, P.W. 4, that he did not see any insect in the cashew nuts. The learned counsel for the State contended that the sentence imposed by the learned Additional Sessions Judge, is the minimum sentence which can be awarded for the offence committed by the petitioner, as the case is governed by sub-section (1) of Section 16 of the Act and not by the proviso to that sub-section and that the sentence cannot be legally reduced further. The contention of the learned counsel for the State appears to be correct. The relevant portion of Section 16 of the Act reads:-

'(1) If any person -

(a) whether by himself or by any other person on his behalf imports into India or manufactures for sale, or stores, sells or distributes any article of food -

(i) which is adulterated or misbranded or the sale of which is prohibited by the Food (Health) authority in the interest of public health .....XX.

xx xx xx xx.

xx xx xx xx.

he shall, in addition, to the penality to which he may be liable under the provisions of Section 6, be punishable with imprisonment for a term which shall not be less than six months but which may extend to six years, and with a fine which shall not be less than one thousand rupees:

Provided that -

(i) if the offence is under sub-section (i) of Clause (a) and is with respect to article of food which is adulterated under sub-clause (1) of clause (i) of Section 2 or misbranded under sub-clause (k) of clause (ix) of that section; or

(ii) if the offence is under sub-clause (ii) of Clause (a), the court may for any adequate and special reasons to be mentioned in the judgment impose a sentence

of imprisonment for a term of less than six months or of fine of less than one thousand rupees or of both imprisonment for a term of less than six months and fine of less than one thousand rupees.'

14. It is clear that subject to the proviso, the minimum sentence for offences of adulteration and misbranding, under the Act, is six months' imprisonment and a fine of Rs. 1,000/-. Under the proviso to sub-section (1), for adequate and special reasons, lesser sentence can be imposed. The proviso comes into operation only if the offence is under sub-section (i) of clause (a) and is with respect to article of food which is adulterated under sub-clause (1) of Clause (i) of Section 2 or misbranded under sub-clause (k) of Clause (ix) of that Section or if the offence is under sub-section (ii) of Clause (a) of Section 16. It falls under sub-section (i) of Clause (a). But the offence is not with respect to article of food which is adulterated under sub-clause (1) of Clause (i) of Section 2. The cashew nuts purchased from the petitioner were found to be insect-infested and were adulterated under sub-clause (f) of Clause (i) of Section 2. The proviso is, thereforee, not applicable to the present case and the sentence, as reduced by the learned Additional Sessions Judge, cannot be reduced further.

15. The result is that the revision petition, in which no other point was urged, fails and is dismissed.

16. The petitioner was granted bail by this Court. In case the petitioner is on bail, his bail bond is cancelled. He should surrender himself to the authorities for undergoing the remaining sentence.

17. Revision dismissed.

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