

Vishku Kumar Vs. the State

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Court : Delhi

Decided On : May-17-1967

Reported in : 4(1968)DLT33

Judge : M.M. Ismail, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 10(7)

Appeal No. : Criminal Revision Appeal No. 182 of 1967

Appellant : Vishku Kumar

Respondent : The State

Advocate for Pet/Ap. : P.S. Safeer, Adv

Judgement :

M.M. Ismail, J.

(1) This is a criminal revision filed against the conviction and sentence of the petitioner under section 7 read with section 16 of the [Prevention of Food Adulteration Act, 1954](#), and when this case came up for Admission on 2nd May 1967, I admitted the case only on the ground of alleged non-compliance with section 10(7) of the said Act.

(2) When the case was taken up in the forenoon, the counsel for the petitioner was not present, and Mr. Safeer, appearing for the State, very fairly assisted me to go through the record and decide the case. Section 10(7) of the Act prior to its amendment in 1964, provided that the Food Inspector when taking any action under clause, (a) of sub-section (1), sub-section (2), sub-section (4) or sub-section (6) shall, as far as possible, call not less than two persons to be present at the time when such action is taken. In view of the use of the words 'as far as possible', there was a difference of opinion as to the provisions of the section being mandatory or directory. However now the section has been amended by the Prevention of Food Adulteration (Amendment) Act No 49 of 1964, and the amended section reads as follows :-

'WHERE the Food Inspector takes any action under clause (a) of sub-section (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.'

After this amendment the position is clear, namely, that the provisions of this sub-section are mandatory and non-compliance with the same will render the conviction illegal.

(3) In this particular case there has been no independent witness examined on behalf of the prosecution to the effect that such witness was present at the time when the sample was taken. One Harbhajan Singh was examined as a defense witness and the learned Additional Sessions Judge, observed with reference to his evidence as follows -

'EVEN Harbhajan Singh, another attesting witness of the inventory Exhibit P. C examined by the appellant in defense, while making the writing R to B did not mention that fact. His statement that the sample was taken in the absence of the appellant is thus obviously false and it is proved beyond doubt that he has been worked over by the appellant.'

This certainly cannot be taken to be the evidence in fulfillment of the requirements of section 10(7) of the Act. For one thing, this Harbhajan Singh was examined as a

defense witness and he was not examined as a prosecution witness in support of the prosecution. Secondly, even his evidence does not make it clear that he was present at the time when the sample was taken. Looking from any point of view, it is clear that in this case no independent witness was present at the time when the sample was taken as required by section 10(7) of the Act and consequently there has been a failure to comply with the mandatory requirements of that section. In view of this, the conviction cannot be sustained. therefore, I reverse the orders of the Courts below, set aside the conviction and acquit the petitioner herein,

(4) I must record my thanks to Mr. Safer for assisting me to dispose of this case in the absence of the counsel for the petitioner in spite of my waiting till the afternoon.

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