

State Vs. Raghbir Das

State Vs. Raghbir Das

SooperKanoon Citation : sooperkanoon.com/683069

Court : Delhi

Decided On : May-20-1969

Reported in : 1970CriLJ1051; 5(1969)DLT678

Judge : I.D. Dua, C.J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 204(IB)

Appeal No. : Criminal Revision Application No. 14 of 1969

Appellant : State

Respondent : Raghbir Das

Advocate for Pet/Ap. : B. Sita Ram and; A.C. Sud, Advs

Judgement :

I.D. Dua, C.J.

(1) On 1st May, 1969 I recorded an order in this case that the respondent was desirous of challenging his conviction and he was at that time desirous of concentrating his challenge to the validity of the appointment of the Public Analyst. Of course, he did not limit his challenge to that objection and also expressed his inclination to attack the legality of the trial. As the points sought to be raised seemed to me to be of importance which were likely to take some time, I directed this case to be set down for hearing on my next visit.

(2) The learned counsel for the respondent has, in the first instance, submitted that title accused was summoned by the trial Magistrate for 14th October, 1968 and on the same day he was convicted. The grievance ventilated by the learned counsel is that the provisions of section 204(IB), Criminal Procedure Code, were not complied with in as much as a copy of the complaint was not attached with the process issued to him.

(3) The next challenge is based on the submission that in the complaint the names of all the witnesses to be produced by the prosecution were not included and the only witness mentioned therein has not been produced.

(4) The third challenge is based on the question of appointment of Public Analyst. According to Shri Sud the report of the Public Analyst on the record shows that the said Officer had been appointed for the State of Punjab and not for the Union Territory of Himachal Pradesh Reference, in this connection, has been made to section 9(I) of the Prevention of Food Adulteration Act of 1954 according to which the Central Government or the State Government have to appoint by notification in the Official Gazette Food Inspectors for such areas as may be assigned to them. No notification leaving been produced on the present record, the report of the Public Analyst for the State of Punjab is according to Mr. Sud. a waste paper. Even otherwise this report (Exhibit PD) does not being home to the accused his guilt under the Food Adulteration Act The counsel has in this connection referred me to certain rules framed under the Food Adulteration Act. Specific reliance has been placed on Rule 22 of the said Rules and emphasis has further been laid on Appendix D of the Rules which as per A 05 01 lay down as under :-

'Turmeric(Hald) means the dried rhizome or bulbous root of the plants of genus Curcuma and species longa and includes turmeric in whatsoever form It shall be free from damage by insect pest, from lead chromate and other artificial coloring matter, and shall not contain more than 10 million of lead It shall conform to the following standards:- (a) Moisture. (b) The characteristic boric acid test shall be positive. (c) Total ash shall be not more than 7 per cent. (d) Ash insoluble in HCl shall not exceed 1.5 per cent.'

(5) According to Shri Sud turmeric 'being' 'Speices' the quantity of sample to be sent to the Public Analyst was to consist of 500 grms. or at least of 200 grms is provided in item No. 23 of Rule 22. 'Turmeric' is, according to Shri Sud, to be included in the word spices' whereas it Sita Ram has controverter this submission by pointing out that in Appendix B 'spices' and Turmeric have been used as separate items.

(6) According to B. Sita Ram, in the Court of the learned Sessions Judge the accused had nto challenged the merits of his conviction and had merely confined his grievance to the question of the sentence being excessive. The accused on this premise, is stated nto to be entitled to challenge the merits of his conviction as a respondent in the present proceedings. This contention is sought to be met by Shri Sud on the basis of section 439(6), Criminal Procedure Code, and reliance for this right is placed on a Full Bench decision of the Lahore High Court reported in Emperor v. Ata-ullah Lastly, the application for enhancement of sentence is opposed by the learned counsel for the respondent on the ground that the question of sentence pertains to the discretion of the trial Court and such a discretion should nto ordinarily be interfered with. Reference, in this connection, has been made to Bed Raj v. State of Uttar Praclexh The counsel has also made a passing reference to M. V. Joshi v. M. U. Shimpi where a sentence of fine in the case of an offence under the Food Adulteration Act was held to meet the end? of justice.

(8) In the case in hand when the accused appeared in the trial Court he did nto make any grievance in record to non-compliance with section 204(IB), Criminal Procedure Code, nor did he raise any objection in regard to the non inclusion of the names of witnesses in the complaint. On the other hand, when. he was questioned by the Court he accepted the Public Analyst's report as also the adulterated nature of the Haldi in question. Indeed, in the order of the learned Magistral' dated 14th October, 1968 it is clearly specified that the accused pleaded guilty to the charge and the learned Magistrate had satisfied himself that this plea was voluntary and without any improper influence. In view of this plea the learned Magistrate sentenced the accused to six months imprisonment and a fine of Rs. 1,000.00.

(9) On appeal, the learned Sessions Judge also expressly observed in his order that the only question agitated before him was that of sentence. It was further noted that the accused had admitted his guilt in the trial Court. Holding the adulteration to be of a very minor nature, the learned Sessions Judge reduced the sentence to the imprisonment already undergone which was for about 3 days and a fine of Rs.100.00.

(10) In my opinion, in view of the fact that the accused had pleaded guilt and had not raised any objection in regard to the non-compliance with section 204(IB). Criminal Procedure Code, it is not open to the accused in the present proceedings to re-agitate either the question of non-compliance with section 204(IB) of the Code or of the non-inclusion of the names of witnesses in the complaint. On the facts and circumstances of this case, assuming there were defects of procedure as suggested by the accused, they do not seem to have in any way caused prejudice to him. These provisions are not of such a mandatory character as would vitiate the trial by their mere non-compliance even when they have caused no prejudice to the accused persons. This, however, must not be understood to mean that this Court sanctions deliberate non-compliance of these provisions or that Courts trying cases can ignore them.

(11) In regard to the question of the appointment of Public Analyst here again, his report was accepted by the accused. If the adulterated character of the article of food is accepted by the accused then the technical objection raised on his behalf in this Court would also lose much of its importance. B. Sita Ram, has however, stated at the Bar that there is a notification appointing the Public Analyst of the Punjab to be a Public Analyst for Himachal Pradesh as well. He has not been able to produce that notification in this Court as, according to him, he has not so far received its copy from his clients. The non-production of this notification in the trial Court, in my opinion, is primarily due to omission on the part of the accused person to raise the question there and also due to his having pleaded guilty. On the facts and circumstances of this case I do not think it is necessary for this Court to adjourn these proceedings to enable B. Sita Ram to produce the necessary notification, though it appears to this Court that the counsel could with due diligence, have secured its copy by now. On the view that I have taken I do not

consider it necessary for this Court to go into the question of how much quantity of the Haldi should have been sent to the Public Analyst for enabling him to submit his report in accordance with the Rules. The accused in exercising his right to show cause against conviction under section 439(6) Criminal Procedure Code, cannot claim to be placed in a better position than if he had himself challenged his conviction by preferring an appeal. Having pleaded guilty, he could not re-agitate questions which are now sought to be raised by his counsel under this sub-section.

(12) B. Sita Ram submits that the learned Sessions Judge has fallen into a legal error in assuming that the offence in question falls under section 2(i)(1) of the Food Adulteration Act, according to which an article of food is to be deemed adulterated if its quality or purity falls below the prescribed standard or if its constituents are present in quantities which are in excess of the prescribed limits of variability. The counsel adds that the present case is covered by section 2(i)(b), according to which if the article contains any other substance which affects, or if the article is so processed as to affect injuriously the nature, substance or quality thereof, then it is to be deemed to be adulterated. In my view, on the present record it is not possible to hold that the learned Sessions Judge has fallen into any such error. The question is not so simple as is assumed by the counsel for the State. On revision, a sentence is to be enhanced only if it is manifestly inadequate so as to amount to miscarriage of justice. Except when the cause of justice demands its enhancement, this Court is reluctant to exercise its power of enhancement of sentence. The State does not seem to me to have made out a case of enhancement for the sentence on the existing record, The accused seems to have suffered sufficiently for his lapse in not caring to see and guarantee that the Haldi in question which was sent for grinding did not get adulterated in that process. In future, I have little doubt that the accused would be careful enough to see that he does not contravene the provisions of the Prevention of Food Adulteration Act. This enactment, it may be realized by all those who deal in foodstuffs is intended to safeguard the health of the society as a whole including infants, invalids and old persons. No citizen in the present state of society is self-sufficient in the production of all the articles of food etc. needed by him Those who manufacture or sell some of the articles of food have also to secure other such

articles for themselves from elsewhere. They thus owe to themselves as much as they owe to the society that they do not sell to others adulterated articles of food just as they would expect to be supplied by other dealers unadulterated articles. The harmful consequences of selling adulterated articles of food are too obvious and have indisputably far-reaching consequences on the society as a whole to require elaboration and the harmful consequences can be visualized from more aspects than one.

(13) For the foregoing reasons, this revision is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com