

Hoshiar Singh Vs. State

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Court : Delhi

Decided On : Nov-27-1978

Reported in : 15(1979)DLT24

Judge : M.L. Jain, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 203; Identification of Prisoners Act, 1920 - Sections 5

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 236 of 1977

Appellant : Hoshiar Singh

Respondent : State

Advocate for Pet/Ap. : D.C. Mathur and; P.P. Malhotra, Advs

Judgement :

M.L. Jain, J.

(1) The facts of the prosecution case are that Food Inspector, Bhardwaj, took a sample of a food article from the shop situated in Chandni Chowk Delhi of Mohan Lal, son of Kirpa Ram on Aug., 25. 1975. It was petitioner Hoshiar Singh son of Shiv Singh who had sold the sample to the Food Inspector, but he gave out his name as Mohan Lal, hence, the case was instituted against Mohan Lal. But the real Mohan Lal died later on and the case was consigned to records. On the same

shop, Food Inspector, Rishi Rain Sharma and R.S. Tiyagi again purchased samples on Sept., 25, 1976. These samples were also sold to the Food Inspector by Hoshiar Singh. This time against Hoshiar Singh gave his name as Mohan Lal. The food Inspector got suspicious and arrested him under section 42 Cr.P.O., and section 10 of the Prevention of Food Adulteration Act, 1954, and produced him before the Magistrate, who remanded the petitioner to judicial custody and directed that the previous file (No. 40/3 of 1976 M.C.D vs Mohan Lal) be produced from the record room. The learned session Judge granted bail to the petitioner on Oct., 11, 1976. The petitioner filed a petition in which this court on March, 28, 1977 quashed the order of the learned Magistrate about taking proceedings against the petitioner as the Magistrate appeared to the court to have identified himself with the prosecution and made inquiries for establishing the identity of the petitioner. But, it was made clear that the Municipal Corporation would be at liberty to seek appropriate remedy open to it against the petitioner in case No. 40/3, of 1976 M.C.D. vs. Mohan Lal. Thereupon the Magistrate again consigned the Municipal Prosecutor moved an application for the revival of the complaint so consigned to the records. The learned Magistrate passed an order for the revival of the proceedings. The accused and Inspector who took the sample in Aug., 1975 were present in the court. The Food Inspector stated that he could identify the accused. The learned Magistrate then directed the petitioner to furnish bail bond and recorded his statement. He further directed that specimen thumb impressions of the accused be also obtained and sent to director, Central Forensic Laboratory, for comparison with the thumb impression on the documents prepared by the Food Inspector on 23 Aug, 1975 This petition is directed against this order.

(2) The learned counsel for the petitioner submits that the order of consigning the case to the records having become final. It cannot be revived in this connection, he relied upon Bindashwari Prasad Singh vs . Kali Singh : 1978 CriLJ187 . This argument cannot be upheld because consigning of the case upon the alleged death of the accused was an order under mistake and was not a final order in the sense of having decided the matter. It was neither discharged nor acquittal. While the Supreme Court case relied upon is a case of dismissal of complaint under section 203 Cr.P.C. The Supreme Court Case has no application.

(3) The Second objection against the impugned order is that the accused was produced before the Magistrate, in the other case in which sample was lifted on Sept., 25, 1975 but not in the case which was revived in the aforesaid circumstances. The petitioner therefore, cannot be considered to have been summoned in the earlier case so revived. He could be summoned only if a complaint was filed against him and the Magistrate was satisfied that Hoshiar Singh petitioner was the person who had sold the sample on Aug., 25, 1975. At present there is no complaint against him. I am unable to uphold this contention also. After the High Court observed that the corporation was at liberty to seek appropriate remedy, the learned Magistrate on their application revived the proceedings and seems to have proceeded to inquire into the identity of the accused, It was further printed out that after the amendment of section 20 of the Prevention of Food Adulteration Act, it is the state Govt. who can give written consent for the prosecution of Hoshiar Singh while the application dated April 29, 1977 was made by the Food Inspector. therefore, there was no proper complaint before the learned Magistrate on which he could proceed. The Proceedings could not be started against Hoshiar Singh on the application of the assistant Municipal Prosecutor for which there was no provision in the Code of Criminal procedure. The learned counsel for the corporation submitted that their application of April 29, 1977 is in effect a complaint and whether there is proper sanction or not is a question on which could be raised before the lower court where it can be examined in all its details and with various notification. The learned Magistrate has already taken cognizance on that application. I agree with this reply and repel this objection.

(4) It was also urged that the direction to take specimen thumb impressions of the accused amounts to a testimonial compulsion not covered by the provisions of the Identification of Prisoners Act. and is invalid. This contention can also not be sustained. Under section 5 of the Identification of Prisoners Act 1920 the Magistrate, where he considers it expedient to do in any investigation or proceedings can direct any person to allow his fingers and foot prints or photographs to be taken and make an order to that effect. These provisions have been held to be constitutional.

(5) It was also pointed out that the learned Magistrate has manipulated the record. The order of April, 29, 1977 had ended with a direction that the statement of the accused be recorded on May, 21, 1977 but as soon as the counsel for the accused came away, the learned Magistrate recorded a fresh order in this hand stating that the statement of the accused has been recorded and that his specimen thumb impression be obtained. The statement also does not bear the sign. of the accused. Yes, there is some basis for this contention. and the way the proceedings appear you have been conducted does not credit to the learned Magistrate but nothing turns upon that. In the light of the above discussions I reject this revision.

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