

Ram Kishan Vs. State and

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Court : Delhi

Decided On : Oct-20-1977

Reported in : 13(1977)DLT188

Judge : Yogeshwar Dayal, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 16

Appeal No. : Criminal Revision Appeal No. 202 of 1977

Appellant : Ram Kishan

Respondent : State and ;municipal Corporation of Delhi

Advocate for Pet/Ap. : D.C. Mathur,; O.P. Dutta and; R.B. Dotar, Advs

Judgement :

Yogeshwar Dayal, J.

(1) This is a revision petition filed by Ram Krishan against his conviction and sentence under section 7 read with section 16 of the Prevention of Food Adulteration Act for sale of adulterated curd of toned milk on 25th June, 1973 to Food Inspector S.K. Ahuja for analysis, the sale having been made by one Hari Singh on behalf of the petitioner.

(2) The trial court convicted and sentenced the petitioner to undergo Rigorous Imprisonment for one year and a fine of Rs. 5,000.00 .

(3) The petitioner, being aggrieved from the conviction and sentence, went up in appeal before the learned Additional Sessions Judge, who on hearing the appeal, affirmed the conviction but reduced the sentence to six months Rigorous Imprisonment and a fine of Rs. 3000.00 . In default of payment of fine, he was directed to undergo R.I. six months.

(4) The petitioner came up to this Court by way of the present revision petition against his conviction and sentence.

(5) When the petition came up for hearing before me, I gave notice to State regarding sentence only.

(6) The petitioner filed Cr. M. 1231/77 for challenging his conviction also inspired by the fact that I had given notice only regarding sentence which meant that I had dismissed the petition against conviction. However, on 14th September, 1977, learned counsel for the petitioner, withdrew Cr. M. 1231/77.

(7) During the hearing Mr. Mathur has submitted that the sentence is on the high side. He submitted that this is a case which is covered by the proviso to Section 16 and the Court has the power to award less than the minimum prescribed for adequate and special reasons. The adequate and special reasons for reduction of sentence submitted by Mr. Mathur are.

(i) that the sample was not taken from the accused or in his presence (ii) that there is no evidence that water was added by the accused. (iii) that there is no evidence that the petitioner had used any mechanism for extraction of fat contents from the toned milk before making curd of it: (iv) that the sample was taken as early as 25th June, 1973 and four years have gone by ; (v) That the petitioner is under treatment or Pulmonary Tuberculosis; (vi) that the Public Analyst opined that the fat content of the curd prepared from the toned milk was found to be 1.23 percent instead the minimum of 3% prescribed whereas the non-fatty solids were 10.5 percent instead of 8.5 percent.

(8) Mr. Mathur, in support of his submission regarding the deficiency in fat content relied upon the observations of the Supreme Court in Malwa Co-operative Milk Union Ltd., Indore and others v. Biharilal. The learned counsel also relied on the observations of Ansari, J. in Manjeet Singh v. State 2.

(9) Reliance was also placed on the judgment of Mathew J. In Ajit Prasad Ram Kishan Singh v. State of Maharashtra 3. The observations at page 549 of the report have been particularly relied upon.

(10) It appears that the case of Malwa Co-operative Milk Union was a case of marginal deficiency. The present is-not a case of marginal deficiency, as the deficiency is to the extent of 59 percent. It is true that the non-fatty solids have been more than the minimum prescribed. However, in the facts of this, I do not want to decide this matter on the question of percentage of deficiency found, in the fat content and or the excess found so far as the non fatty solids are concerned.

(11) In the present case, we have the certificate from Medical Superintendent of Lala Ram Sarup T.B. Hospital to the effect that the Petitioner is undergoing treatment for Pulmonary Tuberculosis. I find this alone to be a special and adequate reason for reducing the sentence of the petitioner.

(12) Mr. R.B. Datar. learned counsel appearing on behalf of the Corporation submits that the certificate regarding the petitioner's suffering from tuberculosis is genuine.

(13) The petitioner has already paid the fine. He has also undergone about six weeks of imprisonment. In these circumstances, the sentence is reduced to already undergone by the petitioner.

(14) The revision petition is allowed to this extent regarding sentence only.