

Ganpat Rai Vs. State

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Court : Delhi

Decided On : Oct-31-1974

Reported in : 1975RLR95

Judge : Jagjit Singh and; V.D. Misra, JJ.

Acts : Prevention of Food Adulteration Act - Sections 9

Appeal No. : Criminal Revision Appeal No. 247 of 1972

Appellant : Ganpat Rai

Respondent : State

Advocate for Pet/Ap. : H.C. Goel, A.D. J.,; Bawa G. Singh,; D.C. Mathur and ;

Judgement :

V.D. Misra, J.

(1) This revision is directed against the judgment of Additional Sessions Judge upholding the conviction of the petitioner under section 16(1)(b) of the Prevention of Food Adulteration Act, and the sentence of rigorous imprisonment for six months and a fine of Rs. 1,000.00. When this revision came up before P.S. Safeer, J., he referred it to a larger Bench and that is how the matter is before us.

(2) Kewal Ram, father of Ganpat Rai Petitioner, runs a Karyana shop at House No. 32, Kailash Colony Market, New Delhi. On February 21, 1970, at about 11.45 a.m. Food Inspector K.K. Doomra went to his shop and found the petitioner attending to the customers. The Food Inspector disclosed his identity to the petitioner and asked for the sample of bura (grounded sugar). He purchased 600 grams of Aura. When the Food Inspector wanted to pay its price of Rs. 1.20 P , the petitioner told the Food Inspector that he was sending for his father and he would accept the price after his father had come to the shop. The petitioner, however, told the Food Inspector that he could in the meantime complete other formalities. The Food Inspector prepared the necessary documents Exhibits PA. Pb and PC. He also divided the bura into three portions and transferred the same into three separate clean bottles. After sometime a person came to the shop and whispered something to the petitioner. Thereafter the petitioner refused to accept the price of sugar and sign the documents which had been prepared, and snatched the three bottles containing the sample of bura and asked the Food Inspector and others to get out of the shop. The Food Inspector prepared report Exhibit P.D. at the spot and got it signed from the witnesses who were present.

(3) The Municipal Corporation of Delhi filed a complaint against the petitioner under section 16(1)(b) of the Prevention of Food Adulteration Act for preventing the Food Inspector from taking the sample. The defense of the petitioner, as disclosed in his statement under section 342 of the Code of Criminal Procedure, was that he was present at the shop and had duly given the sample but he had refused to sign the documents and accept the price because he had no connection with the shop. He, however, denied snatching any bottles from the Food Inspector and asserted that the bottles were duly taken away by the staff of the Food Inspector.

(4) During the course of the pendency of this revision the Municipal Corporation of Delhi made an application for being heard. We decided to grant it a hearing under section 440 of the Code of Criminal Procedure, 1898.

(5) Bawa Gurcharan Singh. learned counsel for the petitioner, contends that Shri K.K. Doomra was not validly appointed as Food Inspector since he neither fulfilled

the requisite qualifications for being appointed a Food Inspector nor any notification appointing him as Food Inspector was issued.

(6) Rule 8 of the Prevention of Food Adulteration Rules 1955, lays down the qualifications of a Food Inspector. The relevant portion of this rule (before its amendment on July 8, 1968) read as under :

(III) is a holder of a qualification in sanitary science registrable as an additional qualification by the State Medical Council, or Health Officers Examination certificate, or possesses qualifications prescribed by the respective State Governments for appointment of sanitary inspectors for health inspector :'

Shri Doomra was appointed Sanitary Inspector in 1963. He has deposed that he had obtained a diploma from Royal Institute of London which is recognised by the Government for the appointment of Sanitary Inspectors. There is nothing on record to show why the statement of Shri Doomra should not be believed. I find that he was qualified to be appointed a Food Inspector.

(7) Notification No. F. 32 (3)/61-M&PH; issued by the Delhi Administration and published in the Gazette dated April 6, 1961, was issued under section 9 of the Prevention of Food Adulteration Act. By this notification the Chief Commissioner of Delhi appointed all Sanitary Inspectors of Municipal Corporation of Delhi as Food Inspectors for the purposes of the Prevention of Food Adulteration Act. It is not denied that persons could be appointed Food Inspectors by virtue of their office and it was not necessary to appoint them by their names. But, contends Bawa Gurcharan Singh, only those sanitary inspectors who were holding this office at the time of the issuance of this notification became Food Inspectors and those who came to hold the office of sanitary inspectors later on could not be said to be appointed as Food Inspectors. In other words, fresh notification is required to be issued every time a person is appointed a sanitary inspector. I am afraid I do not agree. The purpose of appointing persons as Food Inspectors by virtue of an office is not only to appoint those who are holding the office at the time of issuing the notification but also those who may come to hold that office. In other words, the notification is to ensure to the benefit of the future- holders of that office. I am fortified in the view I have taken by a Division Bench decision of the Bombay High

Court in *Emperor- v. Savalaram Kashinath Joshi and others* Air 1948 Bom 156, which was approved by the Supreme Court in *Sindhi Lohana Choithram Parasram v. The State of Gujarat*, : 1967 CriLJ1396 . In the case of *Savalaram Kashinath Joshi (supra)*, by a notification dated August 23, 1928, Assistant Superintendents and Deputy Superintendents of Police at six: specified places including the Poona city were empowered to issue warrants under section 6. of the Bombay Prevention of Gambling Act (4 (IV) of 1887). Section 6 was re-enacted by Bombay Act 1 (I) of 1936. But no similar notification was issued under the new section. One Mr. Crone, who was acting as the Deputy Superintendent of Police at Poona, issued a warrant under section 6 on November 10, 1944. It was held that Mr. Crone holding the office of the Deputy Superintendent of Police, Poona City, must be held to have been empowered to issue warrants under that section in view of the notification of 1928.

(8) Bawa Gurcharan Singh lastly contends that there is no cogent evidence showing that the petitioner had snatched back the sample bottles from Food Inspector K.K. Doomra. I find that the Food Inspector has categorically stated that the petitioner had snatched the sample bottles and had asked the Food Inspector and others to get out of the shop. The Food Inspector had duly brought this fact to the notice of the Chief Sanitary Inspector Krishan Lal, PW4, who was supervising the raid. The Chief Sanitary Inspector had come to the shop and had advised the petitioner to return back the sample bottles or give a fresh sample but the petitioner did not agree. Kewal Krishan, PW5, is another Food Inspector who was accompanying Shri K.K. Doomra when the latter had taken the sample from the petitioner. He also corroborates Shri Doomra that the petitioner had snatched the sample bottles after refusing to sign the relevant documents prepared at the spot. The only contradiction pointed out by the learned counsel is that whereas Kewal Krishan, PW5, is positive that the sample bottles were snatched in the presence of Chief Sanitary Inspector Krishan Lal, the statement of the latter shows that these bottles were not snatched in his presence and Shri Doomra had complained to him about the snatching of these bottles. The statement of the Chief Sanitary Inspector shows that he had gone to this shop twice on being summoned by Food Inspector Doomra and it was on his second visit that Shri Doomra had complained to him about the petitioner snatching away the sample bottles. Shri Doomra had prepared

the report Exhibit Pd immediately after the incident and it bears signatures of Public Witness 5 Kewal Krishan as well as of a public witness Mangal Singh, Public Witness 6. This report corroborates Shri Doomra and the 'Chief Sanitary Inspector Krishan Lal. It seems that by the time PW5 Kewal Krishan appeared in the Court he had got confused about the persons who were present at the time the sample bottles were snatched by the petitioner. This confusion on the part of this witness does not in any way detract from the categorical statement of Shri Doomra which finds support by bids contemporaneous writing Exhibit P.D. and the statement of the Chief Sanitary Inspector. PW6 Mangal Singh is a public witness who runs a shop in the same locality in which the shop of the petitioner's father is situated. While admitting that he had signed Exhibit P.D. and other documents, the did not support the prosecution and was declared hostile. However, he admitted that an officer of Food Inspector Doomra had also come to the shop. Both the lower courts have believed the prosecution evidence and I see no reason to differ from them. Revision dismissed.