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Court : Delhi

Decided On : May-20-1976

Reported in : 1977CriLJ410

Judge : Pritam Singh Safeer, J.

Appellant : Bal Kishan

Respondent : State and anr.

Judgement :

ORDER

Pritam Singh Safeer, J.

1. Departing from the normal procedure in dealing with Criminal Revision Petitions at the admission stage I have heard the counsel in detail.

2. The first contention raised by him is that the conviction of the petitioner by the courts below under the Prevention of Food Adulteration Act is illegal for the reason that the quantity of turmeric powder in fact purchased was not 450 grams but 400 grams. The arguments proceeds to assert that in case it is found that 400 grams had been purchased, then dividing the sample into three parts the requisite quantity meant for analysis could not have been furnished by the Food Inspector either to the Public Analyst or the Director of Central Food Laboratory, Calcutta. I have seen Exhibit P. C, That document came into being at the actual time of

purchase. It is specifically stated therein that the quantity purchased was 450 grams. While making the purchase the Food Inspector H.C. Saini allowed the present petitioner to write anything he wanted by way of protest on document Exhibit P.C. The only protest recorded was to the effect that the petitioner was the servant and not the proprietor. If instead of 450 grams of Haldi (turmeric powder) 400 grams had been purchased there was an occasion for the petitioner to write on the face of Exhibit P.C. that what was stated in the body of the document regarding the quantity purchased was incorrect and that in fact he had sold 400 grams of Haldi.

3. I have also gone through the evidence of P. Ws. 1 and 4, which has been read out to me by the learned Counsel. P.W. 1 H.C. Saini was the Food Inspector, who lifted the sample. He stated in his examination-in-chief that he had purchased 450 grams of Haldi (turmeric powder). It is significant that he was not at all cross-examined and it was never suggested to him that the purchase made by him from the petitioner in the presence of P.W. 4 Balwani : Singh was of a quantity of 400 grams of Haldi (turmeric powder) and not of 450 grams!

4. Section 138 In the Evidence Act permits cross-examination. It has been held by courts that where, a particular material assertion is made in examination-in-chief and the witness is not cross-examined in respect of that assertion then it will be taken that the party affected admits the truth of that assertion. The provisions of Section 138 came in for interpretation before the Patna High Court in *Karnidan Sarda v. Sailaja Kanta Mitra* : AIR1940 Pat683 ; and the Punjab High Court in *Ganpat Ram Khosla v. Kishan Lal* (1958) 60 PLR 349. Considering the law laid down in those cases I am of the view that where cross-examination is not directed against the positive material assertion affecting the opposite party, it would amount to the affected party accepting the truthfulness of that assertion unless there is some exceptional proof to the contrary. It is no doubt correct that in the statement of P.W. 4 Balwant Singh it is stated that 400 grams of turmeric powder were purchased. That statement by the witness who did not make the actual purchase although he, according to his evidence, was present there, does not dislodge the documentary evidence furnished by Exhibit P.C. which is supported by the deposition of P, W. 1 H.C. Sarin, who actually made the purchase and whose

deposition was never questioned by putting to him the assertion that he had purchased only 400 grams of turmeric powder. I do not find that the findings of the courts below deserve to be disturbed on account of the first contention raised before me that the quantity purchased was not 450 grams.

5. The second contention is that the report by the Director of Central Food Laboratory, Calcutta, having superseded the report of the Public Analyst and he having not stated in so many words in his report that the turmeric powder, the sample whereof he had examined, was not fit for human consumption, the courts are powerless to go into the matter. The learned Counsel relies on the observations contained in *Municipal Corporation of Delhi v. Kacheroo Mal* : 1976 CriLJ336 . I have gone through the relevant portions of the judgment which the learned Counsel desired to refer to. I find that in paragraph 11 of the judgment the Supreme Court made the following observations:

The report of the Public Analyst, including the opinion on this point, is *parse* evidence by virtue of Section 13 of the Act. But this does not mean that this *ipse dixit* would be conclusive and binding on the Court. To treat it so, would be to leave the determination of the guilt of the accused to the whims and fancies of the Public Analyst. The Act would not countenance such abdication of its judicial function by the Court, leaving the case-as it were-to be tried by the Analyst, It is for the Court to weigh his opinion and reach its own finding.

(Emphasis added).

The Supreme Court view, quoted above, with great respect, lays down the fundamental and correct view of the law that it is for the court to determine the guilt on the basis of the evidence furnished before it. It is immaterial whether it is opined or not by the Director of Central Food Laboratory that the food is fit for human consumption or not. The Court on appreciating the entire evidence before it can come to the determination that the concerned article of food was not fit for human consumption. The court's conclusion will not be questioned on the basis that the Public Analyst's report or the report of the Director of Central Food Laboratory does not in so many words say that the food being sold due to adulteration was unfit for human consumption.

6. I have seen Rule 44 of the Prevention of Food Adulteration Rules, 1955. The rule begins with the following words:

Notwithstanding the provisions of Rule 43 no person shall either by himself or by any servant or agent sell-

This rule contains Clause (h) which is:

(h) turmeric containing any foreign substance.

I accept the argument of Bawa Gurcharan Singh that 'turmeric' mentioned in Clause (h) will include turmeric whole as well as turmeric powder. Be that as it may, the rule is clear that it will not contain any foreign substance. If there is any starch in the turmeric powder it must be within the prescribed limit of 60 per cent. But then that starch cannot be of any foreign substance. Turmeric itself has starch in it. Bawa Gurcharan Singh submits that Rule 44, Clause (h) only supersedes Rule 43 and that a reference ought to be made to the standards fixed in Paras A. 05.20 and A. 05;20.01. There is no sanction in those provisions permitting the adulteration which has been found by the Director of Central Food Laboratory, Calcutta, who has stated in his report Exhibit 'J. that turmeric was found with plenty of wheat, maize and pulse structure in it. He was furnished 153.0 grams of turmeric powder for examination. The quantity required for the sample was to be 150 grams. It means that he had with him the requisite quantity for examination. I am of the view that the courts below were right in holding that turmeric powder, which was sold was adulterated and conviction based on that finding cannot be held to have been founded on insufficient evidence. The circumstances of the case with which M.R.A. Ansari J. (as he then was) dealt with in Sita Ram State 1978 F, A.C. 226 were quite different. I have to take into consideration the evidence including Exhibit L and after hearing the counsel at length and going through every piece of evidence available on the record I come to the conclusion that the findings of the courts below are well founded that the turmeric powder which was sold being adulterated, was unfit for human consumption. There is no scope for interference.

7. With these observations the petition is dismissed in liming.

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