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Court : Delhi

Decided On : Jan-29-1971

Reported in : 1971CriLJ1342

Judge : Pritam Singh Safeer, J.

Appellant : Kailash Chand

Respondent : The State

Advocate for Pet/Ap. : Mr. Daya Kishan

Judgement :
ORDER

Pritam Singh Safeer, J.

1. The petitioner was convicted Under Section 7/16 of the Prevention of Food Adulteration Act on the 10th of January, 1969, and sentenced to six months rigorous imprisonment and a fine of Rs. 1,000/-, in default of payment whereof he was to undergo four months rigorous imprisonment. The conviction and the imposition of the sentence were confirmed by a detailed judgment containing a thorough appraisal of the evidence adduced in the case which judgment was recorded by the appellate court on the 5th of November, 1969. The prosecution was based upon the collection of 600 grams of 'Amchoor Sabat' at 12.45 p.m. by P.W. 1 from the shop where Kailash Chand petitioner was carrying on the

business as a partner.

2. No contest was raised before the courts below that the report submitted by the Public Analyst was erroneous or that the commodity, the sample whereof was the subject of the aforementioned report, was not adulterated. The third sample which remained with the present petitioner was never sought to be analysed by the Director of Central Food Laboratory. No resort was had to the provisions of Section 13 of the Prevention of Food Adulteration Act, hereafter to be mentioned as 'the Act'. There is no prohibition in the Act or in the Code of Criminal Procedure in view whereof the present petitioner could not apply to the trial court for examining the Public Analyst on whose report the prosecution was founded. That report is not the subject-matter of any of the grounds on the basis of which this revision petition has been moved.

3. The circumstances pleaded by the prosecution are that apart from P.W. 1, P. Ws. 3 and 4 who were called from the same locality and P.W. 5 who was another Food Inspector witnessed the occurrence. P.W. 1 asked the petitioner to sell the sample to him. It is the petitioner's case that he asserted that the entire material38 kilograms contained in the said gunny bag was not meant for sale. It stands proved that on the face of the document Exhibit P.C at the very earliest the petitioner wrote in his own hand that what was contained in the concerned gunny bag was refuse and was not meant for sale. It is, however, pertinent to note that the said assertion in the peculiar circumstances where it was preceded by a refusal to sell the material does not go beyond recording that what was contained in the gunny bag was mere refuse not meant for sale. This aspect of the case becomes prominent in the context of the defense version put to the prosecution witnesses at the trial and is also to be scrutinised in the light of the stand taken by the present petitioner when examined Under Section 342 of the Code of Criminal Procedure.

A statement made by an accused person is to be considered in terms of Sub-section (3) of the aforementioned section. Questions are put to an accused person in order to give him an opportunity to furnish Explanationn in respect of the allegation which may be deemed to have been established and the points put are

those which may be ultimately utilised against the accused person while arriving at conclusions in the course of the judgment.

4. P. Ws. 3 and 4 turned hostile at the trial. P.W. 1 was examined on several dates. It is significant that the case which became an anchor sheet of the defense was never put to P.W. 1 except when he was recalled for cross-examination after the charge on the 18th of October, 1968. The plea eloquently sought to be urged through cross-examination as well as through the support which the defense derived from the evidence of P. Ws. 3 and 4 was that no material contained in the concerned gunny bag was actually lying at the premises. The refuse collected had been put into a gunny bag and given to D. W. 5, Mangal Sen (or Mangal Das) who had removed it from the premises. While Mangal Das. according to the defense version, had gone about 20 to 25 paces from the premises where Kailash

Chand was functioning, he was allegedly accosted by P.W. 1, who asked him as to whose goods were being carried by him. P.W. 1 is alleged to have ordered Mangal Das back to the shop where Kailash Chand was working. That is the version put to P. Ws. 1 and 5 and that is the version which is repeated by P. Ws. 3 and 4 on their becoming hostile to the prosecution. During the statement Under Section 342 of the Code of Criminal Procedure the petitioner made a significant departure from that version.

According to the exact words used by the petitioner, the gunny bag containing the material out of which the sample was allegedly taken had already been placed on a dump of refuse by Mangal Das D. W. 5 and the Food Inspector got it back from the dump to the petitioner's shop. The appellate court has observed that the defense version is preposterous. I would say it is abnoxious. If Kailash Chand had achieved the dumping of the gunny bag in a place where refuse was being dumped from all premises, then there was no reason for P.W. 1 to accost anyone carrying the same. The statement Under Section 342 of the Code of Criminal Procedure is that there was a rising mound of refuse on which the gunny bag had been placed and that P.W. 1 had acted ferociously in getting it back. It passes comprehension as to how could P.W. 1 looking at the place where all refuse had been collected decipher that the particular gunny bag lying there belonged to the

firm of which Kailash Chand happened to be the partner. Why would Mangal Das be found out by P.W. 1 and employed for carrying back the gunny bag already dumped on the mound of refuse? A dishonest defense throws an arrow mark in the direction of the guilt of the accused person. It subtracts from the achievement which the cross-examination of the prosecution witnesses may disclose.

5. In this case the learned Counsel appearing for the petitioner has assisted me by reading twice over the statement of P.W. 5. It is no doubt that he also happens to be a Food Inspector. There is, however, a ring of truth in his testimony. He has fully supported the version given by P.W. 1. It would be erroneous if a premium is put on a convenient defense that the vendor asserted that the material was not meant for sale. No Food Inspector would be able to act under the Act and if he does his action will never be upheld if such a convenient defense is held to be good in law. In every case it will be open to an accused person under the Act to assert that to start with he had said: 'These goods are not meant for sale'. Before going to the other contentions which have been raised I must record that Kailash Chand, the present petitioner who showed the vigilance of making the writing 'A' to 'A' on Exhibit P.C. did so at a time when the document had been prepared. That writing was almost simultaneous with the attestation by P. Ws. 3, 4 and 5 as witnesses to that document. If D. W. 5 had been employed to bring back a gunny bag already dumped on the mound of some refuse, or it the Food Inspector had accosted D. W. 5 while he was taking the bag towards the place where he was to throw it off then a person who had the wits about him to make the writing 'A' to 'A' would have certainly completed his protest by incorporating therein that the material out of which the sample was being taken, the third part of which was being received by the petitioner, had been taken in the peculiar circumstances by calling back the gunny bag while being lifted away by D. W. 5 or by getting it lifted actually from the place where it had been dumped amongst other refuse.

The alleged collecting of the sample was on the 6th of April, 1968, at 12.45 a. m. It is intriguing as to for what reasons the petitioner delayed the sending of his telegram to the 8th of April, 1968. D. W. 1 was produced to bring before the court a register containing an entry showing that the telegram sent on the 8th of April, 1968. had been received on the 12th of April, 1968. This again is surprising. It is

quite clear that being conscious of the fact that the sample which was being taken was adulterated the petitioner made the writing 'A' to 'A' on Exhibit P.C. He then sent the telegram to set up his ultimate defense. The telegram purporting to have been sent on the 8th of April, 1968, produced as Exhibit D. W. 4/C, reads:

Sample of Amchur taken by Balra.i Kocher Food Inspector out of a bag which was for destruction and handed over to Jamadar Mangal is illegal and contrary to law Kailash Chand.

The assertion in the telegram is in direct conflict with the version given in the statement Under Section 342 of the Code of Criminal Procedure. The grievance stops at asserting that the bag had been handed over to Jamadar Mangal. That means that the bag was in the custody of D. W. 5. In the statement Under Section 342 of the Code of Criminal Procedure Kailash Chand stated that the gunny bag had been thrown on the dump of refuse meaning that it was no longer with Jamadar Mangal and again (dobara) the Food Inspector got it lifted and brought back.

6. It has been submitted by the learned Counsel for the petitioner that there was no sale in this case. Reading the definition in Sub-clause (13) of Section 2 of the Act he had to face the difficulty created by the following words which are an integral part of the definition:

and includes an agreement for sale, an offer for sale, the exposing for sale or having in possession for sale of any such article

The definition of 'sale' as contained in Sub-clause (13) of Section 2 precludes the learned Counsel from arguing that if the prosecution version is depended upon then the sample was not taken out of the material which had been exposed for sale. It has also been contended that the Public Analyst's report does not meet the obligations of Clause (f) of Section 2 inasmuch as it does not say that any living insects were present in the material and for this argument reliance is placed upon the observations made by V. D. Misra, J. while disposing of Criminal Revn. No. 120 of 1970 (Kacheroo Mai v. State) on the 24-12-1970 (Punj). In that case my brother Misra, J. depended upon the evidence given by the Public Analyst in

another case with which he had the occasion to deal. In terms of the evidence it had been indicated in Wazir Chand v. State Criminal Revision No. 279 of 1969, decided on 7-12-1970 (Delhi), that in a case of insect infestation as distinguished from insect damage, the Public Analyst states that living insects are present. I fear that the argument will not meet the facts on which the conviction in this case is based. That is so because it has been found by the Public Analyst that the material is adulterated and unfit for human consumption for another reason as well. That reason given is that 'animal dung' is present in the material.

If a material meant for human consumption has any element of animal dung it certainly is filthy. It is putrid. It is disgusting. It may be called rotten as well, I cannot accept the argument at this stage that apart from dirt the quantity of animal dung has not been mentioned in the Public Analyst's report. Dirt and animal dung when they are together are bound to become integral components of each other. In any case the presence of either or both of them makes the material filthy, putrid and disgusting. It is not in every case that crimes of this kind are discovered. It is regrettable that a firm of repute indulged in keeping the goods at its premises exposed for sale which have been found adulterated.

7. I must observe that the petitioner should have made an application before the trial court urging that the Public Analyst be called for being cross-examined. The Public Analyst should have been given a clear chance of explaining the conclusions recorded in his .report. His statement was recorded in Wazir Chand's case, Cri. Revn. No. 279 of 1969, D/- 7-12-1970 (Delhi) (referred to above). The petitioner has not raised any objection to the conclusions recorded in the report of the Public Analyst before the courts below. As pointed out earlier, even in the grounds contained in the memorandum of this revision petition no challenge is contained to the report of the Public Analyst.

8. It would be erroneous for any accused person to assume that the High Court will while exercising its jurisdiction Under Section 439 of the Code of Criminal Procedure ordinarily call a witness for examination before itself or for any reason condone a deliberate laxity on the part of a litigant and send back the case for cross-examination of a witness the evidence furnished by whom may be having

the protection which a provision like Section 13 may be giving it. The petitioner should have attacked the Public Analyst before the trial court and questioned him whether any living or dead insects were actually present or not in the material which had been examined by the Public Analyst.

9. It is contended that 3 or 4 other bags were lying there and samples were not taken out of them. The contention cannot be appreciated. There was no obligation on the Food Inspector to take a sample out of each bag.

10. It is significant that the petitioner examined Mangal Dass as D. W. 5. His statement is revealing. According to him Kailash Chand had on that very day i.e. 6th of April, 1968, collected the refuse which he was taking away in the gunny bag. Mangal Das, D. W. 5. who happens to be a sweeper employed by all the shopkeepers in the locality and who, according to himself, gets Rs. 2/- every month from each shopkeeper including the firm to which 'Kailash Chand belongs, sweeps the roads in front of the premises of various shop-keepers, I cannot understand as to why, if there was any refuse, it was not swept on to the road. Why was it collected into a gunny bag? It is common that dust and dirt are swept out on to the road. The entire version set up by Kailash Chand in order to demolish the prosecution case is seething with contemptuous prevarications.

11. However condemnable the conduct of the petitioner may have been there is one submission made on his behalf which still merits consideration. It is urged by Mr. Daya Kishan appearing for the petitioner that the provisions of Section 16 of the Act do not make it imperative that the sentence imposed should be rigorous imprisonment. A consideration of the provisions reveals that the nature of the sentence to be imposed is not statutorily provided. It may be simple imprisonment as well. While dismissing the petition I modify, the sentence to simple imprisonment. The petitioner will undergo six months simple imprisonment and in default of payment of Rs. 1,000/- as fine he will undergo two months simple imprisonment.

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