Sukhbir Singh Vs. the State

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Court : Delhi

Decided On : Apr-12-2002

Reported in : 2002CriLJ3529; 97(2002)DLT925; 2002(63)DRJ534

Judge : S.K. Agarwal, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 401 and 482; Prevention of Food Adulteration Act, 1954 - Sections 7, 10(7), 13(2), 16, 16(1), 16(1)(1A) and 16-A; Indian Penal Code (IPC),1860 - Sections 320

Appeal No. : Crl. R. No. 76/2002

Appellant : Sukhbir Singh

Respondent : The State

Advocate for Def. : Richa Kapur, Adv.

Advocate for Pet/Ap. : Rasjeesh Tyagi, Adv

Disposition : Petition dismissed

Judgement :

S.K. Agarwal, J.

1. This revision petition under Sections 401 read with Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') is directed against the judgment and

order dated 6th September, 2001 passed by the Court of Addl. Sessions Judge, New Delhi dismissing appeal of the petitioner, upholding his conviction in the two cases (Nos. 33/92 & 40/92), under Sections 7/16 of the Prevention of Food Adulteration Act, 1954 (for short 'PFA Act') and the sentence to undergo SI for one year with a fine of Rs. 2,000/-, in default one month SI, in each case and directing both sentences to run concurrently.

2. Admit. The point involved in the petition is very short. I have heard learned counsel for the petitioner, leaned APP for the State and have been taken through the record.

3. Facts in brief are that on 19th February, 1992 at 4.00 p.m., Food Inspector purchased a sample of 'Lalmirchi' and 'Haldi' powder from the petitioner at Sukhbir Masala Stall at Patri opposite New Public Dairy C-1/1, Nehru Vihar Dayalpur, Delhi which were stored for sale. The sample was seized and sealed as per the PFA Act and the Rules made there under. The samples were found adulterated because total ash and ash insoluble in dilute HCL were found beyond the maximum prescribed limit. These were also found containing in abundance of foreign starches and coloured with an unpermitted oil soluble coal tar dye. Petitioner did not exercise his right under Section 13(2) of PFA Act. Both the cases were ordered to be proceeded as a warrant trial cases. Learned trial court held that the petitioner had contravened the prescribed standards and also Sections 2(i-a)(a)(j)(m). The petitioner was held guilty under Section 16(1)(1A) read with Section 7 of PFA Act in both the cases. Both the sentences were ordered to run concurrently. Appeal filed by the petitioner was also dismissed vide judgment and order dated 6th September, 2001. Petitioner has assailed the same.

4. Learned counsel for the petitioner, firstly argued that Section 16A of PFA Act mandates that all offences under Sub-section (1) of Section 16 are to be tried summarily. thereforee, this case should have been tried as a summons case; the trial court erred in trying the same as a warrant trial in derogation of the direction of law and the petitioner was prejudiced in his defense. In support of his submission, reliance was placed on the case in Mahabir Prasad v. The State of Haryana , 1989 CCC 1(HC). The contention is not sustainable. As noticed above, the petitioner

was prosecuted and held guilty for the offences as defined in Section 2(i-a)(a)(j)(m) as the sample was not of the nature, substance or quality which it represented so to be; as the samples were found having unpermitted coal tar dye. Section 16(1)provides different penalties for different violations as defined in Section 2 of PFA Act. Section 16(1) reads as under:-

'16. Penalties

(1) Subject to the provisions of Sub-section (1-A), if any person:-- (a) to (g) xxx xxx xxx'

5. Section 16A of the Act empowers the Court to try all offences under Sub-section (1) of Section 16 which shall be tried in a summary way. But it is subject to provision of Section 16(1-A) which prescribes punishment for violation of Sub-clauses (e) to (l) both inclusive of Clause (i-a) of Section 2 of the Act. It reads.

'16. [(1-A)] If any person whether by himself or by any other person on his behalf, imports into India or manufactures for sale or stores, sells or distributes:--

(i) any article of food which is adulterated within the meaning of any of the Sub-clauses (e) to (l) (both inclusive) of Clause (ia) of Section 2; or

(ii) any adulterant which is injurious to health; he shall, in addition to the penalty to which he may be liable under the provisions of Section 6, be punishable with imprisonment for a term which shall not be less than one year but which may extend to six years and with fine which shall not be less than two thousand rupees;

Provided that if such article of food or adulterant, when consumed by any person is likely to cause his death or is likely to cause such harm on his body as would amount to grievous hurt within the meaning of Section 320 of the Indian Penal Code (45 of 1860), he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to term of life with fine which shall not be less than five thousand rupees.

[(10AA)] xxx xxx xxx

[(10B)] xxx xxx xxx

(1-C) xxx xxx xxx

(1-D) xxx xxx xxx

(2) xxx xxx xxx'

6. As noticed above, in this case, petitioner was also prosecuted for the offence under Section 2(i-a)(a)(j)(m), thereforee, it is totally erroneous to contend that it was triable as a summons trial case. The judgment relied upon is not at all applicable to the facts at hand. In that case there was no charge that the sample was having any unpermitted colour.

7. Faced with the above, learned counsel for the petitioner argued that the conviction of the petitioner under Section 2(i-a)(j) is not sustainable. He argued that Section 2(i-a)(j) is intended to cover a case where any particular type of coloring of matter is prescribed and the article is found to contain any other type. It is not so. It also covers up the cases where no colour is prescribed to be used and yet the article contains a coloring matter. Reference in this regard can be made to the Apex Court decision in Prem Ballab and Anr v. The State (Delhi Admn.) , AIR 1977 SC 1956 it was held:-

'Rule 23 of the Rules provided that the addition of a coloring matter to an article of food, except as specially permitted by the Rules, shall be prohibited. The only artificial dyes, which were permitted to be used in food, were those set out in Rule 28, and Rule 29 prohibited the use of permitted coal tar dyes in or upon any food other than those enumerated in that Rule. Linseed oil was admittedly not one of the articles of food enumerated in Rule 29 and hence even permitted coal tar dyes could not be added to linseed oil...'

It was further held:

'.....Clause (j) of Section 2(i) is not merely intended to cover a case where one type of coloring matter is permitted to be used in respect of an article of food and the article contains another type of coloring matter but it also takes in a case where no coloring matter is permitted to be used in respect of an article of food, or in other words, it is prohibited and yet the article contains a coloring matter. There is really

no difference in principle between the two kinds of cases. Both are equally reprehensible; in fact the latter may in conceivable cases be more serious than the former. Where no coloring matter is permitted to be used in an article of food, what is prescribed in respect of the article is that no coloring matter shall be used and if any coloring matter is present in the article in breach of that prescription, it would clearly involve violation of Clause (j) of Section 2(i).....'

and in Badri Prasad v. State of M.P. , 1996 SCC 79 wherein it was held:-

'.....Addition of a coloring or flavouring matter to chillies power is prohibited. That per se would make the article adulterated. These being the state of affairs, it is difficult to upset the conviction of the appellant recorded under Section 7 read with Section 16 of the Prevention of Food Adulteration Act, 1954.'

8. In this case, there are concurrent findings that the samples were found having unpermitted coal tar dye, thereforee, petitioner was rightly not tried summarily.

9. Learned counsel for the petitioner next argued that it was obligatory on the part of the prosecution to serve a copy of the report of analyst on the accused informing him to make an application, if he so desires within ten days to get the sample of food article (kept by the Local Health Authority Analyst), done by the Central Food Laboratory under Section 13(2) of PFA Act. He argued that the trial court gravely erred in not making distinction between dispatch and service of report of the Public Analyst as contemplated under Section 13(2) of PFA Act; that this Section clearly lays down that mere proof of dispatch of the report is not sufficient to satisfy the requirements of law under Section 13(2) of PFA Act; that in the absence of proof of actual service vitiates the trial. In support of his submission reliance was placed in Food Inspector Guntur v. Bavirisetty Hanumantha Rao and State of Assam v. Banwarilal Pipalwa .

10. In this case, the public analyst report was sent by registered post to the petitioner at the address given by him. Not only this, the Inspector visited the residential premises of petitioner from where the samples were lifted for service of the report of public analyst. However, on repeated occasions the residence premises of the petitioner was found locked and he was not available at the

business address. The reports were proved as Ex.PW-2/D. Learned courts below, on appreciation of evidence on record rightly rejected the contentions raised by the petitioner. There is no illegality or infirmity in the finding recorded by the learned courts below.

11. Learned counsel for petitioner then argued that provisions of Section 10(7) of PFA Act have not been complied with by the prosecution, as no public witness was joined at the time of taking the samples. He submits that the samples were stated to have been taken from the Part in an open market, yet no public witness was joined. He further argued that claim of the prosecution to the effect that no public person came to join the investigation ought to have been rejected and non-joinder of public witness casts a strong doubt on the bona fide of the prosecution case. It necessarily vitiated the trial and the conviction on the sole testimony of the official witnesses is bad in law and is not sustainable. Reliance was placed on the decision in B.A. Sawant v. State, 1974 PFA 304. As per the settled law, Section 10(7) is not mandatory. It is evidentiary in character. The compliance of Sub-section (7) would be necessary for satisfying the Court that the required sample was taken, as alleged by the prosecution. The compliance becomes unnecessary when the accused himself admits they taking and sealing of the ample by the Food Inspector. The case of the petitioner that he had no connection with 'Haldi' or 'Lalmirchi' powder and that he was merely standing there as a customer is without substance. It is a matter of common knowledge that members of public are hesitant in joining as witnesses. Merely, because the public witnesses were not joined, the prosecution case cannot be thrown out.

12. Lastly, leaned counsel for the petitioner argued that the petitioner has suffered pain and agony of trial for more than ten years and that he has already undergone a sentence of more than seven months, thereforee, sentence awarded to the petitioner be reduced to the period already undergone by him. Since the minimum sentence prescribed under Section 16(1-A) is one year and sentences awarded in both the cases have been ordered to run concurrently, and punishment awarded is only simple imprisonment, this contention has also no merit. No other point was argued.

13. In view of the above, I find no illegality or infirmity in the impugned order to warrant interference. There is no merit in the petition and the same is dismissed.