

Ramesh Chand Goyal Vs. State

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Court : Delhi

Decided On : Jul-16-2002

Reported in : 99(2002)DLT424

Judge : S.B. Sinha, C.J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 7(10), 14(1) and 16(1); [Evidence Act, 1872](#) - Sections 114 and 114(3)

Appeal No. : Crl. Revision No. 26 of 2001

Appellant : Ramesh Chand Goyal

Respondent : State

Advocate for Def. : Mukta Gupta, Adv.

Advocate for Pet/Ap. : P.R. Thakur, Adv

Disposition : Petition allowed

Judgement :

S.B. Sinha, C.J.

1. This revision petition is directed against a judgment of conviction and sentence dated 20.1.2001 passed by Sh. H.S. Sharma, ASJ, Delhi whereby and whereunder, an appeal preferred by the petitioner herein from a judgment of

conviction dated 24.4.1992 by the Metropolitan Magistrate under Section 16(1)(c) of the Prevention of Food Adulteration Act (the Act) sentencing the petitioner to undergo RI for one year and to pay a fine of Rs. 5,000/- was dismissed.

2. The case has a chequered history. Petitioner herein, used to run a grocery shop under the name and style of Goyal Provision Store in Janakpuri Market, New Delhi.

3. On 29th April, 1988 at 4 p.m. allegedly one R.K. Ahuja, Food Inspector, visited the said shop and allegedly upon disclosing his identity expressed his intention to take sample of black pepper whole. According to the prosecution case, the petitioner moved the packets of black pepper and ran away therewith and did not turn up thereafter. In the said circumstances, a complaint was filed in the Court purported to be on the ground that the petitioner has committed an offence under Section 14(1)(c) of the Act.

4. The case of the petitioner, on the other hand, was that the said Food Inspector visited the shop at 4 p.m. and made a demand of black pepper whole. As the said commodity was not available the Food Inspector and the members of his team asked him to collect Rs. 10,000/- from other shopkeepers so that they may not be further harassed. Upon refusal by the petitioner to do so, he had been threatened with dire consequence whereupon he called some shopkeepers of the market and took a decision to lodge a report in the nearby police station. Further contention of the petitioner is that they reached police station at 4.30 p.m. where they lodged a report, Following them the Food Inspector also reached the police station.

5. At the trial the prosecution examined seven prosecution witnesses. Petitioner also examined five witnesses.

6. It is not in dispute that so far as the report filed by the petitioner is concerned, no action has been taken on the complaint.

7. Petitioner has raised a contention that he along with other shopkeepers after lodging a report with the police station made a representation to Shri Bansi Lal Chauhan, Executive Councillor who promised that some action in the matter shall

be taken. Before the Trial Court the petitioner inter alias examined a Head Constable posted in Police Station to prove that the report against the complainant and others was lodged at 4.30 p.m. whereas the report of the Food Inspector was lodged only at 4.47p.m. Disbelieving the evidence of the petitioner the Trial Court accepted the prosecution case. The learned Magistrate awarded a punishment of RI for one year and further directed the petitioner to pay a fine of Rs. 5,000/- or in default thereof to undergo further RI for six months.

8. Petitioner preferred an appeal against the said judgment of conviction and sentence before the learned Sessions Judge which was registered as CrI. A. 3199/92. Before the Appellate Court as many as eight substantial questions were raised besides the question that the sentence awarded is too harsh.

9. Learned Court of Appeal below, adopted somewhat unusual approach. A bare perusal of the said judgment would go to show that he in his judgment did not discuss the evidence both oral and documentary. The Appellate Court principally failed to take into consideration the question as to whether the defense witnesses examined by the petitioner herein should have been disbelieved or not. It is noticed that the learned Judge jumped to the conclusion that the uncorroborated testimony of the witnesses should not be believed and in support of the said proposition he relied on Section 114(e) of the Evidence Act. The said provision had no relevance at all particularly when in terms of the provisions of the said Act procedure has been laid down as to how and in what manner search and seizure should be effected. It is one thing to say that in a given case the Court comes to the conclusion that there has been substantial compliance of Section 7(10) of the Act but it is another thing to say that although an argument has been advanced to the effect that the said mandatory provision of law as interpreted in various decisions of the Apex Court and other High Court had not been followed but evidence of witnesses would be accepted in view of the provisions of Section 114(3) of the Evidence Act.

10. Counsel appearing on behalf of the petitioner has taken me through the decision of Apex Court in 1974 SC 789 and Full Bench decision of Punjab & Haryana High Court in State of Punjab v. Raman Kumar . The Full Bench upon

taking into consideration the decision of the Apex Court in 1974 SC 789 has held:

Quote paras 34 and 36 : 'We thus, hold that the provisions of Section 10(7) are mandatory but their non-compliance itself would not vitiate the trial if there exists proper documentary evidence to show before the Court that it was not practically possible for the Food Inspector to secure presence of independent witnesses, ' this obviously would include an effort on his part to ensure presence of independent witnesses in which he may fail in spite of efforts. In such circumstances the collection of sample in the presence of members of the staff of the Food Inspector or his team may be termed as sufficient compliance of these provisions.

This bald assertion of the Food Inspector does not inspire confidence and cannot persuade the Court to come to a conclusion that the Food Inspector made any genuine efforts to join the independent witnesses but he was unable to do so from the evidence available on the record.....'

11. Unfortunately, the Court of Appeal below did not consider the matter from that angle at all. It further appears, as has rightly been pointed out by the learned Counsel for petitioner that the Appellate Court has disbelieved the defense witnesses and particularly the evidence of the Head Constable DW 5 without assigning any reason at all. The Appellate Court below in the judgment merely held: (Page 33):

'The defense of the appellant is nothing but an afterthought and merely because he (the appellant) had informed the police on that very day does not mean that the PWs have deposed falsely. A written complaint Ex. PW 2/A was handed over to the police by the FI (R.K. Ahuja). The argument that no case under Section 186, IPC was registered and therefore the police did not find the version of the FI as correct is devoid of merits.'

12. It has been contended, which has not been denied or disputed that no suggestion was given to DW 5 that he had made interpolation in the official record. In the absence of such a suggestion, the Appellate Court ought not have disbelieved the said evidence. Furthermore, the Appellate Court below, did not

discuss the evidence of the witnesses in detail independently or otherwise and passed the impugned judgment in perfunctory manner. The manner in which the Appellate Court has dealt with the appeal cannot be appreciated and on that ground alone in the opinion of this Court the impugned judgment cannot be sustained which is set aside accordingly and the matter is remanded to the District Judge, Delhi with a request to assign the matter before appropriate Bench with a notice to the parties so that the appeal may be disposed of as expeditiously as possible. This petition is allowed.

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