Swaroop Ram Vs. the State

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Court : Rajasthan

Decided On : May-28-1963

Reported in : AIR1963Raj233; 1963CriLJ527

Judge : Jagat Narayan, J.

Acts : Prevention of Food Adulteration Act, 1954 - Sections 11, 13, 16 and 20; Rajasthan Town Municipalities Act, 1951 - Sections 23; Rajasthan Municipalities Act, 1959 - Sections 67

Appeal No. : Criminal Revn. No. 202 of 1963

Appellant : Swaroop Ram

Respondent : The State

Advocate for Pet/Ap. : S.L. Mardia, Adv.

Disposition : Revision dismissed

Judgement :
ORDER

Jagat Narayan, J.

1. This is a revision application by one SwaroopRam who has been convicted under Sections 7(i) and 16(ii) of the Food Adulteration Act and sentenced to

rigorous imprisonment for three months and to pay a fine of Rs. 1500/-or in default to undergo rigorous imprisonment for Three months..

2. Two points were mainly argued on behalf of theapplicant. One was that the Chairman of the Municipal Board who granted the sanction was not duly authorised to do so and the other was that the sanction was bad. Reliance wasplaced on the decision of a learned single Judge of this Court in Chhanwar Lal v. The State, Cr. Revn. No. 198 of 1962, D/- 28-2-1963 (Raj).

3. The point that the Chairman had no authority to grant sanction in the present case was not raised on behalf of the applicant in the Trial Court. It was sought to be raised for the first time in the Appellate Court but the latter declined to go into it, and rightly so in my opinion as it is a mixed question of fact and law. However, I find that under Section 23 (d) of the Rajasthan Town Municipalities Act, 1951 as well as under Section 67 (d) of the Rajasthan Municipalities Act, 1959 the Chairman has authority to perform all executive acts on behalf of the Board. The Chairman consequently could grant sanction to prosecute in this case as granting of such sanction was an executive act.

4. In Chhanwar Lal's case, Cri. Revn. No. 198 of 1962 D/- 28-2-1963 (Raj) (supra), according to the learned counsel for the appellant the prosecution relied on the following resolution of the Board:

'This Board hereby resolve that the Health Officer of this Board shall be licensing authority and the President of the Board shall be the local authority under Section 20 of the Prevention of Food Adulteration Act 1954 to accord consent for any prosecution of any licensee under Section 20 of the Prevention of Food Adulteration Act.'

5. Learned counsel contends that as the applicant isnot a licensee the Chairman had no authority to grant sanction for prosecution in this case. This argument is based on two presumptions. Firstly that in this case also theprosecution relies on the same resolution of the Board which was relied upon in Chhanwar Lal's case, Cr. Revn. No. 198 of 1962, D/- 28-2-1963 (Raj), and secondly that in fact the applicant is not a licensee. There is no evidence on record io show whether he is

or is not a licensee. There is, however, an inventory form Ex. P. 2 which contains a column for entering the licence number of the person prosecuted. This column is blank.

6. Assuming that the applicant is not a licensee, the Chairman had power to sanction the prosecution in the pre-sent case under Section 23 (d) of the old Act and Section 67 (d) of the new Act. it has not been shown that the power of the Board to sanction prosecution has been delegated to any person or authority other than the Chairman In the case of the persons who do not hold a licence.

7. With regard to the contention that the sanction is the argument of the learned counsel is two-fold. Firstly,it is contended that the sanction is bad as the section of the Prevention of Food Adulteration Act under which the prosecution was being sanctioned was not specified. The second argument is that there is nothing to show that the Chairman applied his mind to the facts of the case. So far as the specification of section is concerned, I am of the opinion that it is not necessary. The facts on which the prosecution is based should, however, be placed before the authority and the authority should apply its mind to them before granting sanction. As was observed in Tulsiram v. The State of Uttar Pradesh, AIR 1963 S C 666, there is a presumption from the official act of the Chairman granting the sanction that it was regularly performed. There is nothing on record to rebut the presumption so arising. On the contrary, the statement of the Inspector shows that the Chairman duly applied his mind to the facts of the casa before granting the sanction.

8. Another point which was argued was that no opportunity was given to the applicant to cross-examine Jeevraj P. W. 2. On the date on which he was examined the learned counsel for the applicant was out of station. He did not apply for an adjournment before leaving Jodhpur. In the circumstances, the Trial Court rightly rejected his application for recalling the witness for cross-examination.

9. Next it was argued that it has not been proved that formaline was put in all the three bottles in which samples of milk were taken. Here again there is a presumption that it was so put. Moreover, it is mentioned in the report of the Inspector who took the samples that ten drops of formaline were put in each of the

bottles.

10. Finally it was argued that no evidence was produced to prove that the samples were not tampered with after they had been taken. The samples were duly sealed by the Inspector in the presence of the applicant. They were received by the Analyst in a sealed condition. There is no material on record from which any suspicion might arise that the bottles were tampered with. The presumption therefore is that the seals were not tampered with.

11. The applicant was convicted once before for adul-terating milk. In the circumstances of the case the sentenceis not excessive.

12. I accordingly dismiss the revision application.