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Kanhaiya Lal Vs. State

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Court : Rajasthan

Decided On : Mar-16-1971

Reported in : 1971CriLJ1211

Judge : H.C. P. Tripathi, J.

Appellant : Kanhaiya Lal

Respondent : State

Advocate for Pet/Ap. : Mr. C. S. Saran

Judgement :
ORDER

H.C.P. Tripathi, J.

1. Applicant was convicted by a Magistrate First Class for an offence Under Section 7/16 of the Prevention of Food Adulteration Act and sentenced to six months' rigorous imprisonment and to a fine of Rs. 1000/-. In default of payment of fine, he was to undergo three months' further rigorous imprisonment.

2. On appeal, the conviction and sentence of the applicant were confirmed by the learned Sessions Judge, Gyanpur.

3. According to the prosecution, Sri Shambhu Prasad Food Inspector took the sample of Pera from the shop of the applicant, which he was exposing for' sale in

the Mela at Seetamarhi on 27-6-1966 in accordance with rules. He divided it in three parts, one of which he handed over to the applicant and one was sent to the Public Analyst. The Public Analyst reported that the milk fat contents in the sample was less than. 5 per cent., which is the minimum limit prescribed under law. Accordingly, the applicant was prosecuted and has been convicted and sentenced as stated above

4. Mr. C. S. Saran, learned Counsel for the applicant has raised several contentions in support of this revision-It is urged that the sample was taken on 27th of June, 1966, the report of the Public Analyst was received on 2nd of September, 1966, the sanction for the prosecution of the applicant was given by the District Medical Officer of Health on 30th June, 1967, but the prosecution was actually launched against the applicant sometime in the year 1968. learned Counsel contends that on account of this inordinate delay in launching the prosecution against the applicant, he could not take advantage of the valuable right conferred on him by Section 13(2) of the Prevention of Food Adulteration Act to have the sample analysed by the Director of Central Food Laboratory and as such his conviction is not sustainable. The other argument raised by the learned Counsel is that as no standard has been prescribed under the rules for the fat contents to be found in Pera, it cannot be held that the sample was adulterated within the meaning of the Act.

5. There is a report on the file, which indicates that the original record of the case is not traceable. From the impugned orders of the trial Magistrate and the Sessions Judge, however, it is clear that the sample of Khoya-Ka-Pera was taken on 27-6-1966 at 2 p.m. and that the prosecution was launched against the applicant sometime in the year 1968 as is evident from the fact that it has been numbered as Criminal Case No. 260 of 1968, learned Counsel produced before me from his file a copy of printed form, which appears to have been submitted by the Food Inspector to the S. D, M., Gyanpur indicating therein that the sample of Khoya-Ka-Pera was taken on 27-6-1966 at 2 p.m. and praying that the applicant be prosecuted Under Section 16 for the breach of Section 7 of the Prevention of Food Adulteration Act. There is an endorsement on this printed application, which bears the signature of District Medical' Officer of Health, Varanasi dated 30-6-1967

according the sanction for the institution of the complaint. I am, therefore, satisfied that the various dates as mentioned by the learned Counsel on which the-sample was taken, and the sanction was accorded for the prosecution of the applicant are correct and that the prosecution was launched more than two years after taking of the sample.

6. Section 13(2) of the Act reads:

After the institution of a prosecution under this Act the accused vendor or the complainant may, on payment on the prescribed fee. make an application to the Court for sending the part of the sample..... to the Director of the Central Food Laboratory.

In terms of this sub-section, the accused vendor can take advantage of it only after the prosecution has been launched against him in Court and then he can have the sample sent through court to the Director of the Central Food Laboratory for a certificate. In this case, the prosecution was launched more than two years after taking of the sample. It is obvious that the milk contents of Pera could not have remained in a fit condition for being examined by the Director within the meaning of Section 13(2) after a lapse of such a long time. In such circumstances, there is nothing surprising if the applicant did not apply to the Court for getting the sample analysed by the Director as his attemp would have proved of no avail. I am, therefore, of, the opinion that in the light of the decision of the Supreme Court in the case of Municipal Corporation of Delhi v. Ghisa Ram. : 1967 CriLJ939 it must be held that the applicant has been deprived of his valuable right, which is conferred on him Under Section 13(2) of the Act for getting the sample analysed by the Director of Central Food Laboratory on account of an inordinate delay in launching the prosecution against him. That being so where there is denial of this right to the vendor, there is no doubt that the vendor applicant i seriously prejudiced in the trial and it would not be proper to uphold, his conviction on the basis of the report of the Public Analyst.

7. In the result, this revision is allowed. The conviction and sentence of the applicant are set aside. Applicant is on bail. His bail bonds are cancelled. He need not surrender. Fine, if paid, shall be refunded.

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