

Chhagan Lal Vs. the State

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Court : Rajasthan

Decided On : Nov-05-1982

Reported in : 1982WLN512

Judge : G.M. Lodha, J.

Appeal No. : S.B. Criminal Revision No. 265/82

Appellant : Chhagan Lal

Respondent : The State

Disposition : Petition dismissed

Judgement :

G.M. Lodha, J.

1. Protective umbrella for preventing, punitive punishment under Prevention of Food-Adulteration Act, by plea of food stuffy meant for animals, whether genuine or result of ingenuity of human intelligence to exploit animals and human-being together, is the pivot of legal debate in these two criminal prosecutions.

2. Prevention of prosecutions and implementation & enforcement of Prevention of Food-Adulteration Act by vested interests, who do trafficking in human life for minting money, whether should be prevented by exploding such defences of ingenuity, trickery, is another fact of the present prosecutions, where the same

petitioner is facing three prosecutions, for adulterating in three different varieties of food stuffs, on the same shop, as alleged by Mr. Tibrewal.

3, Whether man who is termed as 'most intelligent animal' by some philosophers, should be allowed to exploit animals silence and helplessness of non-contesting, non-protesting and non-speaking, by taking, defence in their name, is yet another new dimension of the noval defences, a dimension on which I would restrain myself from divulging and elucidating, any more as a Judge.

4. Honey for scorbean bite treatment and 'Ajwayn' for animals, is the defence in two prosecutions in which adulteraiton is not under challenge, Whether the defence is much more adulterated than the food stuff is the new horizon, of adulteration in this ever increasing social crime of serious magnitude.

5. Honey for scorpean bite or accused biting humanbeings, as Scorpean, for minting money out of Honey, is the real controversy.

6. Prosecution for adulteration with adulterated defence, whether means adulteration in adulteration, is yet another new fact of this device which is becoming as common as plea of alibi in other criminal cases.

7. Criminology of social crimes and such defence whether extension or aggravention of criminology, should be a subject of serious research.

8. And now the traditional facts for dealing the two revisions separately.

9. Let me deal with conviction about adulteration in Ajvayan first, petitioner Chhagan Lal has filed this revision petition against the judgment of the learned Sessions Judge, Sikar in Criminal Appeal No. 101/81 maintaing the conviction of the petitioner under Section 7/16 of the Prevention of Food Adulteration Act (hereinafter referred to as the Act), as passed by the learned Chief Judicial Magistrate, Sikar vide his judgment in criminal case No. 55/81. However, the sentence has been reduced from one year rigorous imprisonment and a fine of Rs. 2,000/- to six months rigorous imprisonment and a fine of Rs. 1,000/-.

10. The second revision petition No. 226/82, arising out of Honey adulteration would be dealt with separately.
11. The petitioner is a shop-keeper in the town of Khandela in district Sikar. Food Inspector, Roopram took sample of Ajvayan from the petitioner. Ajvayan was found adulterated by the Public Analyst as it did not confirm to the prescribed standard.
12. Before this Court as well as the lower Court, the plea which has been taken by the accused, and on which detailed arguments have been advanced by the learned Counsel for the petition is, that Ajwayn sample of which was taken from the petitioner was not meant for human consumption, but it was meant for consumption of animals.
13. Both the lower courts have considered this aspect of the case. The accused in support of his plea examined DW 1 Babolal and DW2 Ramcharan to support his contention that Ajwayn which was purchased by the Food Inspector was meant for consumption of animals and was not meant for human consumption. Reliance was also placed on the receipt Ex. P. 2 in which a note was given to this effect.
14. Mr. Tibrewal submitted that once the receipt itself contains a note to the effect that the article of food purchased by the Food Inspector is meant for consumption of cattle and two witnesses have been produced in support of that, it was enough as a plausible defence and in a criminal case where the prosecution is required to prove the case beyond all reasonable doubt, the accused is entitled to acquittal. Reliance was placed by Mr. Tibrewal on a Division Bench judgment of this Court in State v. Gulab Chand 1980 Cr LR (Raj) 627 where an appeal against acquittal for an offence for selling adulterated Gur was dismissed by the High Court.
15. Since the purchase of Ajwayn and the fact that it was the accused from whom it was purchased, and that it was found to be adulterated is not in doubt or dispute, it would be proper now to consider the submissions of Mr. Tibrewal in support of the contentions and the plea of the accused mentioned above. The Food Inspector has stated that at the time of purchase of the sample of Ajwayn, he gave Form No. 6 and notice Ex. P-1 and obtained signatures of the accused and then after

making payment got receipt Ex. P. 2. These documents have not been disputed, but Mr. Tibrewal has concentrated on the plea of the accused that Ajwayn was not meant for human consumption. It is significant to note that apart from the prosecution evidence that Ajwayn was being sold for human (consumption, the defence witness Ramcharan has also stated that the accused used to sell Ajwayn for human consumption also, although he has stated that the particular Ajwayn bag from which the sample was taken was not meant for human consumption. It is established on the record that the bag from which the sample Ajwayn was taken did not contain any label or mark showing that it was meant for animals or cattle consumption only, and even if the accused had other bags in which Ajwayn was kept, I am of the opinion that the finding of the lower court that the Ajwayn sold by the accused to the Food Inspector from the shop where he was doing the business for selling various items of human consumption was meant for human consumption, is just & proper.

16. Mr. Tibrewal's contentions is correct that in a criminal case the burden lies on the prosecution and the accused is not required to prove the case beyond reasonable doubt. However, when normally the petition was doing the business of selling various items for human consumption, and he wanted to carve out an exception for his benefit to escape the normal penalty and the requirements of the Act, where standards have been laid down for each item, then he alone could have proved that this particular case of sale came into exceptional category where even though he was doing the business for selling various items for human consumption, some of them and this particular item was for consumption of animals. It was all the more necessary, because when the bag from which Ajwayn was taken did not have any Label or indication that this particular stuff was not for human consumption, neither the purchaser nor the seller can distinguish which particular Ajwayn is meant for human consumption and which is meant for cattle consumption, even if the accused intended to sell some part of it for animal consumption only. The absence of any label or marking or indication on the bag from which Ajwayn was taken and the similarity of other bags as per statement of Ramcharan defence witness squarely shows that the defence of the accused is an after thought and ingenuine device to escape the penalty under the Act.

17. Both the lower courts have discussed the evidence of defence witness, and have also taken note of the fact that while giving the receipt the accused introduced a few words to show that it was meant for cattle consumption, but this introduction was not genuine and was only a clever device to escape punishment and I have got no reason to disagree or take a different view from the view taken by the two lower courts on the appreciation of evidence in revisional jurisdiction.

18. Mr. Tibrewal placed reliance on the judgment of State v. Gulab Chand (supra). On a careful study of the judgment, it is obvious that the Gur quality, sample of which was taken was a quality which could not be used for human consumption at all. It has been proved even from the statement of the Food Inspector in that case that Gur which was purchased and the sample was taken was 'Raskat' Gur, and Raskat Gur is a quality which is not meant for human consumption. This special feature of Gulabchand's case makes it clear that the acquittal by the lower Court which was upheld by the High Court was based squarely on the basis of admission of the Food Inspector himself along with the other evidence that the quality of Gur purchased or sample of which was taken was Rastak Gur which was never meant or can never be used for human consumption. It is not the case of the accused that Ajwayn in the instant case was of a quality which can never be used for human consumption, nor it has been alleged or shown that there are different qualities of Ajwayn. In view of the facts and circumstances in which the acquittal of Gulabcharid was upheld by the Division Bench could have no application to the present case and no benefit can be taken by the accused on that count.

19. It must be mentioned that adulteration of the food articles is a serious social crime and normally unless the court finds very genuine defence, the provisions of such laws which are meant for safeguarding the health of the community as a whole should not be allowed to be defeated, and frustrated, but ingenuity or device of the accused to outwit the prosecution. In my considered opinion, the present one is a typical case of that type where the accused by ingenuity wanted to outwit the prosecution by introducing in the receipt the words to show that Ajwayan was for cattle consumption.

20. The facts and circumstances of the case and the reasons given by the learned Sessions Judge in my opinion are just and proper to disbelieve and reject the defence theory that Ajwayn sold to the Food Inspector was not meant for human consumption.

21. Mr. Tibrewal then submitted that the accused is an old man of more than 60 years of age, and it was only by chance that he remained on the shop on that day where normally he sits. I find that the learned Sessions Judge has already reduced the sentence from one year to six months and the fine has also been reduced. Normally, in such cases of food adulteration, there is no ground or reason for reducing the sentence.

22. With advancement of age one expects maturity and detachment from greed of money.- The ancient Indian Vedic concept of advanced age was 'Vanprasth' and 'Sanyas'. In this space age of materialism, superceding spiritualism, maturity in age is being exploited for inventing ingenious, new and novel devices, methods and schemes for enriching self, by amassing ill gotten wealth by all questionable methods. The present two cases are microscopic, insignificant samples of mad race of adulteration crime, which is one out of lakhs of variety of economic and socio-economic offences, which in the latest publicly expressed opinion of Hon'ble Hidayatullah, Ex-Chief Justice of Supreme Court of India, warrants 'whipping' if not public whipping.

23. The Appellate and Revisional Courts should not adopt 'reduction of sentence methodology' a traditional goodwill gesture system, which has outlived its utility and put only premium on such crimes.

24. No doubt the maxim is 'Old is Gold' but new instead of acting as precious metal of gold, some old persons also want to procure 'gold' by hook or crook, by questionable criminal methods. Therefore, unfortunately in such cases 'Old' are not Gold: but they want 'gold' at any cost and when criminology is resorted to, old cannot escape jail and yet have gold.

25. As socioeconomic crime putting at risk health of society at the altar of silver coins, is anti these is of 'Social Justice'. The era of social justice, warrants firm,

stringint and strict approach in such social crimes and misplaced traditional leniency results in abatement of such crimes against society. Such offenders who are social parasites, do not deserve any 'goody goody' nominal sentences.

26. Exemplary; deterrent punishments is the need of the day for 'social justice in social crimes'. I, therefore, refuse to become 'abettor' of this social offence of serious magnitude and reject Mr. Tibrewal's prayer of reduction of sentence, which already is inadequate.

27. The result of the above discussion is that this revision fails and is hereby dismissed.

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