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Court : Rajasthan

Decided On : Jan-25-1972

Reported in : 1972WLN38

Judge : S.N. Modi, J.

Appeal No. : S.B. Criminal Revision No. 500 of 1970

Appellant : Chatrumal

Respondent : The State and anr.

Disposition : Petition dismissed

Judgement :

S.N. Modi, J.

1. The petitioner Chatrumal was convicted by the Municipal' Magistrate, Ajmer under Section 7/16 of the Prevention of Food Adulteration Act, hereinafter called as the Act, and sentenced to undergo simple imprisonment for six months and to pay a fine of Rs. 1000/-. On appeal by the petitioner before the learned Sessions Judge, Ajmer, the conviction of the petitioner was affirmed but the sentence was reduced to two month's rigorous imprisonment and a fine of Rs. 500/-, and in default of payment of fine, to undergo further simple imprisonment for three months. The petitioner has now filed this revision application challenging his

conviction and sentence.

2. The relevant facts of the case are that the petitioner Chatrumal is a grocer having his shop at Hathi Bhata, Ajmer. He deals in vegetable ghee and oils. On 4th December, 1967 Food Inspector Yatindranath visited his shop and purchased 375 gms. of til oil from the petitioner for analysis purposes after giving notice Ex P. 1 in the prescribed form and making the payment of Rs. 1.40 as the price of the til oil. The sample of purchased was divided into three parts and each part was filled in a separate neat, and clean bottle. All the three bottles were duly corked, wrapped and labelled and sealed. One of such bottles was given to the petitioner, another was sent to the public analyst and the third one was retained by the Food Inspector. The Public Analyst S.D. Ahuja examined the sample of the til oil and found the sample to be adulterated as it did not conform to the prescribed standard of purity. He also mentioned in the report that the til oil was adulterated due to low B.R. Value, low iodine value and high turbidity temperature (bellier test). On receipt of the public analyst's report, the Municipal Council, Ajmer, filed a complaint against the petitioner in the Court of the Municipal Magistrate, Ajmer. The accused pleaded not guilty. He stated that he had sold pure til oil. According to him, the person who purchased the sample was not the Food Inspector but his peon. In his subsequent statement under Section 342 Cr. P.C. the petitioner stated that the peon first demanded ground nut oil from him which was supplied and filled in; three bottles. Later on, the Food Inspector came there and he asked the peon to take the sample of til oil. The bottles were then emptied and in the same bottles the sample of til oil was filled by the peon. On the prosecution side, the Food Inspector appeared in the witness-box and two more witnesses were examined. They are PW 2 Shyamsunder and PW 3 Narainsingh, the peon of the Food Inspector. In defence, the petitioner examined DW 1 Bhugromal. Both the lower courts held that the defence taken up by the accused that the ground-nut oil was first filled, in the bottles taken later on, in the same bottles, til oil was filled in, was rejected as after-thought and false. This plea of defence was supported not only by DW1 Bhugrdmal but also by PW 2 Shyamsunder. Both the lower courts were of the view that DW 1 Bhugromal was a concocted Witness and P W 2 Shyamsunder was 'won over by the accused-petitioner. In the result, the trial court as well as the appellate court convicted the accused-petitioner for the offence under Section 7/16

or the Act.

3. The learned Counsel for the petitioner, in the first instance, contended that the two lower courts acted erroneously in disbelieving the defence version as also the testimony of DW 1 Bhugromal and P W 2 Shyamsunder. There is a concurrent finding of both the courts that the defence version was false and after-thought and the two witnesses PW 2 Shyamsunder and DW 1 Bhugromal were not the witnesses of truth. As a general rule, the High Court ordinarily does not in a revision interfere with a finding of fact and this is specially so in the case of concurrent findings of fact of the lower courts. In the present case, no good ground has been pointed out by the learned Counsel for the petitioner to take a view different from that taken by the lower courts. I, therefore, reject the contention raised on behalf of the petitioner that the two lower courts committed error in disbelieving the defence version and the defence witness produced in support thereof.

4. The learned Counsel for the petitioner next pointed out certain defects in the sealing of the sample bottles. It was pointed out that the sample was not properly packed and sealed in the manner provided in Rule 16 of the Prevention of Food Adulteration Rules, hereinafter called the Rules. At the trial, one of the bottle which was left with the Food Inspector was summoned and its seals were broken at the request of the petitioner. The court found that the outer mouth of the bottle was sealed and the bottle was labelled. The bottle was also found wrapped by a piece of thick paper. Rule 16 runs as follows:

Rule 16. Manner of packing and sealing the samples: All samples of food sent for analysis shall be packed, fastened and sealed in the following manner namely:

(a) The stopper shall first be securely fastened so as to prevent leakage of the contents in transit.

(b) The bottle, jar or other container shall then be completely wrapped in fairly strong thick paper. The ends of paper shall be neatly folded in and affixed by means of gum or other adhesive.

(c) The paper cover shall be further secured by means of strong twine or thread both above and cross the bottle, jar or other containers and the twine or thread shall then be fastened on the paper cover by means of shelling wax on which there shall be at least four distinct and clear impressions of the seal of the sender, of which one shall be at the top of the packet, one at the bottom and the other two on the body of the packet. The knots of the twine or thread shall be covered by means of sealing-wax bearing the impression of the seal of the sender.

This rule deals with the manner of packing and sealing the samples, It was contended on behalf of the petitioner that the requirements of Clause (c) of the said Rule were not fully complied with in as much as no seals were affixed at the bottom and on the body of the bottle and the paper cover was not secured by means of a strong twine or thread. It may be true that some of the requirements of Rule 16 were not complied with, but merely on that account the trial or the report of the Public Analyst can not be deemed to be invalid unless it was further shown that miscarriage of justice had been caused on account of the defects in the manner of packing and sealing the (sic) was not able to show how the accused was in any way prejudiced by reason of the non-compliance of the provisions of Rule 16. One of such bottles was sent to the Public Analyst and his report shows that the sample of til oil contained in the bottle was properly sealed and fastened and he found the seal intact and unbroken. He further noticed on comparison of the seal on the bottle and the specimen impression of the seal received separately by him that both the seals were indetical. If the bottles were properly sealed, there was no possibility of tampering with the sample oil. There is thus no substance in the contention of the learned Counsel that there was non-compliance of Rule 16 of the Rules.

5. The learned Counsel also urged that the possibility of the original sample bottles being changed, subsequently cannot be ruled out in the present case as the prosecution witnesses were not able to point out the exact colour of the sample bottles Some pointed out the colour of the bottles to be white whereas others pointed out that they were coloured. Much weight cannot be attached to such a fact as small discrepancies here and there are bound to occur when evidence is given after a lapse of considerable time. Some allowance must be made for

forgetfulness and lapse of memory. There is no evidence that the original sample bottles were substituted subsequently. The best evidence in this connection would have been the production of the sample bottle which was handed over to the accused at the time of taking the sample. The accused withheld that bottle saying that it was not available with him.

6. The learned Counsel for the petitioner then drew my attention to the statement of the Public Analyst S.D. Ahuja which was recorded by the appellate court. In that statement, the public analyst stated that the sample of the til oil was adulterated as it contained 60% of ground-nut oil. On the basis of the above statement, it was urged that since the mixing of the groundnut oil could not be prejudicial to the purchaser, the admixture cannot be treated as adulterated article of food within the meaning of Section 2(1)(a) of the Act. Section 2 deals with definitions. Sub-section (1) of Section 2 defines the word 'adulterated'.

7. Its Clause (a) runs as under:

(1) 'adulterated' an article of food shall be deemed to be adulterated.-

(a) if the article sold by a vendor is not of the nature, substance or quality demanded by the purchaser & is to his prejudice, or is not of the nature, substance or quality which it purports or is represented to be;

It was argued that the sample of til oil had not been shown to be prejudicial to the purchaser and unless that is proved the sample cannot be deemed to be adulterated. In support of the above contention, the learned Counsel for the petitioner relied on *The Public Prosecutor v. Nalam Subba Rao* 1964 (1) Cr. L.J. 448. In this case it was laid down by Munikanish, J. as follows:

So the gravamen of the charge, when a person is accused of adulterating an article of food, is that such adulteration prejudices the vendee or injuriously affects the nature, substance or quality of the article of food. Such being the case, it is not always that the mixture of articles of food that invariably make an offender liable for an offence under Section 7(1) on the ground that there was sale of an adulterated food.

8. In that case, the Food Inspector purchased Bengal gram flour & on an analysis it was found to contain 50 percent of pea powder. It was further found that the pea powder mixed with the Bengal gram flour was a costlier substance. There was no evidence to show that the pea powder in Bengal gram flour effected prejudicially to the purchaser. In the circumstances, Munikannish, J. observed:

It cannot be said that it has been sufficiently brought out that the pea powder, when mixed with Bengal gram, is injurious or injuriously affects the nature, substance or quality of the Bengal gram powder. The lack of such evidence makes it impossible to bring the mixing of these powders as adulteration falling under Clause (c) or Clause (b). As for the bringing of the present case under cl (a), there is no evidence to show that the purchaser has been prejudicially affected. Therefore, the conclusion reached by the lower court that no offence has been made out against the accused under Section 2(1)(a) read with Section 7 of the Act is unassailable.

9. With great respect. I am unable to agree with the interpretation placed by the learned Judge on Section 2(1)(a) of the Act. In my opinion the learned Judge reading of Section 2(1)(a) is not correct. The Section 2(1)(a) should be read as follows:

An article of food shall be deemed to be adulterated:

(i) If the article sold by a vendor is not of the nature, substance or quality demanded by the purchaser and should be to his prejudice, or

(ii) If the article sold by a vendor is not of the nature, substance or quality which it purports to be, or

(iii) If the article sold by a vendor is not of the nature, substance or quality as it represented to be.

The expression 'is to his prejudice' clearly goes with the first portion of the section only and not with the second and third portions of it. If the article sold is not of the nature, substance or quality which it purports to be or is represented to be, then that article must be regarded as adulterated irrespective of the consideration

whether or not it prejudices the purchaser. In the present case, the petitioner gave the sample of the til oil and if the sample given by him was not of pure til oil but was admixture of til oil and ground-nut oil, it must be deemed to be adulterated within the meaning of Section 2(1)(a) of the Act. The Food Inspector in the present case demand from the accused a sample of til oil and if the accused sold to him admixture of til oil and ground-nut oil representing it to be til oil, the article of food cannot be of the nature, substance or quality which it purported or represented to be. The sample in the circumstances was rightly held to be adulterated.

10. Assuming for the sake of argument that the admixture of til oil and ground-nut oil cannot be deemed to be an adulterated article of food within the meaning of Section 2(1)(a) of the Act, even then that would not render the petitioner's conviction under Section 7/16 of the Act invalid or illegal. Section 7 of the Act inter alia lays down that no person shall himself or by any person on his behalf or by any person manufacture for sale or store, sell or distribute any article of food in contravention of any other provision of this Act or any rule made thereunder '

11. Now Clause (c) of Rule 44 of the rules which have been made under the Act prohibits sale of a mixture of two or more edible oils as an edible oil. It would thus be clear the admixture of til oil and ground-nut oil sold by the accused was in contravention of the Rules. Section 16(1)(a)(ii) of the Act makes punishable selling of any article of food in contravention of any of the provisions of the Rules. The conviction of the accused petitioner under Section 7/16 of the Act cannot therefore, be held to be illegal.

12. The learned Counsel lastly contended that the sentence was excessive in view of prolonged trial. He also contended that the case was also once remanded by the learned Sessions Judge. All these points were considered by the learned Sessions Judge and considering them be reduced the sentence. I am not inclined to further reduce the sentence.

13. The revision petition therefore fails and it is dismissed The petitioner is on bail. He is not present in Court today. The District Magistrate, Ajmer, shall issue a warrant of arrest against him and send him to jail to serve out the remaining sentence.

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