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Court : Rajasthan

Decided On : Jan-13-1987

Reported in : 1989WLN(UC)504

Judge : Navin Chandra Sharma, J.

Appeal No. : S.B. Cr. Revision No. 179 of 1982

Appellant : Mohd. Umar

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. A.K. Bhandari

Judgement :

N.C. Sharma, J.

1. This is a revision by Mohammad Umar against the judgment of the Additional Sessions Judge No. 1, Baran dated August 9, 1982 passed in criminal appeal No. 164 of 1981 of his Court whereby the said Judge confirmed the conviction and sentence dated September 1, 1981 passed by the Judicial Magistrate, Baran in criminal case No. 274 of 1977 convicting the petitioner under Section 17 read with Section 16 of the Rajasthan Prevention of Food Adulteration Act, 1954 (for short here in after the 'Act') and sentenced him to undergo six months' rigorous imprisonment and to a fine of Rs. 1000/ and in default of the amount of fine to

further undergo one month's imprisonment.

2. Facts leading to the filing of this revision are that the petitioner Mohammad Umar carries on the business in grocery and edible oil in Talab Pada Baram. On November 28, 1975 Amarlal, Food Inspector Baran went to the shop of the petitioner, found that the petitioner was selling edible oil and species. He suspected that the ground-nut oil at the shop of the petitioner was adulterated. He, therefore, gave a notice in form VI to the petitioner and his intention to purchase 375 gramc of ground-nut oil from the petitioner. Ex. P 1 is the notice in form VI. The Food Inspector purchased the said quantity of ground-nut oil on payment of Rs. 2.62 to the petitioner under cash receipt Ex. P 2. He divided the sample in three parts and filled the divided parts in three clean and dried bottles labelled and sealed them according to statutory requirements and gave one bottle of the sample to the petitioner and sent the other to the Public Analyst Kota. Along with the sample the Food Inspector also sent a memorandum (copy whereof is Ex. P. 4) together with the specimen impression of the seal separately. Ex. P 5 is the receipt of the Public Analyst bout his receiving one sealed sample No. A/82/75 with form No. VII by hand on December 3, 1975. The Public Analyst found that the sample was properly sealed and fastened and that the seal was intact and unbroken. He also noted that the seal fixed on the container of the sample tallied with the specimen impression of the seal separately sent by the Food Inspector and that the sample was in a condition fit for analysis. The Public Analyst Kota sent his report of analysis on December 31, 1975 and he was of the opinion that the sample of ground-nut oil did not conform to the prescribed standard of purity and was adulterated within the meaning assigned to the expression by Section 12(1)(a) of the Act. The Food Inspector after obtaining sanction from the Administrator, Municipality Baran filed a criminal complaint against the petitioner on May 1, 1976 in the court of the Judicial Magistrate Baran. The Judicial Magistrate after holding trial found the petitioner guilty and by his judgment dated September 1, 1981, sentenced the petitioner as aforesaid. The petitioner filed an appeal No. 164 of 1988 before the court of Sessions which was transferred to the court of the Additional Sessions Judge No. 1, Baran. The Additional Sessions Judge dismissed the appeal of the petitioner on August 9, 1982. The petitioner has come in revision before this Court.

3. It was strenuously contended by Mr. A.K. Bhandari appearing for the petitioner that the courts below have ignored the evidence of Gajendra Singh PW 2 who has clearly admitted in his statement that the oil of which the sample was taken by the Food Inspector had leaked from all tins and the petitioner had also told to the Food Inspector that the oil in the tub was not for sale and had requested the Food Inspector to take the sample from the oil contained in the tins. However, the Inspector mala fide took the oil from the tub in spite of the protest from the petitioner. Thus it was contended that there was no sale but it was in fact seizure or compulsorily requisitioning of this food stuff. It was also argued that the petitioner had not stored the oil for sale because it was a waste oil in the tub which had leaked from the container. On this basis it was argued that there was no sale of the article which the Food Inspector had taken as sample and that the oil in the tub was not food as defined in the Act. In the alternative Mr. A.K. Bhandari also urged that in case this court affirms the conviction of the petitioner, a lenient view may be taken regarding the sentence because the petitioner is facing this protracted criminal litigation for the that over 10 years and he has already remained in Jail for 22 days. Mr. Bhandari urged that sentence already undergone would be sufficient to meet the ends of justice.

4. I have given due consideration to the contentions advanced by the learned Counsel for the petitioner. Amarlal Food Inspector has examined himself as PW 1 and he has deposed that the petitioner had a shop in Talab Pada Baran and at that shop the petitioner was selling edible oil and species etc. He has proved the giving of notice Ex. P 1 to the petitioner for purchasing 375 grams ground nut oil from the petitioner. He has also proved that he took this quantity of ground nut oil after paying an amount of Rs. 2.62p. to the petitioner for which he obtained receipt Ex. P 2. It is pertinent to note that on behalf of the petitioner no cross examination what so ever was made with Amarlal PW 1 and thus his statement completely goes unchallenged by cross-examination. The statement of Amarlal Food Inspector was recorded on September 22, 1978 and on that date the petitioner along with his counsel were present as is clear from the proceedings dated September 22, 1978. It may be mentioned here that before the Additional Sessions Judge, Baran, the petitioner had filed an affidavit this his counsel Shri Shyamkishore was not present on July 27, 1981 as he had gone out and,

therefore, further cross-examination could not be made with the prosecution witnesses. No affidavit was filed on behalf of the petitioner and his counsel before the Additional Sessions Judge and the Additional Sessions Judge held that when the presence of the counsel is recorded in the file of the Judicial Magistrate Baran on July 27, 1981, there was a presumption that the proceedings were correct. I am not ready to disturb this finding of the Additional Sessions Judge in revision and more so when no application was given by the petitioner before the trial court stating that his counsel had gone out on July 27, 1981 and that it was wrongly recorded in the proceedings that the petitioners' counsel did want to further cross-examine the witness. As food Inspector Amarlal was not at all cross-examined by the petitioner either initially on September 22, 1978 and also on July 27, 1981, and no suggestion was made to him that the sample of ground-nut oil taken by him was not from a container containing the ground nut oil and was taken from a tub the argument which the petitioner wants to raise that the oil in the tub was not meant for sale appears to be an after thought on which the petitioner wants to make a fabric because he was able to win over the attesting witness Gajendra Singh PW 2. The neck of the prosecution can not be tied by the testimony of a false witness like Gajendra Singh who had solemnly attested Ex. P 3 which clearly recorded that it was groundnut oil which was taken from the container as sample by the Food Inspector but who can change his stand to suit any one at any time. I completely believe the statement of the Food Inspector which is corroborated by the memo Ex. P. 3 which had been prepared by the Food Inspector and which was attested by Gajendra Singh and which is also signed by the petitioner himself. Notice in form No. VI given to the petitioner also bears the signatures of the petitioner and it is well established that the petitioner had sold ground nut oil to the Food Inspector after receiving a consideration amount of Rs. 2.62 P. It is well settled that a sale by a dealer to the Food Inspector is 'sale' as that expression is defined in Section 12(xiii) of the Act The courts below were right in holding that the petitioner had sold this articles of food to the Food Inspector. There can be no room for doubt that ground-out oil is food for the simple reason that it is an article which is used in the preparation of human food. The Division Bench of the Madras High Court in Public Prosecutor v. Maya Krishna : (1970)1MLJ275 held that ground-nut oil is an article of food-It was stated in that decision that in the context

of the petitioner having it in his grocery shop and for sale, it cannot be doubted that he kept it for sale as an article of food for human consumption. The Supreme Court in the decision reported in *State of T.N. v. Krishnamurthy* : 1980 CriLJ402 , stated that a seller of adulterated gingale oil will be guilty of an offence under the Act. Even if it sold specifically for lighting purposes if the purchase is likely to use it as food.

5. I may discuss here a decision referred to by the learned Counsel for the petitioner. The learned Counsel referred before me the decision of the Supreme Court in *Shah Ashu Jaiyant v. State of Maharashtra* : 1975 CriLJ1868 and on this basis he urged that the burden was on the prosecution to prove that the article which is the subject matter of an offence is ordinarily used for human consumption as food. This decision has no application what so ever to the facts of the present case because the article involved in 'black' tiles which were meant for 'pooja' and not for human consumption. I am of the view that the courts below rightly held the petitioner guilty for the offence under Section 17 read with Section 16 of the Act. As to the submission of the learned Counsel for the petitioner, for clemency, it may be stated that the offence was committed on November 28, 1975 i.e. before the Act was amended by Central Act No. 34 of 1986. The petitioner is facing this trial since last more than ten years. He has already remained in jail for 22 days from August 9, 1982 to August 31, 1982. He is on bail from September 1982. Looking to these facts. I am of the view that the ends of justice would be met if the sentence is reduced so as to commensurate with the sentence already undergone. However, the sentence of fine would remain intact.

6. Therefore, while ordering that the substantive sentence of imprisonment awarded to the petitioner is reduced to the period during which the petitioner has already been in jail, I disarms the revision so far as the conviction of the petitioner for the offence is concerned and also maintain the fine imposed on the petitioner. If the petitioner has already deposited the fine that would be an end the matter. However, in case the petitioner has not deposited the fine amount of Rs. 1000/- and fails to deposit the amount of fine within a period of one month, the Judicial Magistrate would take immediate steps after the expiry of one month to send the petitioner to Jail under a warrant for undergoing the sentence awarded by him in

default of payment of fine.

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