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Deo Kishan Vs. State of Rajasthan

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Court : Rajasthan

Decided On : May-15-1984

Reported in : 1984WLN(UC)92

Judge : S.S. Byas, J.

Appeal No. : S.B. Criminal Revision No. 301 of 1978

Appellant : Deo Kishan

Respondent : State of Rajasthan

Disposition : Petition allowed

Judgement :

S.S. Byas, J.

1. Accused Deo Kishan was convicted under Section 7/16 of the Prevention of Food Adulteration Act, 1909 (hereinafter referred to as 'the Act') and was sentenced to six month's ligorous imprisonmant with a fine of Rs. 1000/- in default of the payment of fine to further undergo one month's like imprisonment by the learned Judicial Magistrate, Jodhpur vide his judgment dated September 22,1977. The accused went in appeal which was heard by the learned Additional Sessions Judge No. 2, Jodhpur. In appeal, his conviction and sentence were maintained. The accused has now come up in revision.

2. Briefly stated, the prosecution case is that the accused runs a Kirana shop in Mirchi Bjzar, Jodhpur. On August 20, 1975 the Food Inspector Jeevraj (PW. 8) went to the shop of the accused and disclosed his identity. He found approximately 5 kg, of honey in a drum. He suspected it to be adulterated. He, therefore, purchased 750 grams of honey from the accused after making the payment of its price in case to him. The purchased honey was divided in three equal parts and each part was filled in a separate phial. One of the samples was sent for analysis to the Public Analyst, Jaipur. On analysis the sample was found adulterated as it did not conform to be prescribed standards of purety. One the receipt of the report of the Public Analyst, the Food Inspector approached the District Magistrate, Jodhpur to seek his written consent to launch prosecution against the accused. The District Maistrate accordingly granted the written consent authorising the Food Inspector to present the complaint. Thereafter a complaint was filed in the trial Court by one Assistant Public Prosecutor S.K Mathur. This led to the prosecution and conviction of the accused, as stated earlier.

3. At the fore-front of his arguments the learned Counsel appearing for the petitioner vehemently contended that the prosecution and trial of the accused were wholly bad and unwarranted in law. It was argued that the District Magistrate gave the consent in writing to the Food Inspector to launch the complaint but the complaint was not filed by him. It was filed by one Assistant Public Prosecutor SK. Mathur, to whom the written consent to file the complaint was not accorded by the District Magistrate under Section 20 of the Act. As such the whole trial stands vitiated. Reliance in support of the contention was placed on Section 20 of the Act and on two decisions of this Court (1) State v. Jai Narain 1983 Ct. LR (SC. & Raj) 459 and (2) Nagji Ram v. State of Rajasthan 1983 Cr. LR (SC & Raj) 666. In reply, it was contended by the learned Public Prosecutor that objection as to the maintainability of the complaint on the ground now raised in this Court was not taken by the accused in the Court below. As such, the objection should not be entertained now at this stage. As regards the two authorities cites above, the learned Public Prosecutor had to submit that in case his aforesaid objection is not accepted, the present case is covered by the aforesaid authorities.

4. I have taken the respective submissions into consideration. Admittedly, the written consent to launch prosecution and file the complaint was accorded by the District Magistrate to the Food Inspector vide Ex P.7A perusal of the case file shows that the complaint was filed not by the Food Inspector vide Ex. P.7A perusal of the case file shows that the complaint was filed not by the Food Inspector but by the Assistant Public Prosecutor S.K. Mathur in the trial Court. Section 20 of the Act speaks of the persons or Authorities who can initiate prosecution. They are (1) the Central Government, (2) the State Government, (3) a person with the written consent of the Central Government or the State Goyernment, (4) a person authorised in this behalf by the Central Government, or the State Government, and (5) purchaser referred to in Section 12 of the Act. No person or Authority other than those referred to above can file a complaint under the Act. If a complaint is filed by any person ohter than specified above, the prosecution would be void ab initio. Where the complaint is filed by an unauthorised person, the Court has no jurisdiction to take cognizance thereon. Since the APP was not the person or authority to whom the written consent to launch the complaint was given, he had no powers to present the complaint. A similar view was taken by this Coutt in the two decisions referred to above.

5. I find no merit in the contention of the learned Public Prosecutor that the accused is estopped from challenging the illegality of the prosecution simply on the ground that he did not raise the objection which he is taking now in the appeal. There is nothing like estoppel in law which may preclude the accused from challenging the illegality or invalidity of the prosecution.

6. Since the complaint was filed by a person not authorised under Section 20 of the Act, the prosecution and trial of the accused stand illegal ab-initio.

7. In the result, the revision-petition of accused Deo Kishan is allowed. The judgments of the Courts below are set-aside and the conviction and sentence of the accused under Section 7/16 of the Prevention of Food Adulteration Act, 1954 are set-aside. He is already on bail and need not surrender. His bail bonds shall stand cancelled.

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