

**Ashok Kumar Vs. State**

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**Court :** Rajasthan

**Decided On :** Jan-31-1990

**Reported in :** 1990(2)WLN370

**Judge :** M.B. Sharma, J.

**Appeal No. :** S.B. Criminal Revision No. 297 of 1986

**Appellant :** Ashok Kumar

**Respondent :** State

**Disposition :** Petition allowed

**Judgement :**

**M.B. Sharma, J.**

1. The accused petitioner was convicted by the learned Addl. Chief Judicial Magistrate, Bharatpur, Under Section 7/16 of the Prevention of Food Adulteration Act, 1954 (for short 'the P.F.A. Act') under the judgment dated 30th December, 1981 and was sentenced to undergo 6 months rigorous imprisonment and to pay a fine of Rs. 1000/- and in default of payment of fine to further undergo 1 month's simple imprisonment. He preferred an appeal against the aforesaid conviction and the learned Sessions Judge No. 2 under his judgment dated 12th December 1984 dismissed the appeal.

2. It was on 16th of August, 1979 at about 2.20 p.m. that the Food Inspector B.K. Chaturvedi P.W. 1 visited the shop of the accused-petitioner and saw that on the shop accused-petitioner was present and was selling groundnut-oil as well as Tara Meera Oil. The said two oils were kept in two separate drums. He suspected Tara Meera oil to be adulterated and purchased 375 grams of oil and paid Rs. 3.37. It was divided in three equal parts and each part was filled in a clean bottle each of which was wrapped and sealed in accordance with the rules/One sample was delivered by Shri Chaturvedi to the Chief Public Analyst, Bharatpur on 17th of August, 1979 i.e. the next day the sample was taken. It was analyzed and under report Ex. P-7 dated 21st of September, 1979 of the Chief Public Analyst (CPA) it was found that the sample was adulterated as it did not conform to the prescribed standard of purity. After putting the papers to the CM. & H O. Bharatpur who was the local authority and who has been authorized by the State Government under the notification gave its consent For the prosecution. A complaint was filed against the petitioner and he was tried and convicted as aforesaid. The plea of the petitioner in his statement Under Section 313 Cr.P.C. that the sample was taken but the oil was not meant for sale but was meant for domestic consumption. He also came out with the case that the proceedings were not in accordance with law but did not examine any witness in defence.

3. It may be stated that it does not appear that before the two courts below the legality of the written consent to prosecute the petitioner for an offence Under Section 7/16 of the P.F.A. Act was ever challenged but in my opinion it is a legal point and the sanction is available on the record and, therefore, the learned Counsel for the petitioner can raise. This plea in his submission as it goes to the very root of the case'.

4. It has been contended by the learned Counsel for the petitioner that a bare reading of the Section Under Section 20(1) of the P.F.A. Act, which is available on record, will show that there has been total non-application of mind and, therefore, the Court could not have taken cognizance of the offence. A perusal of the aforesaid sanction Under Section 20(1) of the P.F.A. Act shows that neither there is any reference to file report of the CPA nor to any other papers and all that has been. Stated is that the report of the Food Inspector Shri B.K.Chaturvedi was

perused and other relevant record was also perused and the CM. & H.O. and local authority (Health) was satisfied that it was a fit case against the petitioner. The aforesaid sanction is in cyclostyle and only the blanks have been filled in. There is no reference either to the report of the CPA or to other papers specifically, as stated earlier. All that has been mentioned is that the report of the Food Inspector has been perused. P.W. 1 B.K. Chaturvedi, has not stated in the statement that he had submitted his report Ex.P.8 along with the papers mentioned therein. A look at the document Ex. P. 8 shows that it neither bears any date nor it appears that it was ever presented before the CM. & H.O. There is no endorsement on Ex.P. 8 of the above presentation. In the "circumstances and in the absence of any date on Ex. P. 8 it is not possible to hold that the papers mentioned there were placed before the CM & HO who had given his written consent. That apart it has been mentioned in the aforesaid sanction Ex.P.9 that Shri B.K.Chaturvedi, Food Inspector was authorized of file the catapulting in the Court of Law for offence Under Sections 7(1) and 7/16 of the PFA Act. It is not mentioned as to under which clause the case actually fell and what was the adulteration. I am, therefore, of the opinion that the written consent goes to show that there has been total non-application of mind in the absence of any date on Ex. P. 8 it is not possible to hold that the papers mentioned there were placed before the CM & HO who had given his written consent. That apart it has been mentioned in the aforesaid sanction Ex.P.9 that Shri B.K.Chaturvedi, Food Inspector was authorized of file the complaint in the Court of Law for offence Under Sections 7(1) and 7/16 of the PFA Act. It is not mentioned as to under which clause the case actually fell and what was the adulteration. I am, therefore, of the opinion that the written consent goes to show that there has been total non-application of mind and the law is well settled that before giving its written consent the competent authority must peruse the entire record, apply its mind' and then say that he is satisfied that it is a fit case for prosecution against the accused.

5. Consequently, I hereby allow this revision petition, set aside the judgment dated 12th December, 1986 of the learned Addl. Sessions Judge No. 2, Bharatpur as well as the judgment dated 30th December 1981 of the Chief Judge Magistrate, Bharatpur convicting and sentencing the accused-petitioner Under Section 7/16 of the PFA Act, 1954. The accused-petitioner is acquitted of the aforesaid charge. He

is on bail. He need not to surrender his bail bonds.

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