

Babu Lal Vs. State

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Court : Rajasthan

Decided On : Apr-20-1983

Reported in : 1983WLN114

Judge : G.K. Sharma, J.

Appeal No. : S.B. Criminal Revision No. 86/1983

Appellant : Babu Lal

Respondent : State

Disposition : Petition Allowed

Judgement :

G.K. Sharma, J.

1. The petitioner has alleged that on 20.4.1981 Public Analyst Bharatpur analysed sample of 'Mithai' alleged to have been collected from accused Babulal and given to him by the Food Inspector for analysis. According to the report of the Public Analyst it contained Sachharin, and the sample was found adulterated under Rule 47 of the Prevention of Food Adulteration Act. On the report of the Food Inspector, Bharatpur, the Chief Medical and Health Officer, Bharatpur on 20.6.82 after his satisfaction granted sanction to prosecute the petitioner for the offences under Section 7 of the Prevention of Food Adulteration Act read with Rule 49(1)(2)(3) of

Prevention of Food Adulteration Rules. Thereafter a complaint was lodged in the court of Chief Judicial Magistrate on the basis of aforesaid sanction. The petitioner made an application for sending the sample to Director, Central Food Laboratory Gaziabad, The report of Director, Central Food Laboratory did not tally with the report of Public Analyst, Bharatpur. On the contrary, it was found that the sample showed presence of a non-permitted basic Coal Tar Colour. On behalf of the petition an objection was raised before the learned Chief Judicial Magistrate that his prosecution on the ground that the sample showed presence of non-permitted basis Coal Tar Colour was bad in law because on that account no sanction for prosecution of the accused petitioner was given. The learned Chief Judicial Magistrate did not agree with the petitioner's arguments and proceeded with the prosecution of the petitioner and did not drop the proceedings for want of sanction vide it's order dated 28.12.1982. Against this order the present revision petition has been submitted.

2. The learned Counsel for the petitioner has argued that the sample was sent to the Public Analyst, Bharatpur and he reported that 'Mithai' contained Sacharin and thus was adulterated one. But on the request of the petitioner when sample was sent to Director Central Food Laboratory no Saccharin was found in the sample but it was found that there is presence of non-permitted basic Coal Tar Colour. The sanction for prosecution was regarding the saccharin. No sanction to prosecute the petitioner has been given by the Chief Medical & Health Officer on the ground that it contained a non-permitted basic coal Tar colour. The petitioner without sanction for this cannot be prosecuted on the basis the sanction regarding Saccharin, The learned Counsel has cited during his argument, 1978 ((sic)) FAC, Pag. 136 State of Maharastra v. Nizamudin Haji Mohmmmed Khan. In this case his lordship of the Bombay High court has observed as follows:

The question which Mr. Badkar has raised is regarding the application of the mind of the consenting authority to the facts of the case before a prosecution is instituted. The consent envisaged under Section 20 is almost in the nature of a sanction and obviously, says Mr Badkar, a sanction cannot be accorded unless the facts of the case are disclosed to the sanction authority. In the instant case the facts as disclosed to me by sanctioning authority & on the basis of which the

sanction was given were in the adulteration of the sample seized as shown by the report of the Public Analyst. The adulteration which is thus shown will be an adulteration of a particular type mentioned in one of the clauses in Section 2 of the Act. After the report of the Director of the Central Food Laboratory was received, another type-nature of the adulteration was disclosed. Therefore, the offence with which the accused would be charged on the basis of the report of the Central Food Laboratory will be different from the offence with which he would have been charged on the basis of the report of the Public Analyst. When Section 20 says that no prosecution in respect of an offence shall be instituted without the consent in writing of the requisite authority, in the instant case a prosecution for the different offence which now emerges from the report of the Director of the Central Food Laboratory could not be launched, it will naturally be incompetent in the absence of fresh-consent given under Section 20 of the Act. The nature of adulteration is an important question which must go into the formation of the mind of the consenting authority. What was before the consenting authority in the instant case was the report of the Public Analyst and the contents of that report along with the facts placed went into the formation of the opinion which opinion may not be the same if the report of the Central Food Laboratory discloses a different kind of offence, though under the same Act. In my opinion, where different ingredients of the offence are disclosed by the report of the Central Food Laboratory, fresh application of mind to the new facts will be necessary before a consent could be given.

3. The another case cited on behalf of the petitioner is of Allahbad High Court and it is reported in 1979 (1) FAC 247 Municipal Board Jaunpur v. Raghunandan Ram. In this case their Lordships have observed as follows:

In our opinion however the order of acquittal of the respondent is justified on the short ground that in the complaint, on the basis of which proceedings were initiated against the respondent the only ground taken was the report of the Public Analyst with regard to the content. We may point out that under the proviso to Section 20 of the Act, the Medical Officer of Health had to attach a copy of the report of the basis on which the Magistrate took cognizance of the case against the respondent. Further this was the case which the respondent was called upon by

the Magistrate to meet. This ground however failed in view of the Director's report. Bearing in mind that liability eventually was sought to be fastened on the respondent on an entirely different ground not mentioned in the complaint, we feel that the conviction of the respondent on the ground, that the alcoholic contents was not up to the minimum prescribed could not have been sustained. In the end, we may point out that Section 20 contemplates that the precise ground on which prosecution is launched should be stated clearly in the complaint, and since the ground mentioned in the present complaint was negatived by the report of the Director, the bottom was knocked out of the prosecution case, as stated in the complaint.

4. I have considered the arguments advanced by the learned Counsel for the petitioner and also perused the law cited by him. The argument advanced by him has force. The sanction to prosecute the petitioner was granted on the basis that 'Mithai' collected from him contained Saccharin. The report of the Public Analyst Bharatpur is Annexure-I. It says that Saccharin was present. There is no mention in this report about the presence of a non-permitted basic Coal Tar Colour. The sanction by the Chief Medical and Health Officer, Bharatpur is Annexure-2 and it is with regard to the Saccharin. The report of the Director Central Food Laboratory, Gaziabad is Annexure-3 and this report has no mention about saccharin but on examination the Director opined that the sample shows presence of a non-permitted basic Coal Tar Colour. Thus, on this contradictory report the petitioner ought to have been prosecuted. The report of the Director Central Food Laboratory was not before the sanctioning authority. So there was no question of applying the mind by the sanctioning authority for prosecution on the ground of a non permitted basic Coal Tar Colour found in the sample. The sanction Anx. 2 is with regard to Saccharin and there is no sanction for the presence of a non-permitted basic Coal Tar Colour. So the offence with which the accused would be charged on the basis of the report of the Central Food Laboratory will be different from the offence with which he would have been charged on the basis of the report of the Public Analyst. Thus, I am of the opinion that the sanction for the prosecution of the petitioner is different and the sanction is not valid. The learned Chief Judicial Magistrate has strongly taken cognizance of the complaint without taking in to consideration the fact that proper sanction has not been as corded.

The sanctioning authority has not applied his mind by granting sanction for prosecution regarding the presence of a non-permitted basic Coal Tar Colour.

5. Therefore, the order of the learned Chief Judicial Magistrate dated 28.12 1982 cannot be maintained. The prosecution of the petitioner without proper sanction is bad. The revision petition is accepted. The order of the learned Chief Judicial Magistrate dated 28.12.1982 is set-aside and the proceedings pending before the learned Chief Judicial Magistrate in Criminal case No. 629/82 are quashed.

6. The prosecution is at liberty to file fresh complaint after obtaining proper sanction, if so.

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