

Balu Vs. State of Rajasthan

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SooperKanoon Citation : sooperkanoon.com/760044

Court : Rajasthan

Decided On : Nov-26-1997

Reported in : 1998CriLJ2420; 1998(3)WLC621

Judge : Amaresh Ku. Singh, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 7, 16 and 16A; Code of Criminal Procedure (CrPC) , 1974 - Sections 251, 309, 326(3), 482 and 483; [Constitution of India](#) - Article 21

Appeal No. : Cri. Misc. Petn. No. 279 of 1997

Appellant : Balu

Respondent : State of Rajasthan

Advocate for Def. : D.S. Rathore, Public Prosecutor

Advocate for Pet/Ap. : Sandeep Mehta, Adv.

Judgement :

ORDER

Amaresh Ku. Singh, J.

1.Heard the learned counsel for the petitioner and the learned public prosecutor.

2. This petition was admitted on 7th April, 1997 and notices were issued to the non-petitioner. The non-petitioner, the State of Rajasthan has been served.
3. This petition under Section 482, Cr.P.C. has been filed with a prayer that the proceedings in Criminal Case No. 19/88 pending in the Court of Additional Chief Judicial Magistrate, Bhilwara be quashed, because in spite of the fact that the case was instituted as early as in the 1988, the case has not been frustrated.
4. The learned public prosecution has opposed this petition.
5. A perusal of the record of the lower Court shows that on 25th April, 1988, Food Inspector submitted a complaint in the Court of learned Additional Chief Judicial Magistrate alleging the commission of offence under Section 7 read with 16 of the Prevention of Food Adulteration Act. On the same day, cognizance of offence was taken by the learned Chief Judicial Magistrate and the bailable warrant of Rs. 2,000/- was issued for enforcing the attendance of the accused. The accused appeared on 7th March, 1989 and on that day he was released on bail and case was adjourned to 17th May, 1989 for recording the plea of the accused. Before the plea of the accused could be recorded, the accused moved an application for sending one of the samples to the Central Food Laboratory and on 9th March, 1990 one of the samples was sent to the Central Food Laboratory for analysis. After receipt of the report of Analyst from the Central Food Laboratory, the case was listed for recording the plea of the accused. On 17th December, 1990 the plea of the accused was recorded under Section 251, Cr.P.C. He pleaded not guilty to the charge. Witnesses were thereafter ordered to be summoned, but for one reason or the other, the case was adjourned from time to time. On 23rd July, 1990 the case was transferred to the Court of learned Additional Chief Judicial Magistrate, Bhilwara. On 17th January, 1997, the Additional Chief Judicial Magistrate, Bhilwara again recorded the plea of the accused under Section 251, Cr.P.C. The witnesses were directed to be summoned and the last order-sheet dated 26th April, 1997 shows that no witness has been examined so far.
6. The learned counsel for the petitioner has submitted that the Additional Chief Judicial Magistrate, Bhilwara is conducting the trial in a summary way as permitted by Section 16A of the Prevention of Food Adulteration Act and some of the

subordinate Courts in Rajasthan have taken the view that if trial is conducted in summary way, then on account of the operation of Sub-section (3) of Section 326, Cr.P.C, the evidence recorded by the Magistrate or Judge, cannot be used by his successor, in the event the Magistrate or Judge who recorded the evidence is transferred or otherwise relinquished his office and in all these cases de novo trial becomes necessary. In the instant case also after the transfer of the case to the Court of Additional Chief Judicial Magistrate, Bhilwara a de novo trial appears to have been commenced by the learned Additional Chief Judicial Magistrate. The learned counsel for the petitioner has, therefore, submitted that if the case is conducted in summary way and the provisions of Sub-section (3) of Section 326, Cr.P.C. are held to be applicable to such trials, then on account of frequent transfers of the Presiding Officers, this case is not likely to be completed by any Presiding Officer and if a de novo trial is commenced on every occasion when the Presiding Officer is transferred, the accused are put to unnecessary harassment. Second proviso given below Section 16A of the Prevention of Food Adulteration Act reads :

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear that case in the manner provided by the said Code.

7. This proviso confers a power on the Magistrate to direct that the case should be tried otherwise than in a summary way. Having regard to the fact that unnecessary delay is being caused on account of the passing of orders for de novo trial whenever the Presiding Officer is transferred or the case is transferred from one place to another, it is necessary that the trial should not be conducted in a summary way lest the right of the accused to speedy justice under Article 21 of the Constitution is frustrated.

8. For the reasons mentioned above, in exercise of the powers conferred by Sections 482 and 483, Cr.P.C. read with II proviso of Section 16A of the Prevention of Food Adulteration Act, it is hereby directed that this case shall be tried otherwise than in a summary way. It is further directed that the learned Additional Chief Judicial Magistrate in whose Court, the case is pending shall take every possible step for the purpose of early disposal of the case. Piecemeal summoning of witnesses shall not be resorted to. All the witnesses whom the prosecution wants to examine shall be summoned for the examination on a date to be fixed for that purpose and in the matter of adjournments, the (sic) letter of Section 309, Cr.P.C. shall be religiously adhered to. It should be borne in mind that leniency in the matter of adjournments whatever might be the reasons behind it ultimately leads to the violation of the right to speedy justice and such leniency, therefore, contravenes the fundamental right guaranteed under Article 21 of the Constitution. The prosecution and the accused both shall take part in the proceedings and if unnecessary adjournments are sought by them, the same shall be refused. The learned Additional Chief Judicial Magistrate is directed to dispose of the case within a period of six months. If for any reason he is unable to dispose of the case, a report should be sent to this Court stating the reasons for not disposing of the case within the aforesaid period so that it may be ascertained whether the direction given by this Court has been complied with properly or not.

9. For the reasons mentioned above, the direction as aforesaid is hereby given to the learned Additional Chief Judicial Magistrate, Bhilwara for the early disposal of the case. The prayer for quashing the proceedings is disallowed.

The petition is decided accordingly.