

Kesa Vs. State of Rajasthan

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Court : Rajasthan

Decided On : May-16-1984

Reported in : 1984WLN(UC)240

Judge : S.S. Byas, J.

Appeal No. : S.B. Criminal Revision No. 342 of 1978

Appellant : Kesa

Respondent : State of Rajasthan

Disposition : Petition allowed

Judgement :

S.S. Byas, J.

1. Accused Kesa was convicted under Section 7/16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'the Act') and was sentenced to six months' rigorous imprisonment with a fine of Rs. 1000/-, in default of the payment of fine to further undergo one month's like imprisonment by the learned Chief Judicial Magistrate, Sirhoi by his judgment dated May 6, 1978. The accused went in appeal which was dismissed by the learned Additional Sessions Judge, Sirohi on November 6, 1978. Hence this revision.

2. it was vehemently contended by the learned Counsel for the accused-petitioner that the prosecution and trial of the accused were wholly bad and unwarranted. It was argued that the written consent to launch prosecution or file the complaint was accorded to the Food Inspector by the Municipal Board, Sirohi vide Ex P.6 but the complaint was not filed by the Food Inspector. It was filed by Assistant Public Prosecutor (I), to whom the written consent to file the complaint was not accorded by the Municipal Board, under Section 20 of the Act. That vitiates the whole trial. Evidence 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 Cr. L.R. Raj. 459 and (2) *Nagji Ram v. State of Rajasthan* 1983 Cr. L.R. 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 Courts below. As such, the objection should not be entertained now at this stage. As regards the two authorities cited 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.

3. I have taken the respective contentions into consideration. Admittedly, the written consent to launch prosecution and file the complaint was accorded by the Municipal Board to the Food Inspector vide Ex. P.6. A perusal of the case file shows that the complaint was filed not by the Food Inspector but by the A.P.P. (I) 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 Government (4) a person authorized 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 other than specified above, the prosecution would be void ab initio. Where the complaint is filed by an unauthorized person, the Court has no jurisdiction to take cognizance thereon. Since the A.P.P. (I) was not the person or authority to whom the written consent to launch the prosecution was given, he had no powers to present the complaint. A similar view was taken by this Court in the two decisions referred to above.

4. 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 estopped in law which may preclude the accused from challenging the illegality or invalidity of the prosecution.

5. 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.

6. the result, the revision-petition of accused Kesa 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 stand cancelled.

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