

State of Rajasthan Vs. Ramesh Kumar

State of Rajasthan Vs. Ramesh Kumar

SooperKanoon Citation : sooperkanoon.com/762242

Court : Rajasthan

Decided On : Jul-09-1986

Reported in : 1986(2)WLN517

Judge : Sobhag Mal Jain, J.

Appeal No. : S.B. Cr. Appeal No. 331 of 1978

Appellant : State of Rajasthan

Respondent : Ramesh Kumar

Disposition : Appeal dismissed

Judgement :

Sobhag Mal Jain, J.

1. This appeal on leave granted by this Court under Section 378(iii) of the Code of Criminal Procedure on September 21, 1978 is directed against the judgment dated 18th February, 1978, of the Chief Judicial Magistrate, Sirohi, acquitting the accused-respondent of the offence under Section 16(A)(1) of the Prevention of Food Adulteration Act, 1954.

2. When the above appeal came up for hearing, a preliminary objection was raised by the learned Counsel for the respondent that in this case the authority to file the complaint was given by the Collector and District Magistrate, Sirohi, to Shri

Shivshankar Gaur, Food Inspector, Sirohi, but the complaint in the case was submitted in the Court not by Shri Shivshanker Food Inspector, but by the Assistant Public Prosecutor, Sirohi, and, therefore, the trial itself had vitiated. In support of his contention, he has relied on the cases *The State Rajasthan v. Jai Narain* 1984 RCC 28 and *Sadra v. The State of Rajasthan* 1984 RCC 301. In *State v. Jai Narain*, the complainant was the Food Inspector, Gangapur, but the complaint was presented in the Court by the Assistant Public Prosecutor and the trial was conducted by him. In such circumstances. Agrawal, J. held and observed:

There is nothing on the record of these cases to show that the Assistant Public Prosecutor had the authority to present the complaint on behalf of the Food Inspector, Prakash Chandra, or to conduct the case on his behalf. In view of decision of this Court in *Dhaliy v. The State of Rajasthan* it must be held that the complaint was presented by an unauthorised person and the trial was also conducted by an unauthorised person. Since the aforesaid infirmity in the trial goes to the root of the matter, the trial stands vitiated and no conviction can be recorded on the basis of the aforesaid trial.

Same view was taken by Byas, J. in *Sardra v. State of Rajasthan* 1984 RCC 301. It was held-

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 unauthorised person, the Court has no jurisdiction to take cognizance thereon. Since the Assistant Public Prosecutor 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.

3. In the present case, the Collector and District Magistrate, Sirohi, by his order dated 7th May, 1977, had authorised Shri Shiv Shanker Gaur, Food Inspector, Sirohi, to file a complaint in the competent court under Section 7(1) read with Section 16 of the Act against the accused-respondent. The endorsement on the complaint, however, shows that it was submitted and presented in the Court not by the Food Inspector but by the Assistant Public Prosecutor, Sirohi on May 26, 1977. The order-sheets further reveal that the trial was throughout conducted by the Assistant Public Prosecutor. There is nothing on the record to show that the

Assistant Public Prosecutor was authorised to present the complaint or conduct the case on behalf of the Food Inspector. In view of this the present case is fully covered by the judgments of Agrawal, J. in State of Rajasthan v. Jai Narain 1984 RC 28 and Byas, J. In Sadra v. State of Rajasthan 1984 RC 301.

4. For the reasons mentioned above, the acquittal of the appellant passed by the Chief Judicial Magistrate, Sirohi, has to be upheld.

5. The result is, that the appeal fails and is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com