

Kewal Krishan Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Oct-30-1975

Reported in : 1975WLN(UC)557

Judge : K.D. Sharma, J.

Appeal No. : S.B. Criminal Revision No. 351 of 1975

Appellant : Kewal Krishan

Respondent : State of Rajasthan

Judgement :

K.D. Sharma, J.

1. Kewal Krishan, petitioner, a milk vendor of Shri Ganganagar, was convicted by the Chief Judicial Magistrate, Shri Ganganagar, of an offence under Section 16(1)(a) read with Section 7 of the Prevention of Food Adulteration Act, for being found in possession of adulterated cow's milk for sale on 23-8-1969, and was sentenced to undergo simple imprisonment for six months and to pay a fine of Rs. 1000/- in default of payment of fine to further suffer simple imprisonment for two months. Aggrieved by his conviction and sentence, Kewal Krishan filed an appeal in the court of the Sessions Judge, Shri Ganganagar. The learned Sessions Judge maintained the conviction and the sentence passed against the petitioner by the trial court. As against this judgment of the Sessions Judge, the petitioner has

come-up in revision to this Court.

2. The relevant facts giving rise to this revision-petition may be shortly stated as follows On 23.8.1969; Shyam Lal, Food Inspector, purchased 660 M.L. of Cow's milk from the petitioner for 84P. The petitioner was at that time carrying milk on his bicycle. After purchasing the sample, the Food Inspector divided it in to three parts and filled each part in a neat and clean bottle which was duly sealed according to the rules. One of the sealed bottle was delivered to the petitioner and one of the samples was sent to the Public Analyst, Bikaner for analysis. The reprint of the Public Analyst showed that the sample of the cow's milk was adulterated as it was deficient in non-fat solids to the extent of 3.4%. In the opinion of the Public Analyst the sample contained about 40% of addedwater. The sample was, however, not found deficient in fat cements which were found 9.8% in it. After the report of the Public Analyst was received, the Food Inspector obtained the necessary sanction to prosecute the petitioner from the Administrator, Municipal Council, Sri Ganganagar and made a complaint against the petitioner in the court of the Sub-Divisional Magistrate, Sri Ganganagar, wherefrom the case was transferred to the court of the Chief Judicial Magistrate, Sri Ganganagar upon separation of the Judiciary from the Executive on coming into force of the new Code of Criminal Procedure, 1973 The prosecution examined Shyam Lal, Food Inspector, PW. 1, Kashmiri Lal, PW. 2 and Ali Mohammed, PW. 3 to substantiate the charge against the petitioner. The petitioner in his statement under Section 342 Cr.PC denied to have committed the offence. Both the courts below held upon evidence that the prosecution had succeeded in proving the guilt of the petitioner beyond reasonable doubt.

3. This revision petition was admitted on the ground of sentence only, as I was satisfied that the evidence of he Food Inspector clearly established that the petitioner was found carrying cow's milk on his bicycle and that the sample of milk purchased from him was found adulterated upon analysis by the Public Analyst. The petitioner did not lead any evidence in his defence. His mere dental of all the incriminating circumstances appearing against him is not sufficient to rebut the strong reliable evidence of Shyam Lal, Food Inspector Consequently, no interference was necessary with the findings of both the courts below as to the

guilt of the petitioner.

4. As regards the sentence, it has been contended on behalf of the petitioner that in view of the circumstances that the only defect found in the milk in question was that it was deficient in non fat solids to the extent of 3.4% and that the fat-contents were found to be higher than the prescribed standard, the offence committed by the petitioner lost much of its gravity and that a nominal sentence could have served the ends of justice. In support of his above contention, the learned Counsel for the petitioner relied upon a decision of the D.B. of the Court in State v. Badri , wherein it was held that the fact that the milk fat-contents were higher than the prescribed standard, could be taken into consideration as a mitigating factor while awarding sentence to the accused.

5. I have considered the above contention and I do not find it devoid of force. According to the prescribed standard, the sample must have contained not less than 3.5% of fat-contents and not less than 8.5% of solids non fats. The result of the analysis in this case was as follows:

Fat content 9.8% Solids nonfat contentss 5.1% Cane sugar and starch Nil

Although the sample was found adulterated as it did not conform to the prescribed standards in one of the contents of the milk, the fact that the fat content of the milk sample were considerably higher than the prescribed standard could be taken into consideration as an extenuating factor while awarding sentence to the petitioner. A similar view was taken in the referred to above D.B. case of this Court. Consequently, I am of the view that there is a mitigating circumstance justifying reduction of the sentence. The petitioner has already undergone about one month's simple imprisonment. He is not a previous convict for similar offence. In my opinion, the ends of justice would be met, if the sentence of six month's simple imprisonment awarded to the petitioner by the trial court is reduced to a term already undergone by him and the sentence of fine of Rs. 1000/-, is reduced to Rs. 600/- only.

6. Hence the revision-petition filed by Kewal Krishan is partly allowed and while maintaining the conviction of the petitioner under Section 7/16 of the Act, the

sentence of six months simple imprisonment awarded to him by the trial court is reduced to a term already undergone by him and the sentence of fine of Rs. 1000/-, is reduced to Rs. 600/- in default of payment of fine, the petitioner shall undergo simple imprisonment for 11/2 months. The petitioner is in jail He shall be released forth with, if not required in connection with some other case The petitioner is directed to deposit the amount of fine in the trial court within two months from today, failing which the fine shall be realised according to law.

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