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Court : Rajasthan

Decided On : Sep-18-1998

Reported in : 1999CriLJ404; 1999(1)WLC378

Judge : G.L. Gupta, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 2, 6, 10(4), 13(2), 16, 16(1), 16A, 16(1A), 16(1AA), 16(1B), 20, 23(1A), 24(2) and 262 to 265; Prevention of Food Adulteration Rules, 1955 - Rules 9(2), 23 and 28; [Indian Penal Code \(IPC\), 1860](#) - Sections 320; [Code of Criminal Procedure \(CrPC\) , 1973](#)

Appeal No. : Criminal Revision Petition No. 481 of 1998

Appellant : Uda Ram

Respondent : State of Rajasthan

Advocate for Def. : V.R. Mehta, P.P.

Advocate for Pet/Ap. : K.S. Rathore, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

G.L. Gupta, J.

1. This revision petition is directed against the appellate judgment dated 6-8-98 passed by the learned Addl. Sessions Judge, Pali, whereby he upheld the conviction of the petitioner under Section 16(1) and Section 16(1-A) of the [Prevention of Food Adulteration Act, 1954](#) and sentences of six months' R. 1 and a fine Rs. 1,000 under the first count, and three months' R. I. and a fine of Rs. 500 under the second count.

2. The facts are that Hari Prakash, Food Inspector had inspected the shop of the petitioner, run under the name and style of Manohar Restaurant. The petitioner used to sell sweets, tea and milk. The Food Inspector asked the petitioner to produce the license which he did not. Thereafter, the Food Inspector gave notice to the petitioner for purchase of 1, 1/2 Kgs. 'Laddu' for analysis. He purchased 'Laddu' for Rs. 18, divided them in three parts, and put them in the three bottles. After sealing the bottles, he sent one bottle to the Forensic Science Laboratory, Jodhpur from where it was opined that the sample was adulterated. After obtaining the consent of the Authority Under Section 20 of the Act, the Food Inspector filed complaint against the petitioner in the Court of Chief Judicial Magistrate. The prosecution examined PW1 Hari Prakash, PW 2 Mangilal and PW 3 Dhokal Singh. Accused-petitioner denied the accusation. He examined DW 1 Om Prakash and DW 2 Mirchoo Mal. After hearing the learned counsel for the parties, the learned Magistrate held the charges proved. He, therefore, convicted him. The appeal taken by the petitioner before the Sessions Judge and heard by the learned Addl. Sessions Judge proved abortive.

3. The contention of Mr. Rathore was threefold; (i) The consent for prosecution Ex. P-8 is in printed form which indicates that the Authority had not applied its mind.

(ii) The trial was not held in summary way and, therefore, the trial and conviction are vitiated.

(iii) The incident is 10 years old and, therefore, a lenient view should be taken.

4. On the other hand, the learned Public Prosecutor supported the judgment of the trial Court.

5. I have carefully considered the above arguments. At the outset, it may be stated that 'before the Appellate Court, the petitioner had confined his arguments on the non-compliance of Section 13(2) of the P.F. Act and Rule 9(2) of the P.F. Rules and it was conceded by the counsel for the petitioner that he would not press the appeal on any other ground. It is obvious that the first and second contentions raised by Mr. Rathore had not been raised before the Appellate Court. When it is apparent on record that the petitioner had given up these contentions, he cannot be permitted to agitate those points in this revision.

6. Yet, I have thought it proper to consider the arguments advanced by Mr. Rathore: No doubt the consent order Ex.P-8 is on a cyclostyled form, the blanks of which have been filled in by ink. The question is whether on this ground, it should be presumed that the Authority giving consent had not applied its mind. In my considered opinion, no such presumption can be raised for the reason that the contents of the consent order Ex.P-8 indicates that the Authority had applied its mind to the documents submitted by the Food Inspector for its perusal including the report of the Public Analyst. This Court in the case of *Kansingh Parohit v. State of Rajasthan* 1978 FAJ 302, has clearly held that the consent order cannot be presumed to be mechanical merely because it is contained in a printed form, if it is borne out from the contents thereof that the Authority had applied its mind to the documents submitted by the Food Inspector for its perusal. As already stated, the petitioner had not raised this point before the Appellate Court. The fact situation of the cases of *Munir Din v. State* 1986 RCC 411, *Babulal v. State of Rajasthan* 1991 RCC 357 and that of *Sukhram v. State of Rajasthan* 1992 RCC 240 relied on by Mr. Rathore was very different.

7. In the case of *Babulal* (supra) it was noticed that in the written consent it was not stated as to what record was perused by the Authority concerned. It is in such circumstance, coupled with other circumstances, it was held that the Authority had not applied its mind while granting consent for prosecution. The case of *Sukhram* (supra) was decided on the basis of the decision rendered in the case of *Babulal*. In the case of *Munir Din v. State of Rajasthan* 1986 RCC 411, it was noticed that incorrect facts were stated in the consent order. Even the residences of the accused were not correctly stated. It is in these circumstances, it was held

that the Authority had not applied its mind while giving consent for prosecution. In the instant case, there are no circumstances on which it can be inferred that the Authority had not applied its mind while giving consent for prosecution Ex. P-8.

8. Thus, there is no merit in the first contention of Mr. Rathore.

9. Coming to the second contention we may read Section 16A of the P.F. Act which is reproduced hereunder :-

16-A Power of Court to try cases summarily- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under Sub-section (1) of Section 16 shall be tried in a summary way by a Judicial Magistrate of the first class specially empowered in this behalf by the State Government or by assessee Metropolitan Magistrate and the provisions of Sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial:

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year:

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 re-hear the case in the manner provided by the said Code.

10. Section 16A mandates the trial, in summary way, of the offences punishable under Sub-section (1) of Section 16 of the Act. Admittedly, in the instant case the trial was not held in a summary way but procedure of warrant trial has been adopted. The question is whether because of the following of the procedure of warrant trial, and not following the summary procedure, the conviction is vitiated.

11. To decide the controversy involved it is necessary to read Section 16 which is reproduced hereunder:-

16. Penalties.- Subject to the provisions of Sub-section (1-A), if any-

(a) whether by himself or by any other person on his behalf, imports into India or manufactures for sale, or stores, sells or distributes any article of

(i) which is adulterated within the meaning of Sub-clause (m) of Clause (ia) of Section 2 or misbranded within the meaning of Clause (ix) of that section or the sale of which is prohibited under any provision of this Act or any rule made thereunder or by an order of the Food (Health) Authority;

(ii) other than an article of food referred to in Sub-clause (i), in contravention of any of the provisions of this Act or of any Rule made thereunder; or

(b) whether by himself or by any other person on his behalf, imports into India or manufactures for sale, or stores, sells or distributes any adulterant which is not injurious to health; or

(c) prevents a Food Inspector from taking a sample as authorised by this Act; or

(d) prevents a Food Inspector from exercising any other power conferred on him by or under this Act; or

(e) being a manufacturer of an article of food, has in his possession or in any of the premises occupied by him, any adulterant which is not injurious to health; or (f) uses any report or certificate of test or analysis made by the Director of the Central Food Laboratory or by a Public Analyst or any extract thereof for the purpose of advertising any article of food; or

(g) whether by himself or any other person on his behalf, gives to the vendor a false warranty in writing in respect of any article of food sold by him,

he shall, in addition to the penalty to which he may be liable under the provisions of Section 6, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years, and with fine which shall not be less than one thousand rupees :

Provided that -

(i) if the offence is under Sub-clause (i) of Clause (a) and is with respect to an article of food, being primary food, which is adulterated due to human agency or is with respect to an article of food which is misbranded within the meaning of Sub-clause (Sub-clause (k) of Clause (ix) of Section 2; or

(ii) if the offence is under Sub-clause (ii) of Clause (a), but not being an offence with respect to the contravention of any rule made under Clause (a) or Clause (g) of Sub-section (1-A) of Section 23 or under Clause (b) of Sub-section (2) of Section 24,

the Court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term which shall not be less than three months but which may extend to two years, and with fine which shall not be less than five hundred rupees:

Provided further that if the offence is under Sub-clause (ii) of Clause (a) and is with respect to the contravention of any rule made under Clause (a) or Clause (g) of Sub-section (1-A) of Section 23 or under Clause (b) of Sub-section (2) of Section 24, the Court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term which may extend to three months and with fine which may extend to rupees five hundred.

(1-A) if any person whether by himself or by any other person on his behalf, imports into India or manufactures for sale, or stores, sells or distributes,

(i) any article of food which is adulterated within the meaning of any of the sub-clauses (e) to (1) (both inclusive) of Clause (ia) of Section 2; or

(ii) any adulterant which is injurious to health,

he shall, in addition to the penalty to which he may be liable under the provisions of Section 6, be punishable with imprisonment for a term which shall not be less than one year but which may extend to six years and with fine which shall not be less than two thousand rupees :

Provided that if such article of food or adulterant, when consumed by any person is likely to cause his death or is likely to cause such harm on his body as would amount to grievous hurt within the meaning of Section 320 of the Indian Penal Code (45 of 1860), he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to term of life with fine which shall not be less than five thousand rupees.

(1-AA) If any person in whose safe custody any article of food has been kept under Sub-section (4) of Section 10, tampers or in any other manner interferes with such article, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine which shall not be less than one thousand rupees.

(1-B) If any person in whose safe custody any article of food has been kept under Sub-section (4) of Section 10, sells or distributes such article which is found by the Magistrate before whom it is produced to be adulterated within the meaning of Sub-clause (h) of Clause (ia) of Section 2 and which, when consumed by any person, is likely to cause his death or is likely to cause such harm on his body as would amount to grievous hurt then, notwithstanding anything contained in Sub-section (1-AA), he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to term of life and with fine which shall not be less than five thousand rupees.

12. A reading of Sub-section (1-A) makes it clear that if a person manufactures for sale, or stores, sells or distributes any article of food which is adulterated within the meaning of sub-clauses (e) to (1) of Clause (ia) of Section 2, it is distinct offence and is punishable under this subsection than the offence punishable under Sub-section (1) of Section 16 of the Act. In the instant case, the report Ex. P-7 indicates that the sample was adulterated under Sub-clause (j) of Clause (ia) of Section 2 of the P.P. Act, the offence with which the accused was charged was obviously punishable under Sub-section (1A) of Section 16 of the Act and not under Sub-section (1) of that Section.

13. A reading of Section 16A makes it clear that the summary trial is permissible only in respect of offences punishable under Sub-section (1) of Section 16. The

offences punishable under Sub-section (1-A) or (1-AA) or (1-B) of Section 16 are not included in Section 16A. Meaning thereby, if a person is charged with those offences, his trial cannot be held in a summary way.

14. As in the instant case, one of the charge was for the offence punishable under Sub-section (1A) of Section 16, the learned Magistrate has not committed any error in holding the trial following the procedure meant for the cases instituted otherwise than on the police report. Needless to say if one of the offences was such which could not be tried in a summary way all the offences including the offence which was triable in summary way could be tried by following the procedure provided for trial of the warrant cases as that procedure is beneficial to the accused. In that procedure the accused gets two opportunities to cross-examine the witnesses - one before the charge is framed and the other after framing of the charge.

15. Coming to the case of Ram Dayal v. State of Rajasthan 1991 (2) RLW 99, on which Mr. Rathore has placed reliance, it may be stated that it is not borne out from the report that there was charge of offence punishable under Sub-section (1A) of Section 16 of the P.P. Act. Apart from that, this Court, in the case of Shyam Sunder v. State of Rajasthan 1996 (3) WLC 722, after considering the authorities of this Court as also of the Full Bench of the Punjab and Haryana High Court, has held that a trial conducted in violation of Section 16A of the Act cannot be held to be vitiated without first finding out the prejudice if any caused to the accused. In that case, the learned Judge has quoted the following observations of the Punjab and Haryana High Court in the case of Bimal Kumar Khalsa v. Union of India AIR 1988 P & H 95 : 1988 Cri LJ 869 :

Legislature in its own wisdom empowered the Courts to try the accused both, by following the procedure of summary trial and for warrant trial. In normal course, he has no option left to try all the cases where the offences are one under Sub-section (1) of Section 16 of the Act and if without recording the reason he proceeds with the trial, the trial is illegal; accused has a right to object the continuance of trial as a warrant case and proceedings are bound to be quashed till the trial is not over. But in cases where the conviction is recorded and sentence

is passed, in our humble opinion, question of prejudice will have to be looked into.

16. In the instant case the accused-petitioner has not been able to show as to what prejudice was caused to him because the trial was not held in summary way. The learned Magistrate has given full opportunity to the petitioner to cross-examine the prosecution witnesses and produce his own evidence in defence. At no stage of the trial, the petitioner complained of any prejudice and even before the Appellate Court this point was not raised. It is thus obvious that by following the procedure of warrant trial no prejudice was caused to the accused-petitioner. There is, therefore, no merit in the second contention raised on behalf of the petitioner.

17. It is true that the sample was taken 10 years back, but keeping in view the facts of the case, this cannot be a ground to be lenient in the matter of sentence. The sample was found to be adulterated because it contained non-permitted coaltar colour which is certainly injurious to the health. There was clear contravention of Rules 23 and 28 of the 1955 Rules. In such matters, there can be no sympathy of the Court for the accused. The legislature has provided stringent punishment for the offence under Sub-section (1-A) of Section 16. The trial Court has been rather liberal towards the petitioner. As a matter of fact, the trial Court should not have recorded less than one year imprisonment in the case in view of the express provision in Sub-section (1-A).

18. Consequently, there is no merit in this revision petition which is hereby dismissed.