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Court : Rajasthan

Decided On : Jan-24-1997

Reported in : 1997(1)WLN248

Judge : M.A.A. Khan, J.

Appeal No. : S.B. Criminal Revision Pet No. 154 of 1991

Appellant : Lal Chand

Respondent : State of Rajasthan

Disposition : Petition dismissed

Judgement :

M.A.A. Khan, J.

1. In this case Lalchand Petitioner sold on 20.1.1982 mixed milk to Qutbuddin, Food Inspector (PW.I) near. Jhal Ka Kunwan at Tonk. On analysis the Public Analyst found the sample milk adulterated for its not conforming to the prescribed standard of milk fat content at 4.5% and solid non-fat contents at 8.5%. The sample milk had fat content at 5.2% and solids non-fat at 6.10%. On trial the learned C.J.M. Tonk found the petitioner guilty of offence Under Section 7/16 of the Prevention of Food Adulteration Act, 1954 (the Act), convicted him as such and sentenced to 1 year Rigorous Imprisonment and Rs. 1,000/-fine. On appeal the

learned Sessions Judge, Tonk, confirmed the conviction and sentence of the petitioner. Hence, this revision petition Under Section 397 Cr. P.C.

2. Mr. Narendra Jain, the learned Counsel for the petitioner urged that since the case against the petitioner was not tried as a summary trial case, as required by Section 16A of the Act and was tried as a warrant trial case, the trial stood vitiated. However, no prejudice caused to the petitioner by the trial adopted in his case was pointed out.

3. In the case of Shyam Sunder v. State of Rajasthan and Anr. 1996 (3) W.L.C. (Raj.) 722 a similar question had arisen and the question was referred to a larger Bench for answer. The larger Bench opined that in post conviction cases the trial of a case for offence Under Section 16(1) read with Section 7 of the Act by adopting the procedure of a warrant case does not stand vitiated unless prejudice caused to the accused is shown. Since no prejudice occasioned to the petitioner by trying the case of the petitioner as per procedure for a warrant case has been shown in the present case, the argument advanced by Mr. Jain has no substance and is accordingly rejected.

4. It was next urged by Mr. Jain that before granting the sanction for prosecution of the petitioner, the sanctioning authority did not apply his mind and therefore, the very basis for the prosecution of the petitioner was bad. No specific defect, save that the sanction Ex. P. 8 was not prepared in his hand by the sanctioning authority, was pointed out'.

5. In the case of Nand Kishor v. State of Rajasthan (S.B. Cr. Rev. Petition No. 24 of 1992) I have examined this issue and on the basis of the decision of the Supreme Court in the case of Dhian Singh v. Municipal Board, Saharanpur 1973 F.A.C. 404 have taken the view that what is required for initiation of prosecution for offences under the Act is the 'written consent' of the authority concerned and not 'sanction' within the meaning of the term used in other enactments like Prevention of Corruption Act, the Code of Criminal Procedure, 1973 and since 'written consent' may be given even long before a particular offence has taken place to institute a particular case or class of cases, no question of applying one's mind to the facts of the case before the institution of prosecution in that case arise. In view

of such opinion held by me on this point, there is no merits in Mr. Jain's argument either in law or on facts. This argument too is rejected.

6. It was then urged by Mr. Jain that the report of the Public Analyst was not sent to the petitioner, as required by Section 13(2) of the Act and hence prejudice was occasioned to him. The Food Inspector has stated on oath that he had personally delivered the copy of Analyst's report to the petitioner and obtained his signatures on Ex. P. 10. This assertion of Food Inspector does not stand controverted. No such objection was ever raised by the petitioner during the trial. I, therefore, find no substance in this argument too.

7. In the end it was submitted by Mr. Jain that looking to the fact that the petitioner comes from a poor family, is the sole bread earner for his family and has faced the or deal of this litigation for about 14-15 years, his release on probation or the part of sentence already undergone by him with nominal increase in fine would meet the ends of justice.

8. In the case of Nand Kishore (supra) it was held that looking to the gravity of the offence, the likely consequences of such anti social activities threatening the health of the people at large, the legislative mandate contained in Section 16(1) and the judicial approach to the sentencing policy in such cases, the discretion of the court of awarding punishment in such cases stands restricted to the imposition of imprisonment for not less than three months and of fine for not less than Rs. 500/- and that too for adequate and special reasons recorded in the judgment. The reasons pointed out by Mr. Jain are considered as adequate and special and therefore reduction in the punishment given to the petitioner is made.

9. In view of the above the conviction of the petitioner for offence Under Section 7/16 of the Act is maintained but the sentence awarded to him by the two courts below is reduced to three months Rigorous Imprisonment plus fine of Rs. 500/- or in case of default in payment of fine to one month Rigorous Imprisonment more. With this modification in sentence the petition is dismissed.