

Ramakant Saraf Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-06-2002

Reported in : RLW2003(1)Raj106; 2002(3)WLC180; 2002(2)WLN656

Judge : Sunil Kumar Garg, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 7, 16, 16(1) and 16A;
[Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 465

Appeal No. : S.B. Criminal Revision Petition No. 641 of 2001

Appellant : Ramakant Saraf

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Ramesh Purohit, Public Prosecutor; H.M. Sarawant, Adv.

Disposition : Revision allowed

Judgement :

Garg, J.

1. This revision petition has been filed by the accused petitioner against the order dated 24.9.2001 passed by the learned Additional Chief Judicial Magistrate, Hanumangarh in criminal case No. 432/96 whereby the learned Magistrate allowed the application dated 9.7.2001 filed by the APP and ordered that the case

be tried as warrant case and he further ordered that PW- 1 Ramgopal be summoned for further cross-examination.

2. It arises in the following circumstances :

(i) That a complaint under Section 7/16 of the [Prevention of Food Adulteration Act, 1954](#) (hereinafter referred to as the Act of 1954) was filed in the lower court on 30.5.95 and on that day, the learned Magistrate took cognizance against the accused petitioner. It appears that procedure of warrant trial otherwise than on a police report was adopted by the Magistrate and for that pre-charges evidence was recorded and statement of PW.1 Ramgopal was recorded on 1 i .8.98 and thereafter the case was fixed for argument on charge.

(ii) On 14.1.99, the learned Magistrate found the prima facie case for framing charges for offence under Section 7/16 of the Act of 1954 and accused petitioner was charged accordingly. Thereafter PW.1 Ramgopal who was examined earlier was to be cross-examined and he was cross-examined again on 7.10.99 by the learned counsel appearing on behalf of the accused petitioner and one more witnesses PW.2 was produced on behalf of the prosecution on 2.10.99.

(iii) On 18.5.2001, statement of accused petitioner under Section 313 Cr.P.C. was recorded and one witness was examined in defence on 2.6.2001 and thereafter the file was put up for final arguments. On 9.7.2001, an application was filed by the learned App before the learned trial Magistrate staling that the procedure for trying the summons cases should have been adopted and since the evidence was recorded before charge and the case should have been tried after framing charge and, therefore, it was prayed that in the interest of justice, evidence recorded so far be treated as pre-charge evidence and therefore, the case be disposed of after framing charges.

(iv) That application was disposed of by the learned trial Magistrate vide his order dated 24.9.2001 holding that as per provisions of Section 16-A of the Act of 1954, the trial of the present case should be conducted as summary trial, but since procedure for warrant trial has been adopted and PW.1 Ramgopal has been examined at length and, therefore, mistake can be cured by accepting the

application and further more an opportunity is given to the learned counsel for the accused petitioner to further cross-examine PW.1 Ram Gopal.

3. Aggrieved from that order, this revision petition has been filed by the accused petitioner and it has been argued that since he was facing trial for last 7 years and therefore, the order by which retrial was ordered is illegal as the case was already fixed for final arguments and, therefore, it was prayed that

'the impugned order dated 24.9.2001 may kindly be quashed and the learned Magistrate be directed to pronounce the judgment. Any other order which the Hon'ble Court thinks fit and proper, be passed in favour of the petitioner.'

4. I have heard both and perused the record of the case.

5. In my considered opinion, the present application filed by the APP on 9.7.2001 and the impugned order which was passed on that application shows how in bad manner the proceedings are going on the lower Court. In the application dated 8.7.2001, the learned APP suggest that since pre-charge evidence was recorded, therefore, the evidence recorded earlier should be treated as pre-charge and case should be disposed of after framing charge.

6. This application was devoid of any force as from the order- sheets it appears that the procedure which was adopted by the learned ACJM was of warrant trial, other wise on police report and in that case pre-charge evidence was to be recorded first and in this case, statement of PW.1 Ram Gopal was recorded before framing charge and the charge was framed on 14.1.99 after the statement of PW.1 Ram Gopal was recorded. On the basis of pre- charge evidence, charge was framed by the learned ACJM on 14.1.99 and when this being the position, what learned APP wants to suggest the Court, he knows well and noneelse. Not only this after the charge was framed as per procedure of warrant cases instituted on a complaint, PW. 1 Ram Gopal was further cross- examined by the learned counsel for the accused petitioner on 7.10.99. This is one aspect of the matter. By the impugned order, the learned Magistrate further ordered that if the learned counsel for the accused -petitioner wants to further cross-examine PW.1 Ram Gopal, he can do so, but it appears that the learned counsel for the accused petitioner does

not want to cross-examine further PW.1 Ram Gopal and he wants verdict on the evidence recorded and when that was his intention, how he has filed this revision petition, it is beyond the scope of understanding and if he does not want to further cross-examine PW.1 Ram Gopal and wants that arguments be heard, but he has approached this Court and this also shows slaggness on the part of the accused petitioner. Apart from this since procedure for warrant case instituted otherwise on police report was adopted, therefore, the impugned order cannot be sustained and thus the order dated 24.9.2001 is liable to be set aside and this revision petition is liable to be allowed on this point.

7. Before parting with the judgment the question arises whether trial of the case under the Act of 1954 should have been tried as summary trial as per Section 16-A or in other words procedure as found in Section 16(1) being not adopted by the Court, whether trial stands vitiated in into or not.

8. There is a Division Bench Judgment of this Court reported in Shyarn Sunder Modi v. State of Rajasthan (1). In that case, this Court observed that Section 16-A gives a mandate that all offences under Sub-section 1 of Section 16 shall be tried in a summary way, but if case is conducted as warrant case and no prejudice is caused to the accused petitioner, that mistake can be considered as irregularity and not illegality.

9. In another judgment Shyam Sunder v. State of Rajasthan (2), has held that trial conducted in violation of Section 16-A is not vitiated ipso facto if no prejudice is found to have been caused to the accused.

10. Similar is the view of Himachal Pradesh High Court in a case State of Himachal Pradesh v. Bir Singh (3). Thus, the conclusion that can be drawn may be summarized in the following words :

The Legislature with a view to expeditiously bring to book the offenders under the Act of 1954 introduced summary trial and intended that all offences under Section 16(1) of the Act be tried summarily by specially authorised Magistrates, however, at the same time under the second proviso to the said Section 16-A, discretion has been given to such Magistrates to try such offences by following the procedure laid

down for the trial of a warrant case, if they are of the opinion 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. Such discretion can be exercised by the Magistrates either at the time of commencement of the trial or at any time, during the course of summary trial. On the basis of the language used in Section and in view of the 'Objects and Reasons' for the enactment of Section 16-A of the Act, the only interpretation is that the specially empowered Magistrates shall have to try every offence under Section 16(1) of the act in the first instance in a summary way and if in a given situation, they intend to try the case as a warrant case, reasons thereof would be recorded after giving the parties an opportunity of being heard. However, failure of the Magistrates to record reasons would not vitiate the trial. Such failure would only be an irregularity curable under Section 465, Code of Criminal Procedure, unless prejudice is shown to have been caused to the accused thereby.

11. If the Magistrate specially authorised to try the case under Section 16-A had not passed specific order for trying the case as a warrant trial, on that ground the proceedings would not be vitiated for non-compliance of the provisions of Section 16-A in as much as the Magistrate is also empowered to try the case as a warrant trial also and the accused will be given full opportunity to contest the case, as such non-mentioning of reasons for non-passing of such order to that effect as provided in the second proviso to Section 16-A would only amount to an irregularity but would not vitiate the entire proceedings.

12. So far as the facts of the present case are concerned, the present case has been tried as warrant case instituted on complaint and opportunity to cross-examine further PW.1 Ram Gopal was given to the learned counsel for the accused petitioner and in these circumstances, it cannot be said that his case was prejudiced in any manner and, therefore, such trial cannot be said to be illegal one and at the most, it can be termed as an irregularity which is curable under Section 465 of the Cr.P.C.

For the reasons mentioned above, this revision petition is allowed and the order dated 24.9.2001 passed by the learned Additional Chief Judicial Magistrate,

Hanumangarh is set aside.

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