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Court : Rajasthan

Decided On : Jan-12-1987

Reported in : 1987WLN(UC)355

Judge : Navin Chandra Sharma, J.

Appeal No. : S.B. Cr. Revision No. 111 of 1982

Appellant : Kamruddin

Respondent : State of Rajasthan

Disposition : Petition dismissed

Judgement :

Navin Charndra Sharma, J.

1. This revision petition filed by the petitioner Kamruddin, is directed against the judgment passed by the learned Addl. Sessions Judge, Kishangarh Bas, dated 5th June, 1982, in Criminal Appeal No. 157/1981, confirming the conviction and sentence passed by the learned Munsif and Judicial Magistrate, Tijara, dated 15-10-1981, convicting the petitioner under Section 7 read with Section 16 of the Prevention of Food Adulteration Act, 1954 and sentencing the accused petitioner to undergo rigorous imprisonment for 6 months and a fine of Rs. 500/- and default of payment of fine to further undergo two months rigorous imprisonment.

2. Brief facts leading to this revision petition are that on 1st Nov., 1976, when the accused petitioner was going on a bicycle with a cane containing milk Shri Sukhpal Sharma, PW 1, who was Food Inspector of the local area comprised in Tijara, Municipality, checked the milk of the petitioner. He suspected that the milk was adulterated and therefore, he gave a notice Ex. P 1, in Form VI and purchased 660 Mlts. milk from the accused after paying an amount of Re. 1/- under receipt. The sample of milk thus taken was divided in three parts and filled in clean and dry bottles, 18 drops of formalin were dropped in the sample. The bottles were labelled and sealed after being wrapped in cover. One of the bottle containing the sample was sent by the Food Inspector to the Public Analyst. The Food Inspector, also sent a memorandum in Form VII containing the specimen impression of the seal used to seal the packet of the sample and this memorandum was separately delivered to public analyst by hand. The Public Analyst gave his report on 9th November, 1976, after analysing the sample. The Public Analyst found that the sample sent to him was properly sealed and fastened and he also found that the seal was intact and unbroken. The seal fixed on the container and the outer cover of the sample tallied with the specimen impression of seal sent separately by the Food Inspector and the sample was in a condition fit for analysis. The result of the analysis shows the following position.

1. Fat.....6.9%

2. Solid not fat.....8.4%

3. Test for starch.....Negative

4. Test for sugar.....Negative

3. He opined that the sample of the milk was adulterated as it contained 6.7% of added water. After obtaining proper sanction of the District Magistrate, Alwar, the present prosecution was launched. After trial the learned Judicial Magistrate, Tijara, held the accused petitioner guilty of the offence under Section 7 read with Section 16 of the Act, and sentenced him as aforesaid. Aggrieved by this, the petitioner filed Criminal Appeal No. 157/1981, before the Court of Sessions which was transferred to the court of learned Additional Sessions Judge, Kishangarh

Bas. The learned Additional Sessions, Judge, Kishangarh Bas, dismissed the appeal filed by the petitioner. He has therefore, come in revision before this court.

4. Learned Counsel for the petitioner contended that according to the report of the public analyst, the contents were 6.7% and this percentage was higher than the standard prescribed in A. 11.01.11 in Appendix-B, appended to the Rules, and therefore, the sample of the milk sent for analysis cannot be said to adulterated. The contention made by the learned Counsel for the petitioner has no force and it cannot be considered. There was deficiency in the milk-solid-not-fats, the prescribed minimum percentage of milk solid-non fats is 90% while the result of the analysis of the sample sent to the public analyst in the instant case showed that the sample had solid non-fats 84% Thus, there was deficiency of 6%. It is well settled that the standard of quality of limits of variability fixed by the Government in Appendix-B are not subject of alterations or variation by the court. Reference in this connection may be made to the decision of their Lordships of the Supreme Court in Jagdish Prasad v. The State of West Begal : 1972 CriLJ1309 . Since there was deficiency in the percentage solid non fats and the pubic analyst has opined that the sample of the milk was adulterated as it contained 6.7% of added water The courts below have rightly held the accused petitioner guilty for the offence under Section 7 read with Section 16 of the Act.

5. It was next urged by the learned Counsel for the petitioner that there is nothing to show that after taking sample of the milk the Food inspector stirred the milk. Suffice it to say that no question what so ever on this point was put on behalf of the petitioner to the Food Inspector in cross-examination. It will be presumed that the sample of the milk was taken in the same state as the milk was in the container.

6. In the grounds of revision petition, it has also been pleaded that mandatory provisions of Rules 9, 14, 15, 16, 17 & 18 of the P.F. Adulteration Rules were not complied with, as the Food Inspector, did not pack and fasten/ the seals of the sample in the prescribed manner and nor the container of the sample were properly seized and sent to public analyst. The evidence of the Food Inspector, coupled with the documents Ex. P 1 to Ex. P 6 go to show that all the

requirements of taking sample, seizing, sealing or fastening them, packing them and forwarding them to the public analyst along with a memorandum containing the seal impression used, being sent separately have been complied with and there has been no contravention of the Rules. Even before the learned Addl. Sessions Judge no much argument was raised on behalf of the petitioner. Learned Judicial Magistrate, Tijara, has punished the petitioner with minimum sentence provided in law and no question of reduction of sentence arises. It is true, that the adulteration is marginal but court has no power to make any reduction in the minimum sentence of the case of primary food. If the petitioner wants, he may approach to the State Govt. for remission of the sentence and it is for the State Govt. to consider his request.

7. In the result, this revision petition has no force and the same is dismissed. The learned Judicial Magistrate. Tijara, will take immediate steps to take the accused petitioner in custody and send him to jail under a warrant to undergo sentence.

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