

Girdhari Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-23-2008

Reported in : RLW2009(2)Raj1032

Judge : Bhanwaroo Khan, J.

Appellant : Girdhari

Respondent : State of Rajasthan

Disposition : Application allowed

Judgement :

Bhanwaroo Khan, J.

1. The accused-petitioner has preferred this revision petition under Section 397, 401 Cr.P.C. against the order dated 8.10.1993 passed by the Additional Sessions Judge, Pali whereby the conviction and sentence passed under Section 7/16 of the Prevention of Food Adulteration Act by the Chief Judicial Magistrate, Pali has been upheld.

2. Brief facts of the present case are that on 2.2.1983, the Food Inspector took a sample from the accused-petitioner who was selling milk to the public and was having four drums of milk in his possession. A sample of 660 MI. was taken by paying due amount and by adding formal in to each sample and after sealing the

same one sample was sent to public analysis for examination. Due sanction was obtained and when milk was found to be adulterated, a complaint was made. The trial Court after full trial on the basis of evidence produced convicted the accused-petitioner under Section 7/16 of the Prevention of Food Adulteration Act and sentenced to undergo six months' rigorous imprisonment with fine of Rs. 1,000/-; in default thereof further to undergo two months' rigorous imprisonment. Against which the accused-petitioner preferred an appeal which came to be dismissed by the appellate Court. Hence, this revision.

3. Heard learned Counsel for the parties and carefully gone through the record.

4. This is a revision petition against the judgment of two Courts below having concurrent finding about the conviction. The revisional jurisdiction is only supervisory jurisdiction unless there is gross violation of law or miscarriage of justice or jurisdictional error, the Court cannot go into these factual aspects of the matter and cannot review the judgment passed. Learned Counsel without going into the details of the evidence simply submitted that the trial Court while examining the accused under Section 313 Cr.P.C. has not put any question about the public analyst's report. In food adulteration matter the report of public analysis is main basis or crux of the prosecution and the trial Court has not even put a single question about this report. In absence of this question a prejudice is caused to the accused because he did not have any chance or opportunity to file reply about the same. In absence of this important question, the conviction as awarded cannot be sustained.

5. Learned Counsel for the petitioner submitted the judgments of this Court State of Rajasthan v. Kesarichand and Anr. reported in 2005 (2) R.Cr.D. 388 (Raj.) and Jagdish Prasad v. The State of Rajasthan reported in 1988 (II) PFAC 246 : RLW 1988 (1) raj 693 and pleaded that since no question has been asked to the accused about the report of public analyst. On this very ground prejudice is caused to the accused and he cannot be convicted.

6. Learned Public Prosecutor argued that if a question was not put to the accused in the statement recorded under Section 313 Cr.P.C about the report of public analyst, the case can be remanded back for putting the question under Section

313 Cr.P.C. to the accused. More so, this being simply a irregularity, no prejudice can be said to have been caused to the accused.

7. Since the learned Counsel has raised only question about not putting the question to the accused about the report of public analyst, without going into the merits of the prosecution witnesses, it is found that after perusal of statement recorded under Section 313 Cr.P.C, no mention of either report Ex. P/6 or any question about the same was put to the accused-petitioner. The report is the basis of prosecution and about the same, if no question is asked then certainly prejudice will be caused to the accused. It is true that every error or omission in compliance with the provision of Section 313 Cr.P.C. does not necessarily either vitiate trial or vitiate the conviction. The trial is vitiated or not will depend upon the decree of error and upon whether any prejudice is or has been caused to the accused. Merely, inadequacy of the examination would not cause any prejudice to the accused.

8. Here specifically the trial is for adulteration of the milk which can be said to be proved only on the basis of report received from the public analyst and if the same is not put to the accused while examining him under Section 313 Cr.P.C, it will certainly prejudice the accused and this is not simply mere irregularity or error which would go to the route of the prosecution.

9. The judgment cited by the learned Counsel for the petitioner are in supported the arguments.

10. The arguments of Learned Public Prosecutor to remand the case is of no avail in the peculiar facts and circumstances of the case. The sample was taken as back as in the year 1983 and the judgment against the petitioner was passed by the trial Court in the year 1992 and appeal preferred came to be dismissed in the year 1993 and the revision is being disposed of in the year 2008; more than 25 years have elapsed from the date of commission of offence, so it will now, be futile to remand the case back to put again the accused-petitioner for trial. Though the Food Adulteration Offences are not against the individual but against the Society in general and such type of offences should be dealt strictly and required early disposal. In the instant case 25 years is not a short period. Looking to the peculiar

facts and circumstances of the case and agony which has been faced by the accused-petitioner, it would not be proper to remand the case back to the trial Court for retrial.

11. The accused-petitioner in the circumstances deserves acquittal because the crucial report and basis of the prosecution case has not been put to the accused-petitioner while examining him under Section 313 Cr.P.C.

12. Resultantly, the revision petition deserves to be allowed and the judgment dated 12.11.1992 passed by the Chief Judicial Magistrate, Pali which was upheld by the judgment dated 8.10.1993 passed by the Additional Sessions Judge, Pali are set-aside. Accused Girdhari is acquitted for the charge under Section 7/16 of the Prevention of Food Adulteration Act.

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