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Court : Himachal Pradesh

Decided On : Apr-17-2009

Judge : Surinder Singh, J.

Appellant : Siri Ram

Respondent : State of H.P.

Advocate for Pet/Ap. : Shri. Ashok Sharma

Disposition : Petition dismissed

Judgement :

Surinder Singh, J.

1. The petitioner faced the trial before the Additional Chief Judicial Magistrate allegedly for selling adulterated 'Shakker' to the Food Inspector and he could not produce the licence for the sale of this food article kept in his shop as required under Rule 50 of the Prevention of Food Adulteration Act and Rules framed there under. The learned trial court acquitted the petitioner for the offence punishable under Section 16 (1-A) of the Prevention of Food Adulteration Act, 1954, in Whether reporters of Local Papers may be allowed to see the Judgment?.Yes. short 'the Act', but however, convicted him under Section 16(1)(a)(ii) of the Act as he is proved to be running a shop without having the requisite licence under the Act for the sale of the food articles, as such he was convicted and sentenced by

the learned trial court to undergo simple imprisonment for a period of six months and to pay a fine of Rs. 1,000/-, which was challenged in appeal before the court of sessions in Criminal Appeal No. 10 of 1997.

2. The learned Sessions Judge affirmed the judgment of conviction and sentence of the petitioner, however, reduced the sentence to three months and to pay a fine of Rs. 500/- and in default of payment of fine, further to undergo simple imprisonment for a period of one month. Against the concurrent findings of guilt, the instant revision petition has been preferred by the convict/petitioner.

3. Shri Ashok Sharma, learned Counsel for the petitioner has vehemently argued that the petitioner was neither owning a karyana shop nor he had ever been running the karyana shop, as alleged, thus, there was no question of production of the licence to the Food Inspector. He further submitted that the 'Shakker' with respect to which the Food Inspector had taken the sample was meant for the animal use and not for 'human consumption', which fact has been proved by the defence witnesses. The Food Inspector did not include an independent witness despite his availability to lend corroboration to his version. The courts below have failed to appreciate this point, thus the instant revision petition deserved to be allowed.

4. Contra, Shri Ramesh Thakur, learned Assistant Advocate General has supported the judgment of conviction and sentence passed by the courts below.

5. I have given my thoughtful consideration to the rival contentions of the parties and have carefully gone through the evidence on record.

6. It is proved on record that the Food Inspector had picked up the sample of 'Shakker' from the premises of the petitioner for the purpose of analysis and on its examination, the Public Analyst, Kandaghat passed the sample vide report Ex.P15. Thereafter, the second part was sent to Public Analyst Chandigarh, for its examination. He gave his report Ex.P11 and observed that the contents of this sample contained the acidic coaltar colour of orange shade which is not a permitted coaltar food colour. Moreover, the addition of any artificial colouring matter to Shakker was not permitted under the provisions of the PFA Rules, 1955,

thus the contents of the sample were adulterated.

7. Thus in view of the two contradictory reports, the learned trial court was in lurch which one was to be accepted or which was to be rejected. In view of the contradictory evidence, the learned trial court lent towards the report which was favourable to the accused. Therefore, the appellant was given the benefit of doubt and acquitted him for the offence punishable under Section 16(1-A) of the Act, but however, finding that the petitioner was running a karyana shop without the requisite licence convicted under Section 16(1)(a)(ii) of the Act and sentenced him as aforesaid.

8. The learned Sessions Judge reappraised the evidence, in appeal filed by the petitioner and held that the petitioner at the relevant time was running a karyana shop and he had exhibited the food articles for sale in his shop without licence and while maintaining the conviction reduced the sentence from six months to three months.

9. To appreciate the contention of the learned Counsel for the petitioner that the petitioner at the relevant time was not running any karyana shop, he drew my attention to the statement of the defence witness, the another shopkeeper of vicinity of the petitioner and defence appears to be an afterthought as it was not suggested to the prosecution witnesses.

10. PW1 G.R. Puri has stated in his examination in chief that the petitioner was found running the karyana shop when he was intercepted in his premises on 12.6.1993 and he picked up the sample in accordance with law out of 30 kgs. of 'Shakker' which was exhibited for sale for human consumption. He categorically stated that the petitioner could not produce the licence and this fact was not assailed in his cross-examination by the accused.

11. It is a settled law that if the statement made by a witness in his examination-in-chief remained un-assailed in the cross-examination, it is presumed to be correct. In fact his defence in the cross-examination remained confined to the fact that the Shakker was only meant for animal consumption and not for human consumption.

12. The next contention of the learned Counsel for the petitioner that no independent witness was associated by the Food Inspector in order to lend strength to his version is also devoid of any merit. In my opinion, when the accused did not challenge the statement of the Food Inspector about running a Karyana shop by the appellant, then in that even the non- association or non-examination of the independent witnesses is not fatal to the prosecution, thus, the findings of the courts below that in such a situation the plea of the accused-petitioner that he was not running a shop at the relevant time appears to be palpably false.

13. Therefore, the concurrent findings of fact which stand established on record cannot be interfered with. Further while passing the sentence, the learned appellate court has taken a lenient view and imposed the minimum sentence, therefore, there is no scope for any interference by this Court, accordingly, the revision petition is dismissed. The petitioner is hereby directed to be present before the learned trial court on May 30,2009, to serve out the sentence. In case he fails to turn up on the date aforesaid, the learned trial Court shall take appropriate steps to procure the presence of the convict/petitioner and to commit him to prison to serve out the sentence as modified by the learned appellate Court.

14. Send down the records.

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