

Municipality Vs. Puran Prakash

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Court : Jammu and Kashmir

Decided On : May-01-1974

Reported in : 1975CriLJ677

Judge : S. Murtaza Fazl Ali, C.J. and; S. Wasi-Ud-Din, J.

Appellant : Municipality

Respondent : Puran Prakash

Judgement :

S. Murtaza Fazl Ali, C.J.

1. The accused, Puran Prakash, was convicted under Sections 7/16 of -the Jammu and Kashmir Prevention of Food Adulteration Act (hereinafter referred to as the Act) and sentenced to a fine of Rs. 300/-. The S. J. on appeal maintained the conviction but reduced the fine to Rupees 100/-. The complainant Municipality has filed this application for enhancing the sentence imposed on the accused. The accused has not filed any revision against his conviction to this court. Rule for enhancement of the sentence having been issued, the accused has appeared through Mr. T. S. Thakur who has argued the case both on facts and law.

2. According to the prosecution the Food Inspector, Girdhari Lai Raina, visited the .shop of the accused on 16-5-1970 and took a sample of turmeric weighing 450 gms. contained in a Daba in his shop. This sample was divided into three parts : two of which were taken by the Food Inspector and one was retained with the

accused. The Food Inspector sent one of the parts to the Public Analyst Jammu for chemical examination. The Public Analyst after analysing the sample opined that the sample conformed to the legal standard. The food Inspector, however, was not satisfied with the opinion of the Public Analyst and he moved the court for sending the sample to the Director, Central Food Laboratory Calcutta which is the most authentic laboratory for examining such samples. The accused also appears to have fully cooperated with the court in this behalf and offered his own sample for being sent to the Director of the CFL. The report of the Director CFL showed that the turmeric was adulterated and it contained 21 parts per million (on dry basis) of lead which is undoubtedly a poisonous substance. Thereafter the prosecution produced its evidence before the trial court and the defence examined some witnesses. The trial court, after considering the evidence of the prosecution and the defence, rejected the evidence of the defence and found that the prosecution case was proved and from the findings of the Director CFL. He accordingly convicted the accused and sentenced him to a fine of Rs. 300/-. The trial Judge made severe strictures against Mr. Sharabi, the Public Analyst at Jammu. The accused then went up in appeal to the learned S. J. who dismissed the appeal but reduced the fine from Rs. 300/- to Rs. 100/-. The learned S. J., however, remarked that the observations made by the learned trial court on the character and integrity of Mr. Sarabi were not warranted by the record and he accordingly expunged the remarks. We might mention here that it was not in the province of the S. J. to have expunged the remarks made by the trial court against the Public Analyst which could only be done by this court while exercising its discretion under Section 561-A of the Criminal P. C, In these circumstances the part of the order of the learned S. J. expunging the remarks against the Public Analyst is set aside and the remarks made by the trial Magistrate shall stand unless expunged by this court on a proper application made by the witness, if so advised.

3. We have also gone through the entire evidence and we are convinced that the report of the Public Analyst at Jammu was not at all satisfactory. We may not go to the extent of saying that the Public Analyst was guilty of deliberate dishonesty, but there can be no doubt that he had conducted the test in a very casual and unsatisfactory manner when he had to exercise due care and caution, as his

findings would have an important bearing on the prevention of serious health hazards to the society. In these circumstances the Public Analyst was undoubtedly guilty of gross negligence in making a slipshod examination of the turmeric. Had he been a little more careful, he would have detected the lead undoubtedly found in (he turmeric by the Director CFL Calcutta. The defence witnesses examined by the accused deposed that no sample of the turmeric was taken in their presence by the Food Inspector. The evidence of these defence witnesses is belied by the statement of the Food Inspector himself which we have no reason to disbelieve, particularly when no animus has been suggested by the accused against him. Furthermore, in his statement under Section 342 of the Criminal P. C. the accused has admitted that the sample was taken from him by the Food Inspector and he further agreed that the sample may be sent to the Director of the CFL Calcutta. Thus the defence witnesses appear to be more loyal than the king himself, in trying to disprove a fact which the accused himself admitted.

4. Mr. T. Singh however submitted that the statement under Section 342 could not be treated as substantive evidence. There can be no doubt that this is so but Section 342(3) of the Criminal P. C. itself provides that the answers under Section 342 of the Criminal P. C. given by the accused may be taken into consideration at the trial. In these circumstances the courts were not precluded from deriving assistance from the statement 1975 Parkash Chand, v. S. S. Grewal (FB)679 of the accused under Section 342 and consider it not in isolation but in conjunction with the evidence adduced by the prosecution.

5. Another important argument advanced by the learned counsel for the accused was that as there had been a difference of opinion between the two experts, the benefit of doubt should go to the accused. In order to appreciate this argument it may be necessary to refer to the evidence of Mr. M. L. Sharabi, Public Analyst, who has given an opinion against the prosecution and in favour of the accused. The witness has, to one of the questions put to him whether in (the event of the sample being sent to some other expert, the opinion could be different, expressed his profound ignorance. Furthermore this witness admits that in his report x, D. W. 2 he did not at all examine the quantity or to the extent of the moisture. He further admits that he had performed the test in order to find out whether the sample

contained any quantity of lead, but then he does not disclose this fact in his report which clearly shows that his statement is an afterthought. Finally the expert admitted that he had performed several tests to find out that no objectionable substance was found. The report of this witness is however completely belied by the report of the director of CFL Calcutta which is the most authentic laboratory in the country whose opinion is given special importance by the provisions of the State and the Indian Acts in that where there is a suspicion the sample is referred to the Laboratory either by the accused or by the prosecution. In these circumstances we are satisfied that the report of the Public Analyst Jammu is extremely perfunctory inasmuch as he does not appear to have performed the usual tests for reasons best known to him. After all turmeric is an article of daily consumption of a large majority of the people and it was the duty of the Public Analyst to have performed all tests and to have examined the sample as carefully as possible and incorporated all these tests in his report. If he showed any carelessness in doing so, he cannot escape the responsibility of having caused havoc to public health.

6. For these reasons we fully agree with the learned Magistrate and the learned S. J. that the report of Director CFL is correct and must be accepted. For these reasons- we confirm the conviction of the accused and agree with the courts below that the offence against the accused has been brought home to him beyond reasonable doubt.

7, Coming now to the question of sentence, it was argued by Mr. T. Singh that the accused is a small shopkeeper and the total quantity of turmeric which he possessed, according to the evidence of the Food Inspector, was 500 grams out of which 450 grams were taken as sample by the Food Inspector. It has also been argued that the accused offered his own sample for being sent to the laboratory at Calcutta which should be taken as a mitigating circumstance. It is true that these circumstances are there, but adulteration at all levels, whether on the top or at the bottom, must not only be checked but completely rooted out if the society has to be protected from the danger of health hazards. Unfortunately the State Act does not provide heavy punishment. In the instant case there is no doubt that the turmeric sold by the accused to the Inspector contained a poisonous substance

like lead which constituted a serious health hazard and could have caused death of the persons who consumed this article. It was therefore the duty of the accused to satisfy himself about the genuineness of the turmeric before selling it or keeping it in his shop. Thus the offence committed by the accused is very serious, having regard to the serious repercussions on the public health of the society, and merits a deterrent sentence. The sentence of fine of Rs. 100/- as reduced by the learned S. J. is wholly inadequate and is not commensurate with the gravity of the offence committed by the accused.

8. We would, therefore, allow the application for enhancement and enhance the sentence to six months' rigorous imprisonment and a fine of Rs. 500/-, in default to rigorous imprisonment for two months.

9. The rule is accordingly made absolute.

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