
(2005) 09 GAU CK 0004
In the Gauhati High Court
Case No : Criminal Revision No. 43 of 2001

Biswanath Shah

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 21-09-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 300, 433
Prevention of Food Adulteration Act, 1954 — Section 16, 7
Prevention of Food Adulteration Rules, 1955 — Rule 12

Citation : (2006) GLT 52 Supp

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : G.N. Salewalla, for the Appellant; D. Das, for the Respondent

Judgement

P.G. Agarwal, J.—Heard Mr. G.N. Salewalla, learned Counsel for the Petitioner and also Mr. D. Das, learned P.P., Assam.

2. On 4.11.96, two Food Inspectors Shri H.C. Kalita and Shri Tarun Das inspected the Grocery shop of the Petitioner at Bengali Balijan Gaon, and they collected two separate samples of Iodized Salt, after issuance of notice etc., the samples were packed and sealed as required under the rule. The Public Analyst submitted a report to the fact that the samples does not conform to the standard, thereafter, two cases were filed being C.R. Case No. 3 C/98 and 141/98, C.R. Case No. 141/98 is still at the trial stage. In C.R. Case No. 3 C/98, the trial court, upon conclusion of the trial, convicted the accused Appellant u/s 16 read with Section 7 of the Prevention of Food Adulteration Act (for short, the Act) and sentenced him to imprisonment for 6 (six) months and to pay a fine of Rs. 1,000/- in default and further imprisonment for 2 (two) months.

3. Feeling aggrieved, the Petitioner preferred Criminal Appeal being Criminal Appeal No. 39(3)/2000 before the Sessions Judge, Tinsukia. By the impugned judgment dated 22.12.2000, the appellate court dismissed the appeal and affirmed the order of conviction and sentence.

4. In this revision, the Petitioner has challenged the order of conviction and sentence passed in C.R. Case No. 3 C/98 and affirmed in the aforesaid appeal; the Petitioner has also challenged the pending prosecution in C.R. Case No. 141 C/98.

5. The prosecution in the pending case has been challenged on the sole ground that the Petitioner cannot be tried twice for the same offence. It is submitted that both the Food Inspectors had collected sample of Iodised Salt from the same bag at the same time and as such, there cannot be two prosecutions. Referring to Section 300 Code of Criminal Procedure, it is submitted that the Petitioner had already been tried and convicted for storing/selling alleged Iodised Salt, in C.R. Case No. 3 C/98. He cannot be prosecuted again for the same offence in C.R. Case No. 141 C/98.

6. The law is well settled that there can not be two trials for the same offence, but if the offences are different/distinct, the rule has to double jeopardy is not applicable Harjinder Singh Vs. State of Punjab and Others,

7. As stated above, there is no dispute at the bar that the two samples of Iodised Salt were collected on the same day by two different Food Inspectors from the same bag/container at the same time. It is, therefore, submitted by the learned RR that as the two different samples were collected, two distinct offences were allegedly committed and as such Section 300 Code of Criminal Procedure is not applicable. If the samples are collected from the same bag/container, the result recorded by Public Analyst will be same, or can there be different result? The question raised herein was considered by the Hon'ble Calcutta High Court in the case reported in Sanker Lal Agarwalla Vs. Corporation of Calcutta wherein it was held:

(7) The main question is whether the offence in the three cases is one and the same offence or whether the offences are distinct offences. On analysis the whole thing comes to this: On the 11th August, 1959, at about 10.30 O'clock in the morning the Petitioner was found having stored for sale ghee which according to the prosecution was adulterated and for having sold the same. Therefore, the offence is one and comes within Section 7 of the Prevention of Food Adulteration Act which excluding what is unnecessary for the purpose of this Revisional application is as follows:

No person shall...store, sell...any adulterated food.

By no stretch of imagination can it be said that the offences are distinct simply because three Food Inspectors instead of one happened to go to the godown and simply because each of the three Inspectors took samples from three lots and there were three reports of the Public Analyst.

8. Upon considering the fact that the two samples of salt were collected on the same day and at the same time and also from the same container, we concur with the ratio of law laid down by the Calcutta High Court and hold that two

separate prosecutions are not maintainable. In the present case, the Petitioner has already been tried and convicted in C.R. Case No. 3 C/98, hence, the further prosecution in C.R. Case No. 141 C/98 is hereby quashed.

9. Now, coming to the merit of the revision in C.R. Case No. 3 C/98, it has been submitted that although, sample of Iodised Salt was collected, the report of the Public Analyst shows that he had analysed "Common Salt" only. The question was raised before the trial Court, as well as appellate court, and both the courts below, in view of the materials available on record, held that the mention of the word "Common salt" in Annexure-14 was due to inadvertence and all the documents shows that the analysis was done as regards "Iodised Salt", only. The Analyst also recorded the Iodine content, which was found to be 4.8 PPM, much below the required level of 15 PPM; whereas in the case of "common salt", Iodine contain is not required to be examined. Moreover, the Public Analyst has clearly stated that "a sample of Iodised Salt does not conform to the standard". We, therefore, find no force in the submission that there was any mistake in analysing the samples.

10. The Petitioner also submitted before the courts below that the salt in question was not kept for "sale" and it was meant for cattle fooder. Both the courts below in view of the materials available rejected the plea and we also find no infirmity in the above finding.

11. The learned Counsel for the Petitioner has submitted that in the present case, there is gross violation of the provisions of Rule 12 (Proviso) of the Prevention of Food Adulteration Rules, which reads as follows:

12. Notice of intention to take sample for analysis--

Provided that, in case where a Food Inspector draws a sample from an open container, he shall also draw a sample from the container in original condition of the same article bearing the same declaration, if such container is available and intimate this fact to the Public Analyst.

12. From the evidence of the Food Inspector, we find that although, the samples were collected from an open salt bag which was meant for sale, the Food Inspector has also stated that there were other closed bag of salt lying in the shop but he did not take sample from the closed bag.

13. The provisions of Rule 12 as quoted above does not provide that when open and closed containers are available, sample is to be collected from the closed bag only, the provision merely provides that when sample from open bag/container is taken, Inspector shall also take sample from the container in original condition. The omission on the part of Food Inspector is not however material where the report of Public Analyst is not challenged and defence has not shown anything as to how it is prejudiced.

14. No other question of fact or law has been urged before us. In view of the aforesaid, the revision is partly allowed. The prosecution in C.R. Case No. 141

C/98 stands quashed. Revision against the order of the trial court, as well as the appellate court in C.R. Case No. 3 C/98 stands dismissed. So far the relief u/s 433 Code of Criminal Procedure is concerned, the Petitioner will be at liberty to approach the appropriate authority. Send down the records. The accused Petitioner is directed to surrender before Chief Judicial Magistrate, Tinsukia to serve out the sentence and pay the fine, failing which the Chief Judicial Magistrate shall proceed in accordance with law.