
(1988) 12 RAJ CK 0028

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 383 of 1980

Chhoga Lal alias Chhoga

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 09-12-1988

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16, 20, 7

Citation : (1988) 2 RLW 697 : (1989) WLN 15

Hon'ble Judges : R.S. Verma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.S. Verma, J.—Shri Chhoga Lal alias Chhoga was tried and found guilty for an offence u/s 7/16 of the Prevention of Food Adulteration Act (here in after called "the Act") by the learned Munsif & Judicial Magistrate, First Class, Gangapur, District Bhilwara, and was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 1000/-and in default of payment of fine to under go further rigorous imprisonment for six months. Aggrieved, he filed an appeal before the learned Sessions Judge, Bhilwara, and the same was transferred to the learned Additional Sessions Judge Bhilwara. Learned Additional Sessions Judge, upheld the conviction of chhoga for the aforesaid offence and reduced the term of sentence awarded to him by the learned trial Magistrate to six months of rigorous imprisonment and to pay a fine of Rs. 1000/-and in default of payment of under go three months" rigorous imprisonment. Aggrieved, Chhoga alias Chhoga Lal has come in revision to this Court.

2 Learned counsel for the petitioner submits that in this case the complaint had been signed by Prakash Chandra Singh, Food Inspector, Gangapur, but it had been presented in the court of learned trial Magistrate by Shri Devi Lal, Assistant Public Prosecutor. It was Prakash Chandra Singh who had been authorised by the District Magistrate, Bhilwara to launch prosecution against the revision petitioner as would appear from Ex P 7 How ever, in this case, the complaint was lodged by

the Assistant Public Prosecutor prosecution was conducted by the Assistant Public Prosecutor who was not authorised to lodge the complaint and conduct the prosecution and on this short ground, the conviction and sentence passed against the revision petitioner should be set a side.

3. Learned Public Prosecutor Miss Sumitra Sankhla does not dispute the prosecution that u/s 20(1) of the Act, only such person can lodge complaint, who has been authorised by the competent authority to do so. Prosecution instituted by an unauthorized person would be invalid bad in accordance with law. But she submits that the complaint had been signed by Prakash Chandra singh and the order sheet dated 8-3-1977 of the trial court goes to show that Prakash Chandra Singh, had instituted the complaint and, therefore, the prosecution in this case was not bad an the revision petitioner was rightly convicted. As against this, learned Counsel for the revision petitioner points out that endorsement on the back of the complaint show that the complaint had been instituted by Devi Lal, Assistant Public prosecutor and not by Shri Prakash Chandra Singh. The complaint was lodged on 22-2-1977 and as such, order sheet dated 8-3-1977 does not help the prosecution in any way.

4 I have perused the record of the learned trial court and I find that the complaint had been lodged by Shri Devi Lal, Assistant Public Prosecutor on 22-2-1977. On 22-2-1977, the learned directed the complaint, papers to be checked and the matter was posted for 25-2-1977. On 25-2-1977 it was reported that the papers were complete. On 8-3-1977, the learned Magistrate took cognizance of the aforesaid complaint, which had been presented in the court by Devi Lal Assistant Public Prosecutor. The order sheet dated 8-3-1977 does not show that complaint had been presented by Prakash Chandra. It only mention that Prakash Chandra had produced a complaint through Assistant Public Prosecutor. Thus, there is no escape from the conclusion that in this case, the complaint had been lodged and instituted by Devi Lal, Assistant Public Prosecutor, who was not a person authorized to lodge complaint Ex. P. 7 is a consent issued u/s 20 of the Act by the District Magistrate and Collector, Bhilwara, adit does not authorize the APP Devi Lal to lodge or institute the complaint. It only authorized Prakash Chandra to lodge and institute the complaint.

5. It has been held in a number of cases by this Court that only the Food Inspector can institute prosecution for an offence under the Act and prosecution instituted by unauthorized person vitiates the trial. Reference in this connection may be made to State of Rajasthan v. Nagji Ram 1983 Cr. LR (Raj.) 666, Sacra v. State of Rajasthan 1984 Cr. LR (Raj.) 444 an Hera at. v. State of Rajasthan RLW 1988(2) 3. Hence, I am of the view that in this case, the prosecution of the revisional petitioner was bad in the eyes of law, having been instituted by a person not competent to do so.

6. No other point was urged before me.

7. In view of the aforesaid discussion, this revision petition is accepted and the judgment of the learned Addl. Sessions judge Bhilwara dated 28-11-1980 and judgment of the learned Munsif and Judicial Magistrate, First Class, Gangapur (Bhilwara) dated 9-3-1979 are set aside and the revision petitioner Chhoga Lal alias Chhoga is acquitted of the offence u/s 7 read with Section 16 of the Prevention of Food Adulteration Act, 1954. The bail bonds of the petitioner are cancelled and he need not surrender.