
(1961) 11 P&H CK 0034
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 999 of 1961

Gurnam Singh

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 21-11-1961

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16(1), 20

Citation : (1962) 1 ILR (P&H) 723

Hon'ble Judges : D. Falshaw, J

Bench : Single Bench

Advocate : T.S. Munjral and B.S. Chawla, for the Appellant; K.L. Kapur, for A.G., for the Respondent

Final Decision : Dismissed

Judgement

D. Falshaw, J.—This is a revision petition by Gurnam Singh, who has been convicted u/s 16(1) (g) (ii) of the Prevention of Food Adulteration Act and sentenced to one year's rigorous imprisonment and a fine of Rs. 2,000 or in default six months' further imprisonment.

2. The prosecution story is that on the 22nd of July, 1960, a Food Inspector at Tarn Taran purchased a sample of milk from the Petitioner which he was carrying for purposes of sale as Cow's milk. The usual formalities were followed regarding the taking of the sample, which was divided into three parts, one of which was left with the accused. The sample which was sent to the Public Analyst was found to be adulterated with separated milk to the extent of 42 per cent.

3. The accused denied his guilt and denied that any sample as taken from him or that he executed the formal receipt Ex. P.B. which the Food Inspector took from him for the price of the milk. He examined two witnesses in defence who said that he was taken from the shop of Dalip Singh D.W. 1 on the pretext that his thumb-impression was required for some purpose by the Food Inspector. This evidence was obviously rightly rejected by the Courts below and in my opinion

there is no reason whatever, for not holding that the sample of milk was duly purchased from the Petitioner in accordance with the regulations.

4. The main question raised in revision was whether there was any proper sanction for prosecution of the Petitioner as required by Section 20 of the Act. The relevant portion of Sub-section (1) reads-

No prosecution for an offence under this Act shall be instituted except by, or with the written consent of, the State Government or a local authority or a person authorised in this behalf by the State Government or a local authority.

5. It is not disputed that Food Inspectors generally and the present complainant in particular have been delegated with powers to institute prosecutions under this section, but it was argued that some consent was necessary by some authority for the prosecution of any particular individual. Reliance was placed on a decision of a Division Bench in City Corporation of Trivandrum Vs. V.P.N. Arunachalam Reddiar and Another, , in which it was held that a general sanction authorising the Food Inspector to prosecute all offenders under the Act before a particular Court is invalid as not satisfying the requirements of Section 20.

6. With due respect it seems that this decision is based on a misunderstanding of the purport of the section which has been interpreted by the learned Judges as if the words "by or with the written consent of the State Government..." were by and with the written consent of the State Government...". In my opinion the written consent is only necessary where the prosecution is being instituted by some person who has not already been given powers to institute such prosecutions. The learned Counsel for the Petitioner was quite right in suggesting that it would be meaningless for a person authorised to institute prosecutions under the Act to give himself written consent to institute a particular prosecution, but in my opinion as far as persons who have been duly delegated with authority to institute prosecutions under the Act are concerned the section can be read as if the words "or with the written consent of" were omitted altogether, and what the section means in my opinion is that the prosecution must be instituted either by some person duly authorised with delegated power or else by some person not so authorised but with the written consent of an authorised person. I am, therefore, of the opinion that there is no defect in the institution of the prosecution in the present case.

7. There remains the question of sentence regarding which the relevant facts are that the Petitioner has been given the minimum sentence permitted by Section 16(1)(g)(ii) for a second offence. The section provides for enhanced penalties for second and further convictions. The relevant portion reads-

(i) for the first offence, with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both;

(ii) for a second offence with imprisonment for a term which may extend to two years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such imprisonment shall not be less than one year and such fine shall not be less than two thousand rupees;

(iii) for a third and subsequent offences, with imprisonment for a term which may extend to four years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such imprisonment shall not be less than two years and such fine shall not be less than three thousand rupees.

8. The relevant facts in this case are that the present Petitioner at the time of his conviction in the present case had six previous convictions for offences under the Act between 1957 and 1960. He was, however, treated as if this was only his second conviction simply on account of the fact that apparently on his second, third, fourth, fifth and sixth convictions for some reason or other it had not been brought to the notice of the Courts dealing with the cases that he had any previous convictions and therefore on each of these convictions he was dealt with as a first offender. In these circumstances the learned trial Magistrate felt that it would only be fair to deal with him as if this his seventh conviction was his second conviction. Such being the case it is difficult to make out any case for reducing the sentence which could be covered by the words "special and adequate reasons to the contrary to be mentioned in the judgment of the Court", and I, therefore, do not consider that it is possible for me to interfere in the matter of sentence. I accordingly dismiss the revision petition.