

(1964) 11 PAT CK 0012
In the Patna High Court
Case No : Criminal Appeal No. 21 of 1963

Jamshedpur Notified Area Committee	APPELLANT
Vs	
Chhaggan Lal	RESPONDENT

Date of Decision : 02-11-1964

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16(1)
Prevention of Food Adulteration Rules, 1955 — Rule 50

Citation : AIR 1965 Patna 177 : (1965) CriLJ 581

Hon'ble Judges : U.N. Sinha, J

Bench : Single Bench

Advocate : L.K. Choudhari, for the Appellant;

Final Decision : Allowed

Judgement

U.N. Sinha, J.—In this case, one Chhaggan Lal, who had been tried for an offence u/s 16(1)(a) of the Prevention of Food Adulteration Act, 1934 (Act No. 37 of 1954) read with Rule 50 of the Prevention of Food Adulteration Rules, 1955, has been acquitted by the learned trial Magistrate under the following circumstances: According to the prosecution case, on the 6th June, 1962, Upendra Narain Singh (P. W. 2), a Sanitary Inspector appointed under the Prevention of Food Adulteration Act, visited the shop of the respondent, and saw him selling Kachauri, Jilebi, Pakauri, tea etc., manufactured in the shop, on taking payment from the purchasers. P. W. 2 demanded the licence under the Prevention of Food Adulteration Rules, but the respondent replied that he had not obtained any licence. Thereafter, P. W. 2 submitted a report to the Health Officer, named Dr. S. K. Sinha, on which a prosecution was ordered. The defence of the respondent was a denial of his liability and he stated "that he had not committed any offence. It appears that a contention was raised before the learned Magistrate on behalf of the defence that the accused person was not the owner of the shop in question and, therefore, he cannot be convicted for the offence for which he was tried. The learned Magistrate has upheld this contention and according to him the

prosecution had failed to prove that the accused person was the owner of the shop in question and thus he has been acquitted.

2. In my opinion, the learned Magistrate has erroneously acquitted the respondent and public interest requires that the respondent should be convicted for the reasons given below. It may be remembered that although it was argued on behalf of the respondent that the prosecution had failed to prove that he was the owner of the shop, no such case had been made out by the respondent in his statement before the learned Magistrate, Secondly, the evidence led by the prosecution also does not lead to the conclusion that the prosecution has failed to prove that the respondent was the owner of the shop. On being asked for licence under the Prevention of Food Adulteration Rules, it appears that the respondent had stated that he had not obtained any licence and it had not been stated, at that stage, that he was not the owner. This is clear from the evidence of P. W. 2, and I fail to find how the learned Magistrate has said that unfortunately, P. W. 2 does not identify the accused in dock, although he claimed to have seen him sitting at the counter. Reference may be made to the following sentence occurring in the evidence of P. W. 2, namely: "The owner Book showed that this accused (identifies) is the owner of the shop."

Whatever inference may follow from a letter addressed to one Bhagirath Maharaj, to which the learned Magistrate has referred, it is clear that on the 6th June, 1962, the respondent was the owner of the establishment, which was selling eatables mentioned by P. W. 2. In any event, if the respondent was selling Kachauri, Jilebi etc. on taking payments from customers, without the required licence, he was clearly guilty of contravention of Section 16(1)(a) of the Act read with the Central Rules of 1955 and the State Rules of 1958. Learned counsel for the appellant has relied upon a decision of the Supreme Court in the case of Sarjoo Prasad v. State of Uttar Pradesh, reported in AIR 1901 SC 631 for the proposition that even if the accused was not the owner of the shop, he was still guilty. In my opinion, the contention is sound, and if licence was required under Rule 50 of the Central Rules 1955, then the respondent was not entitled to sell sweetmeats, savoury and articles made out of flour etc., without taking out a licence, as contemplated by the State Rules of 1958, whether he was the owner or the agent of the owner of the establishment.

In any case, I have come to the conclusion that the respondent was really the owner of the shop in question, which was selling prohibited articles. I would, therefore, allow the appeal, set aside the acquittal of the respondent and convict him under the charge under which he was tried. Interest of justice will be met if he is fined to the extent of Rs. 100. In default of payment, the respondent must suffer fifteen days" rigorous imprisonment.

3. It may be stated here that the respondent had appeared In this Court through two advocates named Messrs Mohammad Ayub and Syed Hussain Shareef. As it happens, Mr. Ayub is dead and at the time of the hearing of the appeal Mr. Shareef did not appear and the respondent had gone un represented in this

Court.