

(1964) 11 PAT CK 0013

In the Patna High Court

Case No : Criminal Appeal No. 23 of 1963

Jamshedpur Notified Area Committee

APPELLANT

Vs

C.L. Mahton

RESPONDENT

Date of Decision : 02-11-1964

Acts Referred:

Bihar Prevention of Food Adulteration Rules, 1955 — Rule 50
Prevention of Food Adulteration Act, 1954 — Section 16, 24, 24(2), 7

Citation : AIR 1965 Patna 176 : (1965) CriLJ 580

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

Bench : Single Bench

Advocate : L.K. Choudhari, for the Appellant; N.N. Roy, for the Respondent

Final Decision : Allowed

Judgement

U.N. Sinha, J.—In this case, one C. L. Mahto, who had been tried for the contravention of Section 16(1)(a) of the Prevention of Food Adulteration Act, 1954 (Act No. 37 of 1954) read with Rule 50 of the Prevention of Food Adulteration Rules, 1955, has been acquitted by the learned trying Magistrate, under the Following circumstances. According to the prosecution case, on the 24th May, 1962, Sri Upendra Narain Sinha (P. W. 1), a Sanitary Inspector appointed under the Prevention of Food Adulteration Act, visited the shop of the respondent, where sweets, Singharas, Pakauris etc. were manufactured and sold, and when licence under the Food Adulteration Rules was demanded the respondent failed to produce any. As a matter of fact, he had never taken out a licence under the Rules. Thereupon, a report was made to the Health Officer named Dr. S. K. Sinha and prosecution was sanctioned. Thus this case arise. The defence case was that the accused person had committed no offence at all. Before the trying Magistrate, it was contended on behalf of the defence that unless the prosecution was able to prove that the accused person was the proprietor or owner of the shop in question, he cannot be prosecuted in this case, and on the materials on record, the learned Magistrate has held that the

prosecution has failed to prove that the accused was the proprietor or owner of the shop. On a consideration of the evidence of the two main witnesses, who were P. W. 1, mentioned above, and Md. Safiruddin (P. W. 2), the learned Magistrate has refused to accept the prosecution case that they had visited the shop in question on the 24th May, as alleged. According to the learned Magistrate, further, the rules made by the State Government u/s 24 of the Act, had not been proved to have been published previously, as was required by Section 24. Thus, the prosecution has failed and the respondent has been acquitted.

2. In my opinion, the learned Magistrate has erred in all his conclusions. Upon a consideration of the evidence of P. Ws. 1 and 2, I am unable to uphold the conclusion that these two witnesses had not visited the shop in question at all and their evidence must be rejected wholly in this context. No doubt, there is some discrepancy brought out by the cross-examination of these witnesses, as mentioned by the learned Magistrate, namely, that according to P. W. 1, he had found four boy servants working in the shop, whereas according to P. W. 2, he had seen only one servant serving in the shop, but it appears to me that these are such contradictions which do not go to the root of the matter and it appears that the learned Magistrate has himself described this particular contradiction as a minor contradiction. But according to the learned Magistrate, in view of non-examination of any independent witness, such a minor contradiction assumes greater significance. I fail to appreciate the reasoning of the learned Magistrate in this connection. A contradiction may be so major as to lead to an irresistible conclusion that the evidence of the two witnesses is wholly unacceptable, but if certain discrepancies are termed as minor discrepancies, it is difficult to follow how they assume the nature of major discrepancies or major contradictions, only because no independent witnesses were examined in support of the evidence of these witnesses appointed under the Prevention of Food Adulteration Act. Having read the evidence of P. Ws. 1 and 2, I must conclude that they had visited the shop in question on the 24th May, 1962, as they have deposed.

Then, the question whether the shop was of the accused person or not, was unnecessarily allowed to be raised by the learned Magistrate as it was not the defence case that the shop in question was not of the accused person. In his statement before the trial Court, the accused person did not make out a case that the shop in question did not belong to him. The evidence of P. W. 2 is clear and categorical that the accused person was selling sweets, Singhara, tea etc. in this shop. The presumption must be that the shop was of the accused person, unless the defence case was that the accused person was not the owner of the shop, but someone else was the owner. In any case, if the respondent was found selling articles for the sale of which a licence was necessary, the respondent must be convicted for the contravention of the provisions of the Act and the Rule mentioned above. In this connection, learned counsel for the appellant has relied upon a decision of the Supreme Court, in the case of Sarjoo Prasad Vs. The State of Uttar Pradesh, . According to the learned counsel for the respondent, this

decision does not apply in the case of an alleged contravention of Section 7(v) read with Section 16(1)(a) of the Act I do not, however, find any distinction on principle, inasmuch as if an agent cannot sell adulterated food with impunity, an agent cannot also sell any article for the sale of which a licence is required under the Central Rules, read with the State Rules of 1958, framed u/s 24 of the Act. In any event, on the conclusion, that, in this particular case, the respondent was the owner of the shop in question, the acquittal must be set aside.

So far as the question of the notification is concerned, learned counsel for the appellant has drawn my attention to the relevant notification published in the Bihar Gazette Extraordinary, dated July 2nd, 1958. It is open to this Court to take into consideration this Gazette for holding that the required notification u/s 24 of the Act had received previous publication.

3. For the reasons given above, the appeal is allowed, the acquittal of the respondent is set aside and he is convicted for the offence charged in this case. In my opinion, a sentence of fine to the extent of Rs. 100 will meet the ends of justice. In default of this payment, the respondent must suffer fifteen days rigorous imprisonment.