

(2024) 01 CAL CK 0065
In the Calcutta High Court
Case No : Criminal Revision No. 15 Of 2015

Jhuma Ghosh & Anr.

APPELLANT

Vs

State Of West Bengal & Anr.

RESPONDENT

Date of Decision : 19-01-2024

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 2(m)(v), 2(xiii), 16, 16(1)(a)(i), 17, 20, 20(1)
Negotiable Instruments Act, 1881 — Section 141
Evidence Act, 1872 — Section 65
Prevention of Corruption Act, 1988 — Section 6

Citation : (2024) 01 CAL CK 0065

Hon'ble Judges : Rai Chattopadhyay, J

Bench : Single Bench

Advocate : S.S. Roy, D.K. Samanta, B.P. Samanta, Panabir Roy Chowdhury, Gopal Chandra Das, Goutam Dinda, Anindya Sundar Chatterjee

Final Decision : Dismissed

Judgement

Rai Chattopadhyay, J

1. In this revision, the revisionists have challenged the judgment and order dated September 19, 2014, of the Additional District and Sessions Judge, Bench – II, City Sessions Court, Bichar Bhawan, Calcutta, delivered in Criminal Appeal No. 88 of 2013. In the said appeal the judgment and order dated July 31, 2013, of the Municipal Magistrate, Calcutta, 3rd Court at Calcutta, in Case No. 14D of 2009, was challenged. The present revisionists have been held convicted and were sentenced by the Magistrate for an offence under section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954. They were directed to suffer simple imprisonment for six months and also to pay a fine of Rs.1000/-, in default of which they were to suffer simple imprisonment for a further period of ten days. The Magistrate's order as above, has been affirmed and upheld by the Additional District and Sessions Judge, in the impugned judgment, as mentioned above.

2. This revisional Court is required to adjudicate regarding the legality and propriety of the judgment of conviction and sentence, imposed upon the present revisionists, initially by the Magistrate and later on affirmed by the First Appellate Court.

3. Written complaint was lodged by the Food Inspector, Kolkata Municipal Corporation, on December 14, 2009, in the Court of the Metropolitan and Municipal Magistrate, Kolkata. He has stated therein inter alia that, on October 27, 2009, an inspection was held by him at the shop/production house of the present revisionists. Allegedly stored article, namely "vanaspati" was found there, which did not tally with the standard food safety criteria. Allegedly also, the said adulterated/contaminated article was being used for the preparation of sweetmeats, for human consumption. The present petitioner No.1 was introduced as the owner of the shop/production house and the present petitioner No.2 was described to the complainant as the employee/attendant of the said shop, responsible for the day to day affairs of the business run by the petitioner No.1. After discovery of the alleged adulterated "vanaspati", the statutory formalities were followed up like collection of samples, sealing of samples, seizure of the samples and sending the samples for chemical analysis. The complainant has stated in the said complaint that 750 grams of "vanaspati" was collected and seized. A part thereof was sent for chemical analysis to the Public Analyst. Rest of the seized article was sent to the Chief Municipal Health Officer. Further, according to the complainant, the chemical analysis report of the seized article (sample) duly endorsed the same to be an adulterated article, not fit for human consumption. The complainant, in the said complaint has further stated that the entire relevant documents and his report was submitted before the respective authority, that is, the Chief Municipal Health Officer of the Kolkata Municipal Corporation, who has given a written consent for initiation of prosecution against the present revisionists. Pursuant to the same, the said complaint was lodged before the Municipal Magistrate. The complainant has been examined in the trial as PW 2 and the said complaint dated December 14, 2009, has been exhibited and marked as "Exhibit – 12". The other witness examined was an Assistant to the Chief Municipal Health Officer, who has been examined as PW.1, in the trial. Several documents have also been exhibited, in the trial.

4. Mr. Roy has put forth challenge to the impugned judgment of confirmation of conviction and sentence of the present revisionists, on several counts. Firstly the very authority of the complainant, to initiate prosecution against the present revisionists has been challenged. It has been submitted that a sanction in due compliance with the statutory provision would be the sine-qua-non for initiation of prosecution, which cannot be said to have been obtained in a manner as prescribed. That, there has been a complete breach of provisions under section 20 of the said Act, because of non placement of the inspection report of the Food Inspector before the authority. Therefore consent given, if any at all, does suffer from non consideration of the material documents. That, no formal permission to initiate the prosecution could be presented by the prosecution in the trial. Thus,

he says that, the entire prosecution is based on a foundation which is not only irregular but also illegal. On this, a judgment has been referred to on behalf of the petitioners, that is reported in (2014) 3 Calcutta Criminal Law Reporter (SC) 195 [CBI vs Ashok Kumar Aggarwal]. The Court's finding therein regarding the importance and compulsory requirement of placement of the entire relevant materials, documents and evidence before the sanctioning authority to facilitate authority's due consideration and application of mind thereto, before granting sanction – is the point which has been emphasised by the petitioners.

5. The other point raised is regarding misplaced application of the provisions under section 17 of the Act of 1954. It is said that the said provision is applicable in case of vicarious liability of the responsible person of a company, whereas in the present case the accused persons being allegedly connected with the proprietorship concern. It is stated that section 17 of the said Act, shall have no manner of application though has erroneously been made applicable in the instant case. On this, a judgment of Supreme Court has been referred to, reported in (2007) 5 Supreme Court Cases 103 [Raghu Laxminarayan vs. Fine Tubes]. There, while deciding an appeal under the Negotiable Instruments Act, the Court has held that, a proprietorship concern cannot be considered to be a company under the 'Explanation' to section 141 of the said Act.

6. It has been further argued that the liability of a person, under the afore stated provision of law comes with due proof of his or her status and involvement with regard to the alleged business. Mr. Roy has suggested that in this trial the prosecution has failed to establish any such connection with the present revisionists to the concerned business. He says that the trade license has not been proved in the trial, the original having not been produced. He further says that the status of the petitioner No.1 as the proprietor of the said business is only a guess work by the Court and has not been proved in this trial according to the rules of evidence.

7. Mr. Roy is further agitating the propriety of the impugned judgment on the ground that the Court should have drawn adverse inference against the prosecution in view of the fact that the prosecution has not examined and intentionally withheld the material witness in the trial. It is mentioned that neither the 'Public Analyst' nor the 'sanctioning authority' has been examined by the prosecution in this trial, thereby leaving a fatal vacuum in the prosecution's case. With reference to the deposition of the witnesses it has been stated that erroneously PW.1 has been treated as the complainant/Food Inspector whereas he is an assistant to the Local Health Authority (Chief Medical Officer of Health). Thus, according to the petitioners, the First Appellate Court has proceeded on gross misconception while upholding the judgment of conviction of the Magistrate.

8. The other grounds on which the propriety and legality of the judgment has been challenged are regarding violation of the rules of sample collection and seizure. Mr. Roy has pointed out that instead of collection of an amount of sample as prescribed in the statute itself, a lower amount of sample has been

collected. He says that a violation of the statutory provision of this nature has ultimately resulted into erroneous finding in the chemical analysis report. He has further pointed out to the fact that the alleged adulterated article, was not either for sale or for consumption. Hence, according to the petitioners, mere storage of the alleged adulterated food article cannot be considered as an offence under the provisions of the said Act. On this, a judgment of Supreme Court has been referred to, reported in (2014) 4 Supreme Court Cases 277 [Rupak Kumar vs State of Bihar and Another], where the Court has held that "storage" of adulterated article of food other than for sale, does not come within the mischief of section 16 of the said Act. Hence, according to Mr. Roy the trial court as well as the first appellate court has founded their judgements on wrong appreciation of the factual background of the case as well as non-application of mind as regards due compliance of the statutory obligations by the statutory authorities and the prosecution as well. He has submitted that the impugned judgment as well as conviction and sentence of the present petitioners be set aside.

9. The prosecuting authority, that is, the Kolkata Municipal Corporation is the main contesting respondent in this case. Mr. Das for the said respondent has stood in strong opposition as regards the contentions and prayer of the petitioners.

10. Regarding the point raised of validity of sanction, Mr. Das has denied and disputed that the order of sanction by the competent authority suffers from any irregularity or illegality. Per contra he says that all the relevant documents including the report of the chemical analyst were placed before the sanctioning authority. That, sanction for prosecution was granted only after due consideration of all the said materials. So far as the judgment of Ashok Kumar Aggarwal (supra) is concerned, he has stated that the same would have no manner of application in this case as in the same the Court has dealt with a case under the Prevention of Corruption Act, 1988.

11. Mr. Das has further stated that the petitioner No.1 is liable as the proprietor of the business and the petitioner No.2 being in charge of the affairs thereof. He says that for an offence committed by a proprietary concern, like it is in the present case, these two persons are to be prosecuted. He has further pointed out that there has been no illegality as regards prosecuting the petitioners from the very inception of it. And that after a full fledged trial their guilt has been established and the petitioners have been convicted and sentenced. There would not be any palpable or gross illegality in the same. Therefore the concurring judgments of the Court of first instance and the First Appellate Court may not be interfered in any way. The judgment of Fine Tubes (supra), he says, is distinguishable on facts, as in the same the Court was dealing with an appeal under the Negotiable Instruments Act, 1881.

12. The other judgment referred to, that is, Rupak Kumar (supra) has also been distinguished on the ground that the said case was related to the alleged charges against an officer of the correctional home. And that the factum of sale of any

consumable product in the correctional home was not in issue there, unlike it is in the present case where the adulterated product was being used for preparation of consumable food articles. Mr. Das has insisted for dismissal of the instant revision.

13. Section 17, as inserted with effect from 01.04.1976, to the Prevention of Food adulteration Act, 1954, has provided for offence by companies. In case an offence under the said statute is committed by a company, the said provision has prescribed for how and through whom the same is to be dealt with, in terms of the Act of 1954. It is stated that since the accused persons are not representing any 'company', as it has been stated in Section 17 of the said Act, they could not have been made liable for an offence committed in the business house as alleged. In other words, the petitioners have pleaded that the concept of vicarious liability would not be applicable in their case and in consideration of the same the entire proceeding against them would be only fallacious and vitiable. This submission as well as the case law referred to on this point on behalf of the petitioners, are however not found to be very aptly applicable to aid the case of the petitioners. The record would clearly reveal that the petitioners in their respective individual capacity have been implicated in this case as the accused persons. Their implication emanates from the fact of their holding proprietorship of the business house concerned and being a person responsible with the same for its day to day business and affairs. For proprietorship concern, it is only the proprietor and/or person responsible for conducting day to day business would be the relevant person/s to be arrayed as accused persons, in case any offence is detected to have been committed. In the judgment of *Fine Tubes* (supra), as referred to by the petitioners this principle is laid down and emphasized. The Court has categorically held that 'A proprietorship concern is not a company'. Furthermore the judgment of *Fine Tubes* (supra), is relatable to a case under the Negotiable Instruments Act, 1881. The scope and function of both the statutes are mutually exclusive and distinctive. On the discussion as above, this Court is of the considered view that neither the point raised nor the judgment referred to by the petitioners as above, is convincing and acceptable.

14. Instead, one may concentrate on the argument advanced by the petitioner regarding acceptability or not of the trade license (photocopy), in evidence. Admittedly a photocopy of the trade license has been produced and exhibited in trial. According to the petitioners, the same could not have been considered to be of unimpeachable character, to be admitted as an evidence in the trial. Both the Courts are said to have done wrong on this Court.

15. The rule of evidence has provided a documentary evidence to be necessarily a primary evidence. Section 65 of the Evidence Act has however provided the cases when the Court can accept the credibility of a documentary evidence in the nature of secondary evidence. The question is with relation to the admissibility of the contents of the document. It is not denied that the photocopy of the trade license, which has been cited and exhibited in trial, has been earlier handed over

to the investigating authority under the signature of the present petitioner no.2, endorsing genuineness and truthfulness of the content of the said copy of document, in comparison to the original trade license. Therefore, without questioning the endorsement of self as regards the contents of the documents, the petitioners could not have raised a plea regarding veracity of the same, in this appeal. In the facts and circumstances of the instant case, this Court finds that unless the endorsee has challenged about the genuineness of his signature over the said document or the contentions thereof as a whole, and also if not any prejudice is pleaded due to admission of the said documents as a piece of evidence in the trial, there would be no other impediment in accepting the said document as a valuable evidence. As per this Court's consideration, neither of the Courts below have made any error regarding admissibility of the contents of the document, in evidence.

16. One has to put in mind in this trial that the report of the chemical expert regarding examination of the alleged adulterated material has stood the tests of credibility, veracity and acceptability as a sufficient evidence in this trial. In the case of *Ram Lal vs. State of Rajasthan*, reported in AIR 2001 SC 47, the Supreme Court has proceeded to hold that the offence is to be found against the appellant on the basis of chemical analysis and report of the Public Analyst. In the teeth of the recovered article having been found as adulterated, the discrepancies otherwise put up on behalf of the petitioners appear to be shabby and not sufficient for raising any doubt regarding proof of the prosecution's case here. Petitioners have alleged that there were other persons also, who should have been examined and should have been offered to the defence for cross-examination in this case. On this point, also the settled law would not however support the petitioners, in so far as, it is the prerogative of the prosecution only, as to whom and what material evidence it would cite in a trial to prove its case. It is a trait that, not the number of the evidence but the unimpeachable quality of the same, the truthfulness, reliability and credibility of the witnesses should be valued while weighing the evidence on record.

17. It is not a rule of law that the evidence of the Food Inspector cannot be accepted without corroboration. He is not an accomplice nor he is similar to an attesting witness to a will. The evidence of the Food Inspector alone if believed can be relied on for proving that the samples were taken as required by law. The circumstances of each case will determine the extent of the weight to be given to the evidence of the Food Inspector and what in the opinion of the Court, is the value of his testimony. The case of *Babu Lal Hargovindas vs. State of Gujarat* reported in (1971) 1 SCC 767, may provide sufficient guidance, in this regard.

18. On perusal of the judgments of both the Courts below it is found that the evidence on record of the two witnesses have been thoroughly marshalled, leaving no scope of any doubt regarding due scrutiny thereof. The judgment of the Courts are found to be based, on due scrutiny of the evidence on record. Accordingly neither there is any scope for accepting the argument made that the

other persons were also to be called as witnesses in the case nor that the evidence already on record can by any means be termed as insufficient. This is particularly in the event that the petitioners have not been able to show specifically of commission of any prejudice to him for this.

19. It is needed that the judgment as referred to by the petitioner of Ashok Kumar Aggarwal (*supra*) also be mentioned in this context. The Supreme Court was considering regarding validity of the sanction order with respect to a case of economic offence investigated by the CBI. Nevertheless, the principle enunciated as to how an order of sanction should be validly issued before prosecuting a person, that is, a government servant, the law as settled therein, is the law governing the field of validity of a sanction order. The said case is however factually distinguishable. The said case was initiated under the provisions of the Prevention of Corruption Act, 1988, against the respondent there in, who have been a government official, alleged of possessing disproportionate asset. Necessarily the volume and nature of the records in the said case which are necessarily to be considered by the sanctioning authority and applied its mind to, would be as per requirement of the said particular facts and circumstances of the case. In this case, both the Courts below have found that after inspection, seizure and chemical examination of the seized article, the entire document was placed before the authority for a permission to initiate prosecution against the present petitioners. The scope of such 'permission' is different from the scope of 'sanction' as provided under the Prevention of Corruption Act, 1988, as dealt with in the said judgment of Ashok Kumar Aggarwal (*supra*). The relevant provision of law may be quoted for better understanding as herein below:-

The Prevention of Food Adulteration Act, 1954.

"20. Cognizance and trial of offences.—

(1) [No prosecution for an offence under this Act, not being an offence under section 14 or section 14A] shall be instituted except by, or with the written consent of, [the Central Government or the State Government [***] or a person authorised in this behalf, by general or special order, by the Central Government or the State Government [***]]: Provided that a prosecution for an offence under this Act may be instituted by a purchaser [or recognised consumer association] referred to in section 12, [if he or it produces] in court a copy of the report of the public analyst alongwith the complaint.

[(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under sub-section (1AA) of section 16 shall be cognizable and non-bailable.]"

The Prevention of Corruption Act, 1988.

"6. Power to try summarily.

(1) Where a special Judge tries any offence specified in sub-section (1) of section 3, alleged to have been committed by a public servant in relation to the contravention of any special order referred to in sub-section (1) of section 12A of the Essential Commodities Act, 1955 (10 of 1955) or of an order referred to in clause (a) of sub-section (2) of that section, then, notwithstanding anything contained in sub-section (1) of section 5 of this Act or section 260 of the Code of Criminal Procedure, 1973 (2 of 1974), the special Judge shall try the offence in a summary way, and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial:

Provided that, in the case of any conviction in a summary trial under this section, it shall be lawful for the special Judge to pass a sentence of imprisonment for a term not exceeding one year:

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the special Judge that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the special Judge shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or re-hear the case in accordance with the procedure prescribed by the said Code for the trial of warrant cases by Magistrates.

(2) Notwithstanding anything to the contrary contained in this Act or in the Code of Criminal Procedure, 1973 (2 of 1974), there shall be no appeal by a convicted person in any case tried summarily under this section in which the special Judge passes a sentence of imprisonment not exceeding one month, and of fine not exceeding two thousand rupees whether or not any order under section 452 of the said Code is made in addition to such sentence, but an appeal shall lie where any sentence in excess of the aforesaid limits is passed by the special Judge."

20. 'Consent', according to Cambridge Dictionary is the "State or condition of having a good opinion of someone or something" and "an act of officially accepting or allowing something". To give consent is to agree to or approve something. Consent is a form of formal agreement concerning something. The word 'sanction' has a legal origin. The word 'sanction' refers to a means of enforcing a law (followed up with punishment) and also the process of formally approving or ratifying a law. The Cambridge dictionary narrates two meaning of sanction: firstly, to formally give permission or order for something and secondly, a strong action taken in order to make people obey a law or a rule or a punishment given, when they do not obey.

The written consent under Section 20(1) of the Prevention of Food Adulteration Act, 1954, is to be given only on being satisfied that a prima facie case exists in the facts of a particular case and on recording reasons for launching of such prosecution in public interest. This power is in the nature of a safeguard. The

power bestowed under the Prevention of Corruption Act, is in the nature of enforcing the law followed up with punishment.

21. The judgment referred to by the petitioners in the case of Rupak Kumar (supra) is also distinguishable on facts in so far as the said proceeding was initiated against Superintendent of Correctional Home where there would not be any scope for the alleged offender to sell the alleged adulterated article. Contrarily, in the present case the alleged adulterated article have been used for preparation of the sweetmeat meant for consumption of consumers, at large. Therefore the submission that the concerned article was never meant for sale and thus cannot be brought within the purview of the punitive provisions of the Act of 1954, is only misconceived. The word 'food' as provided under Section 2(m)(v) of the Prevention of Food Adulteration Act, 1954, would include "(a). any article which ordinarily enters into, or is used in composition or preparation of, human food". At the same time one may have a look as to the definition of 'sale' as provided under Section 2 (xiii) of the said Act, which is as follows:

"2. Definitions.—In this Act unless the context otherwise requires,—

(xiii) "sale" with its grammatical variations and cognate expressions, means the sale of any article of food, whether for cash or on credit or by way of exchange and whether by wholesale or retail, for human consumption or use, or for analysis, and includes an agreement for sale, an offer for sale, the exposing for sale or having in possession for sale of any such article, and includes also an attempt to sell any such article;"

22. In other words any 'food' sold for human consumption and if adulterated would come under the purview of this Act. The word 'food' and 'food for sale', in terms of the said Act would mean and include the necessary ingredients also for preparation of that 'food', in case the 'food for sale' is required to be firstly prepared and then be sold. In such view of the facts, the judgment of Rupak Kumar (supra) is also not found to be applicable in petitioners' case.

23. The discussion as above would render the challenge of the present petitioners of the impugned judgment as well as the judgment of conviction, as futile. It is found on the premise as above, that the present appeal would have no substance to be entertained, so far as the verdict of the Courts below regarding conviction of the petitioners is concerned.

24. Rest remains the directions of the Court regarding the sentence allowable to the petitioners. As discussed earlier, the Court has directed the petitioner to suffer simple imprisonment for six months and also to pay a fine of Rs.1000/-, in default of which they were to suffer simple imprisonment for a further period of ten days. The Act of 1954 has provided for punishment with imprisonment for a term which shall not be less than six months and shall be extendable to three years and with fine which shall not be less then Rs. 1000/-. Hence, it can be

seen that the sentence given is at per with the minimum punishment, as provided under the law. According to the scheme of the said statute, upon proof of guilt of a person, which is duly proved in this case, a person has to be punished with imprisonment and fine as well. The legislature, having provided the word "and" in Section 16 of the statute, has mandated the convict, to be punished with both. Hence, no interference, by this Court, as to order of sentence, is warranted, in this case.

25. This Court may also rely on the findings of the Hon'ble Supreme Court in the case of State of Haryana vs. Rajmal & Anr. reported in (2011) 14 SCC 326. The Hon'ble Court has held that the revisional jurisdiction is basically supervisory in nature and may be exercised only when there is glaring defect in procedure or there may be a manifesting error on a point of law, resulting in a flagrant miscarriage of justice. Upsetting concurrent finding of facts by the Trial Court as well as the First Appellate Court, has thus been discouraged by the Hon'ble Court.

26. Criminal Revision No. CRR 15 of 2015 is dismissed. Judgment of the Additional District and Sessions Judge dated September 19, 2014, in Criminal Appeal No. 88 of 2013, is upheld and in effect judgment of the Magistrate in Case No. 14D of 2009, vide judgment and order dated July 31, 2013, is affirmed. Let the petitioners be immediately committed to prison and fine be recovered.

27. Urgent photostat certified copy of this judgment, if applied for, be given to its parties on usual undertaking.