
(2002) 06 GAU CK 0042
In the Gauhati High Court
Case No : Criminal Revision No. 309 of 2000

Lalit Das

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 26-06-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 433
Prevention of Food Adulteration Act, 1954 — Section 16, 7

Citation : (2003) 2 GLR 281 : (2002) 3 GLT 532

Hon'ble Judges : D. Biswas, J

Bench : Single Bench

Advocate : K. Agarwalla, D.K. Chamal, R.J. Baruah and B.K. Das, for the Appellant; S.K. Lahkar, Public Prosecutor, for the Respondent

Judgement

D. Biswas, J.—This revision is directed against the Judgment and Order dated 9.3.1999 passed by the Learned Chief Judicial Magistrate, Tinsukia in C. R. Case No. 165 of 1997 convicting and sentencing the revision petitioner u/s 16 read with Section 7. of the Prevention of Food Adulteration Act, 1954 to suffer Simple Imprisonment for six months and to pay a fine of Rs. 1000, in default to further Simple Imprisonment for one month more and the Judgment and Order dated 3.5.2000 passed by the Learned Sessions Judge dismissing the Appeal No. 7(2) of 1999 preferred by the revision petitioner against the aforesaid judgment.

2. I have heard Mr. K. Agarwalla, learned counsel for the revision petitioner and Mr. S. K. Lahkar, learned Public Prosecutor for the State of Assam.

3. Shri Agarwalla, learned counsel at the very first instance argued that the petitioner was not supplied with the copy of the report of the Public Analyst in violation of the provisions of Section 13(2) of the Prevention of Food Adulteration Act, 1954 and as such, conviction cannot be sustained. In support of this contention he has referred to the Judgment of the Supreme Court in Rameshwar Dayal v. State of U.P., reported in (1995) Suppl. 4 SCC 659 . The Hon'ble Supreme Court, in the aforesaid Judgment, held that non-supply of the report

deprived the accused of his valuable right to get the sample examined by the Central Laboratory and, on that ground, the conviction and sentence of the accused were set aside. In the instant case, however, the report was sent by registered post and the postal receipt is available on record. Exhibit 18 is the copy of the notice u/s 13(2) of the Prevention of Food Adulteration Act and Exhibit 19 is the postal receipt. The Food Inspector also in his evidence stated that the notice was sent. The suggestion given by him in this behalf has been denied. A presumption in the given circumstances can be drawn that notice issued by Registered AD Post was served on the revision petitioner. That apart, the revision petitioner on receipt of the summon appeared before the Court, but did not apply before the Court for sending the other part of the sample to the Director of Central Food Laboratory for analysis. It would, therefore, be impermissible to conclude that the petitioner has been prejudiced in his defence. Moreover, the provisions of Section 13(2) read with Rules 9(j) of the Rules of 1955 clearly indicate that non-compliance of the aforesaid provisions are not mandatory and, therefore, will not vitiate the trial unless prejudice is shown to have been caused. The decision in Khem Chand Vs. State of Himachal Pradesh, does not help the revision for the same reason.

4. The next point argued that the salt which was declared by the Public Analyst as adulterated was not meant for human consumption but for sale as fodder only. But this fact was not brought to the notice of the PW 1, Food Inspector, at the time of collection of the sample. That apart, the accused also failed to produce any licence to show that he is a dealer of fodder for cattle and has been so authorised by the local authority under the law. The Courts below after exhaustive evaluation of the evidence on record and particularly Exhibit (KA), a receipt showing payment of tax, rejected the defence plea. This Court on the basis of the evidence on record do not find any reason even to doubt the correctness of the above finding.

5. Grievance has also been raised by the learned counsel for the revision petitioner for non-compliance of the provisions of Sub-section (7) of Section 10 of the Prevention of Food Adulteration Act, 1954. The Food Inspector in his evidence stated that after disclosing his identity he requested the persons present in the shop to stand as witnesses to the collection of sample. According to him the said persons refused to be witnesses and, hence, he requested Tazmul Hussain, the Peon who had accompanied him to stand as witness. Once it is shown that the Food Inspector at the time of collection of the sample made an attempt to collect independent witness, the requirement of Section 10(7) shall be deemed to have been complied with. The Food Inspector does not have any power u/s 10(7) to compel a person to become a witness to the collection of sample. Therefore, the Courts below appear to be right in their finding that there has been no infraction of the provisions of Section 10(7) of the Act.

6. The Iodized Salt weighing 600 gms purchased by the Food Inspector has been declared by the Public Analyst as inconsistent with the standard prescribed. The

report of the Public Analyst (Exhibit-13) is quoted below :

"COMMON SALT

Moisture : 1.6%

Sodium Chloride (NaCl) : 98.52% (Dry weight Basis)

Matters insoluble in water : 0.77% (Dry weight basis)

Matters soluble in water other than Sodium Chloride : 0.71% (Dry weight Basis)

Iodine content (as Iodine) : 8.82 ppm (Dry weight Basis)

and am of the opinion that the sample of Iodized salt does not conform to the standards."

7. It appears that the variation of standard in respect of iodine contain which is 8.82 ppm on dry weight basis as against 15 ppm at the distribution level. Therefore, iodized salt stored and exhibited for sale by the revision petitioner was adulterated within the meaning of the Act.

8. It, therefore, follows that the Judgment of conviction and sentence as affirmed by the learned Sessions Judge in appeal do not call for interference. However, Shri Agarwalla, learned counsel for the revision petitioner, argued that the petitioner is 63 years old and it would, therefore, be of no purpose to send him to jail at this belated stage. Relying on the decisions of the Supreme Court in *N. Sukumaran Nair Vs. Food Inspector, Mavelikara*, and *Santosh Kumar Vs. Municipal Corporation and Another*, submitted that the petitioner may be exempted from serving the sentence on payment of fine as per provisions of Section 433 Cr.PC and for the purpose be allowed to approach the appropriate Government. The decisions in the aforesaid two cases, however, may be applied in an appropriate case. The petitioner is 63 years old and the offence was committed long back, therefore, the principles evolved in the aforesaid two cases may be invoked in the instant case as well.

9. Considering the nature of adulteration, the age of the revision petitioner, the date of commission of the offence and other relevant factors, this Court is of the opinion that a sum of Rs. 20,000 be imposed as fine for computation of sentence of six months imprisonment and this would met the ends of justice. Hence, the revision petitioner is directed to deposit the aforesaid amount within a period of six weeks from today and intimate the appropriate Government that such fine has been deposited. On deposit of the fine, the said Government may formalise the matter by passing appropriate order under Clause (d) of Section 433 of the Code of Criminal Procedure.

10. This revision petition accordingly stands disposed of.