

(2013) 10 UK CK 0004

In the Uttarakhand High Court

Case No : Criminal Revision No. 77 of 2006

M/s. Hari Oil and Dal Mills

APPELLANT

Vs

State of Uttaranchal and Another

RESPONDENT

Date of Decision : 05-10-2013

Acts Referred:

Citation : (2013) 2 NCC 889

Hon'ble Judges : Servesh Kumar Gupta, J

Bench : Single Bench

Advocate : Lokendra Dobhal, Amicus Curiae, for the Appellant; Vipul Painuly, Government Advocate, for the Respondent

Judgement

Servesh Kumar Gupta, J.—This revision is directed against the concurrent judgment and order of conviction and sentence u/s 7(16) of the Food Adulteration Act (for short, the Act), whereby M/s. Hari Oil & Dall Mills was found guilty of the said offence and has been directed to pay fine of rupees twenty thousand. After dismissal of the appeal by the appellate Court on 28.11.2003, the fine has been deposited by M/s. Hari Oil & Dall Mills (revisionist). However, this revision has been preferred before this Court. Heard Learned Counsel for the revisionist as well as learned Counsel for the State.

2. The main stress given by the learned Counsel for the revisionist is that notice u/s 13(2) of the Act was not duly sent or, even if it was sent, the same was not received by the revisionist. So, the impugned judgments of the Courts below are vitiated as both the Courts below have not looked into this legal aspect of the matter.

3. On perusal of the entire controversy in question, it transpires that one Dinesh Kumar was the retailer from whom the sample of oil was taken by the Food Inspector and it was sent to the laboratory for its analysis. Dinesh Kumar disclosed that he had purchased the same from M/s. Mohan Lal and Company, who was the authorized dealer-cum-commission agent of M/s. Hari Oil & Dall

Mills (manufacturer). M/s. Mohan Lal and Company, based at Dehradun, informed the prosecution that their nominee was Subhash Chandra, who was made the accused No. 3 before the trial court and M/s. Hari Oil & Dall Mills, based at Hapur (U.P.), was impleaded as accused No. 4.

4. As regards the sending of notice is concerned, Ex. Ka-8 and Ka-7 are on the record, which were sent by the Food Inspector to M/s. Hari Oil & Dall Mills by the registered post. The same were also got received to their addressee, and the addressee or his agent received the copy of the same endorsing the word "received" making his illegible signature at the bottom of those letters.

5. Learned Counsel for the revisionist has argued that the receipt of the registered AD has not been filed on the record. However, in the opinion of the Court, this by itself is not enough to belie the entire prosecution story for the reason that even the registered AD No. 868 dated 5.7.1984 has been mentioned at the top of letter Ex. Ka-8 and Mr. Ramola has proved the sending of this registered letter to M/s. Hari Oil & Dall Mills in his oral testimony. By these letters, accused No. 4 (revisionist) was asked to inform regarding the partners of his firm or the nominee (if any) and he was also informed that oil supplied/sold by him to M/s. Mohan Lal and Company was found to be adulterated by the Public Analyst. Mr. Ramola has proved in his testimony that sending of these two consecutive letters was not responded to by M/s. Hari Oil & Dall Mills. Further, P.W. 3 L.K. Raturi, who was the Clerk concerned in the office of Chief Medical Officer, has proved that the notice along with copy of the report of the Public Analyst was sent to the revisionist. So, on this score, the Court is not satisfied with the contention of learned Counsel for the revisionist.

6. Learned Counsel for the revisionist has relied upon a precedent of Hon''ble Allahabad High Court rendered in Narendra Kumar v. Nagar Swasth Adhikari, Agra, 2007 (58) ACC 1026, wherein it was propounded that as per the spirit of Section 10(7) of the Act, the sample should be taken in the presence of two impendent public witnesses other than the Government Servant accompanying the Food Inspector.

7. The above precedent was contrary to law as propounded by Hon''ble Apex Court a number of times. In this regard, authorities rendered in State of U.P. v. Hanif, 1992 AIR SC 1121, as well as Prem Ballabh v. State, published in the journal Prevention of Food Adulteration Cases (1951-76) page 327, can be looked into, wherein it has been categorically held that there is no rule of law that conviction cannot be based on the basis of sole testimony of the Food Inspector. It is only out of a sense of caution that the Courts insist that the testimony of a Food Inspector should be corroborated by some independent witness. This is a necessary caution which has to be borne in mind because the Food Inspector in a sense be regarded as an interested witness, but this caution is a rule of prudence and not a rule of law. If it were otherwise, it would be possible for any guilty person to escape punishment by resorting to the device of bribing punch witness.

8. Similar feeling has been expressed by the Hon''ble Apex Court in Hanif case (supra) by observing that "it is not the law that the evidence of Food Inspector must necessarily need corroboration from independent witness. The evidence of the Food Inspector is not inherently suspected, nor be rejected on that round. He discharges the public function in purchasing an article of food for analysis and if the article of food so purchased in the manner prescribed under the Act is found adulterated, he is required to take action as per law. He discharges public duty. His evidence is to be tested on its own merits and if found acceptable, the Court would be entitled to accept and rely on to prove prosecution case. If in a given case where the factum of the very purchase is put in question and any personal allegations are made against the Food Inspector, perhaps it may be necessary for the prosecution to dispel the doubt and to examine the punch witness seeking corroboration to the evidence of Food Inspector".

9. In the present case, the purchase of the food article was not denied by any of the accused persons in their statements u/s 313 Cr.P.C. So, this is not a case that the article was not purchased. M/s. Mohan Lal and Company has well informed to the prosecution that he was only the commission agent-cum-supplier on behalf of the manufacturer M/s. Hari Oil & Dall Mills. In the result, I find no merit in this criminal revision and it is hereby dismissed. Lower court record be sent back.