

(1978) 01 DEL CK 0012

In the Delhi High Court

Case No : Criminal Revision Appeal No. 222 of 1976

Municipal Corporation of Delhi

APPELLANT

Vs

Het Ram and Another

RESPONDENT

Date of Decision : 30-01-1978

Acts Referred:

Citation : (1979) 15 DLT 195

Hon'ble Judges : D.K. Kapur, J

Bench : Single Bench

Advocate : B.T. Singh and Nemo, for the Appellant;

Judgement

Dalip K. Kapur, J.

(1) This is a revisional petition under the criminal procedure code (Section 40 read with Section 397) arising out of the conviction of the respondent u/s 7 read with Section 16 of the prevention of Food Adulteration Act. A notice has been issued to the respondent but nobody is present for him today. Mr. B.T.Singh, learned counsel for the Petitioner, has very fairly taken me through all the facts and circumstances of the case and I now proceed to decide the revisional petition.

(2) The accused was sentenced to three months imprisonment and fine of R. 500.00 or in default three months of imprisonment on account of selling of mis-branded milk. He was also sentenced to nine months rigorous imprisonment with fine of Rs. 1000.00 and in default six months in payment of fine for selling adulterated milk. The learned counsel for the applicant which is the Municipal Corporation of Delhi, the prosecutor in the case, submits that there were two charges in this case and the minimum penalty in both cases is six months. There should, Therefore, have been a conviction of the accused on both counts with a minimum sentence of six months each. In fact, on one count the accused has been sentenced to three months and on the other count he has been sentenced to nine months.

(3) Strictly speaking, the learned counsel for the petitioner appears to be correct,

because the case of the prosecution in this case was selling milk without a license which milk when analysed was found to be adulterated. It is unnecessary to deal with the factual details of this case which are properly set out in the Magistrate's order, but it is sufficient to say that when the accused was apprehended by the Food Inspector, he was carrying milk in three silver utensils which were being carried to a place for use in a religious ceremony. On analysis of the samples taken from these utensils, it was found that they were adulterated being extremely deficient in milk fats. As there is no case before me for setting aside the conviction, I assume for the sake of these proceedings that the conviction is entirely valid on the merits. If there is any appeal against the conviction, that may be dealt with by the court without regard to the observations here.

(4) The only question in this revision is whether the quantum of sentence given on the two charges is correct. There seems to be in my view something wrong with the order of the Magistrate in the sense that he has treated one of the charges as a charge for selling mis-branded milk. The milk was obviously not mis-branded, because it was adulterated milk. In fact, the charge though described as the selling of mis-branded milk was concerned with the fact that the accused did not have a license. This is also demonstrated from the language used by the Magistrate. I quote:-

"Charge for selling the milk without license also stands proved because the accused could not produce any license either before the Food Inspector or in the Court".

This wording speaks for itself and obviously, the sentence of three months imposed for selling mis-branded milk is in reality a sentence for selling milk without a license.

(5) Now, on the question of sentence, the provisions of Section 7 of the Act are to the effect that no one should sell, manufacture, store, distribute etc.. adulterated milk, mis-branded food or sell food for which a license is prescribed, etc. A sale without a license is prohibited by Section and a license is prescribed. I have also been referred to Rule 50 of the Prevention of Food Adulteration Rules, 1954, and find that a license is required to sell milk of all classes and designations. Thus, no one can sell milk without a license and if he does so, he infringes the Prevention of Food Adulteration Act. As the Act applies to the whole of India, it would appear subject to anything else that may be pointed out, that every one in India requires a license to sell milk. Now, Section 16 says that if a person sells, stores, distributes, etc., any articles of food which is either adulterated or mis-branded or the sale of which is prohibited under any provision of law, he may be sentenced to a term which shall not be less than six months and with a fine which shall not be less than Rs. 1,000.00. Assuming that the sale of food without a license is the sale of a prohibited item of food, the sentence would be six months. I would not like to say that this construction of the Act is a wholly correct one, but assuming that this is so, the sentence for

such an offence would have to be six months minimum.

(6) I have asked myself a question: That if selling milk without license is an offence, is it proper to impose a minimum sentence of six months even if the milk was not adulterated ? I have found that it would be difficult to say that six months sentence in such a case would be a reasonable sentence. For instance, if the milk had been found to be wholly unadulterated and absolutely normal in the case of the present analysis, I very much doubt if the Court would have thought of imposing a sentence of six months. On the other hand, then the sentence of nine months has been imposed on the ground of selling adulterated milk. The serious offence is selling adulterated milk and not the offence of having no license. Hence, I think, that what the Magistrate has done is a perfectly proper way of dealing with the case. He has thought that because the accused was an old man, he should get only three months for not having a license and he should get nine months for selling adulterated milk. This appears to me to be quit justified. On the other hand, it was also open to the Magistrate to impose a sentence of six months or even more, for selling milk without a license. I think he has exercised jurisdiction properly in this case.

(7) On a careful consideration of the facts, I think that the Magistrate has dealt with the case adequately and I would refuse to interfere in revision. The revision is accordingly dismissed.