

(2003) 05 GAU CK 0010

In the Gauhati High Court

Case No : Criminal Revision No. 471 of 1996

Muralidhar Gattani and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 13-05-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Prevention of Food Adulteration Act, 1954 — Section 14, 16, 19(2)

Citation : (2004) 1 GLT 17

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : G.N. Sahewalla, A.K. Goswami, P. Bora and S. Murarka, for the Appellant; P.P. and B. Goyal, for the Respondent

Final Decision : Allowed

Judgement

P.G. Agarwal, J.—In CR Case No. 142/89, the three Petitioners before us were convicted of the offence u/s 16 of the Prevention of Food Adulteration Act and were sentenced. The Petitioners thereafter preferred criminal appeal No. 20/93 and the Additional Sessions Judge, Jorhat vide order dated 9.9.96 affirmed the order of conviction and sentence and dismissed the appeal. Hence the present revision.

2. The prosecution case is that on 31.1.89 the Food Inspector collected samples of rice from the shop of M/s. Malchand Radheshyam situated at Jorhat which belongs to the Petitioner Muralidhar Gattani. The Petitioner Suresh Kr. Pareek was the vendor. The Public Analyst opined that the sample of rice does not confirm to the standard.

3. In this case the collection of the sample and the report of the Public Analyst is not in dispute. At the time of taking sample itself the Petitioner claimed that the goods in question was purchased by them from M/s. Gangabishan Jumermal, Titabor as per challan at Ext. 4 dated 31.1.89 and accordingly the Food Inspector issued notice in Form No. VI to the sub distributor/manufacturer. It may be

mentioned here that the said firm M/s. Gangabishan Jumermal was arrayed as an accused and they were tried along with the Petitioners and the learned CJM acquitted them on conclusion of the trial.

4. Mr. G.N. Sahewalla, learned senior Counsel has submitted that both the Courts below have failed to appreciate and decide the defence plea of warranty as provided under Sub-section 2 of Section 19 of the Prevention of Food Adulteration Act(for short the Act). Section 19(2) reads as follows:

(2) A vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves:

(a) that he purchased the article of food-

(i) in a case where a licence is prescribed for the sale thereof, from a duly licensed manufacturer, distributor or dealer,

(ii) in any other case, from any manufacturer, distributor or dealer with a written warranty in the prescribed form; and

(b) that the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it.

5. The above provisions are available with exceptions to the general provisions and the law is well settled by this Court in the case reported in 1979 CriLJ 123 that it is for the vendor to seek benefit of the defence provided by this provision to establish necessary ingredients in order to earn immunity from criminal liability. The three ingredients which the accused vendor is required to establish are (No. 1) that he purchased the article of food, (No. 2)that it was purchased from the manufacturer/distributor or dealer or from licenser and (No. 3) that the article of food while in his possession was properly stored and he sold it in the same state as he purchased it.

6. In view of the provisions of Section 14 of the Act as amended in the year 1976, the bill or cash memo given by the manufacturer/distributor or dealer shall be deemed to be a warranty.

7. In the present case there is no dispute at the Bar that the Ext. 4 was given by M/s. Gangabishan Jhumermal. The Food Inspector admitted that it was produced to him at the time of collection of sample and it was proved and exhibited by the prosecution itself. The co-accused M/s. Gangabishan Jhumermal have also admitted in their statement u/s 313 Code of Criminal Procedure that Ext. 4 was issued by them. The benefit u/s 19(2) of the Act was denied to the Petitioner on the sole count that the vendor did not lead evidence to show that the stock was stored and sold in the same condition in which it was received by them.

8. The vendor has categorically stated that they had received 50 bags of rice on 31.1.89 itself and the entire 50 bags were lying intact and on the same date the sample was collected by the Food Inspector. This is supported by the Food Inspector when he says that at the time of collection of samples 50 bags were

found. There cannot be any other evidence except that of the vendor that the article in question was stored and sold in the same condition; The evidence that the article was purchased or received by them on the date when the sample was collected by the Food Inspector lends support or credence. Further this is not a case of mixing some other thing with the article in question. Moreover, the plea u/s 19(2) was not raised at a subsequent stage. The cash memo is dated 31.1.89 and on the same date when the sample was collected it was produced before the Food Inspector who assessed the same.

9. In view of the above, we find that the defence was able to establish their plea and the there Petitioners before us are entitled to protection u/s 19(2) of the Act and they are not liable for conviction. Accordingly, the revision petition is allowed. Their conviction and sentence is set aside. They are acquitted and set at liberty forthwith.

10. Send down the records.