
(1996) 11 AHC CK 0127
In the Allahabad High Court
Case No : Criminal Revision No. 1149 of 1996

Radhey Shyam

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 06-11-1996

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16, 7

Citation : (1997) 21 ACR 88

Hon'ble Judges : G.S.N. Tripathi, J

Bench : Single Bench

Advocate : R.K. Awasthi, for the Appellant; G.A., for the Respondent

Judgement

G.S.N. Tripathi, J.—This revision is directed against the judgment and order dated 22.8.1996 passed by the IIIrd Addl. Sessions Judge, Saharanpur in Criminal Appeal No. 62 of 1994 of the same District, whereby he has dismissed the appeal of the accused. That appeal arose out of the judgment and order passed by the learned Special Judicial Magistrate (Economic Offences) Saharanpur dated 4.8.1994 in Criminal Case No. 1151 of 1995. The learned Special Judicial Magistrate found the accused guilty on a charge u/s 7/16 of the Prevention of Food Adulteration Act and sentenced him to two years R.I. and to pay a fine of Rs. 2,000. On failure to pay the fine, further one months" S.I. was awarded.

2. Feeling aggrieved against the judgment and order of the learned Special Judicial Magistrate dated 4.8.1994, the revisionist preferred a criminal appeal as aforesaid, which was dismissed by the learned IIIrd Addl. Sessions Judge on 22.8.1996. Hence this revision.

3. The facts are that on 23.12.1985 at about 3.15 p.m., the Food Inspector Sri C.B. Naithani purchased 600 gms. of Bura on payment of Rs. 3 from the accused (Revisionist) for the purpose of sending the same to the public analyst for analysis. Necessary formalities were done on the spot and the sample was sent

to the public analyst accordingly, whose report dated 3.2.1986 was received, according to which quantity of ash insoluble in dilute Hydro Chloric Acid was found more than the maximum prescribed limit of 5 per cent. and the percentage of sugar, expressed as sucrose, was found less than 96.5 per cent of the total sugar. The permissible percentage of sucrose was minimum to be 96.5% whereas, it was found in the sample to be 91.54%. Similarly, the maximum permissible Tanu Hydro Chloric Acid was 1.09% whereas, the permissible limit of it was 0.5% only. Thus according to the analyst, the food article was adulterated.

4. Before the learned lower court, oral as well as documentary evidence had been adduced and after analysis thereof, the learned court below found that the food article was adulterated. Therefore, he passed an order of conviction and sentence as noted above.

5. It is important to note that on receipt of Ext. Ka-1, recovery memo, Ext. Ka-2, a letter to the C.M.O., Ext. Ka-3, signature of the accused revisionist has been obtained, which has not been disputed. These documents show that the sample of Bura was taken from the accused.

6. After scanning the evidence, the learned Magistrate upheld the prosecution version and the same has got a seal of the Sessions' Court as well because the appeal has been dismissed.

7. The revision has been admitted mostly on the point of sentence. However, a legal point has also been urged as follows by way of amendment in the memorandum of revision:

A Because item A.7.02 in Appendix "B" of the Act as it existed at the time of the taking of the sample of the applicant did not contain the definition of the words "Boora", "Khandsari", "Khandsari Sugar", "Khandsari Sugar Desi", "Khandsari Sugar & Sulpher" and "Boora Sugar".

B. Because for want of a definition of the aforesaid terms or words in the relevant items in Appendix "B" in 1985 the accused has been prejudiced.

C. Because item Nos. A.07.01 and A. 07.02 have been substituted by the amendment of 1987 and the said amendment was made to cure the defect of vagueness in the items.

8. I have heard the learned Counsel for the revisionist and gone through the record. I find that there is no force in this revision and it deserves to be dismissed. However, since the incident in this case took place on 23.12.1985, therefore, some leniency in the sentence may be shown.

9. The admitted position is that before amendment 1987 of Notification No. GSR 9 (b)(c), dated 17.11.1987, w.e.f. 18.5.1988, the standard prescribed for Boora was as noted above, i.e., Sucrose content 96.5% minimum and Tanu Hydrochloric Acid maximum 0.5%, whereas, the sample did not conform to the standard as it stood and hence, it was an adulterated food item on the date of

taking the same. The amendment, which came into effect from 18.5.1988, has no retrospective operation as thankfully conceded by the learned Senior Counsel Sri Ravi Kiran Jain. What the learned Counsel wants to urge is that since the Boora Sugar was not clarified as to whether it was made of Khandsari Sugar or any other thing, therefore, there was a lacuna in the law and hence the amendment was made as Boora or Khandsari Sugar, Khandsari Sugar Desi, Khandsari Sugar Sulphur and Boora Sugar. The later part was only Boora. The learned Counsel urged that it could not necessarily be a Boora from Khandsari or any other Sugar rather, it could be Boora (from the saw mill also), i.e., a wooden material. I do not agree.

10. The evidence has come that the sample of Boora was taken from the shop of the accused situated in Boora market. At that point of time, Boora meant for different kinds had not been defined by the Legislature either in the Acts or under the rules. Therefore, it will be too much a flight of imagination to argue that the sample Boora could have been taken from the saw mill also. I, accordingly, reject this plea.

11. The further ground for rejection of the contention of the learned Counsel is that the amendment dated 17.11.1987 supra has no retrospective application. Hence when the sample was analysed on the basis of the standard of Boora as prescribed on the date of taking sample, it had to be taken into consideration and case should be decided on the ground of norms prescribed on the date available. On that date, Boora in question was found to be adulterated and therefore, there cannot be any challenge to this conclusion of the courts below, rather, I ditto the finding. So the arguments advanced by Sri Jain deserve to be rejected.

12. However, he has relied upon some Supreme Court Rulings, wherein the Hon'ble Apex Court in the case before it found that since the occurrence had taken place about 19 years back and the accused was a small milk vendor, his sentence was reduced to 3 months' R.I. with a fine only, vide *Khem Chand Vs. State of Himachal Pradesh*, . But no much time has not passed in the present case, rather, the time lapse before me is just the half of the period, which has been referred to by the Hon'ble Supreme Court. In another case *Delhi Administration v. Sat Sarup Sharma*, 1994 Supl. (3) SCC 324, which was against the concurrent Judgments of acquittal, the Hon'ble Supreme Court found that there was no guidance that the sample was injurious to health or that it was unfit for human consumption. Therefore, Hon'ble Supreme Court maintained the order of acquittal as ordered by the courts below. Therefore, even this ruling does not help the revisionist.

13. However, this fact is not disputed that this was the first crime committed by the accused and there is no evidence of repetition of the same in the subsequent years.

14. All the same, I find that for the sake of enriching himself, the accused

committed a grave socio-economic crime for his personal ill-gotten benefit. He is bent upon breaking backbone of the country's health. He was selling below standard goods and thus committed the grave crime by weakening the nation itself. Such criminals are far more dangerous than the foreign invaders, who may commit aggression, loot the property and run away once or twice, whereas, the criminals like the accused continuously without any hesitation, go on selling below-standard goods, with the sole purpose of gaining unlawfully at the cost of the nation. Therefore, such criminals should not be lightly taken up.

15. Taking the views all the pros and cons and arguments advanced from both the sides, I find that the order of conviction recorded by both the courts below, deserves to be maintained.

16. The order of conviction recorded by the courts below is accordingly maintained. However, I think that in the interest of Justice, the sentence should be slightly modified as below:

The accused shall undergo imprisonment for a period of 18 months only instead of 2 years as ordered by the courts below and pay a fine of Rs. 1,000 instead of Rs. 2,000. On failure to pay the fine, the accused shall undergo 15 days" R.I. additionally.

17. With these modifications, the revision is finally disposed of.