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(1969) 02 PAT CK 0028

In the Patna High Court

Case No : Criminal Revision No. 2054 of 1968

Rewati Raman Sharma — APPELLANT

Vs

Jamshedpur Notified Area Committee — RESPONDENT

Date of Decision : 11-02-1969

Acts Referred:
Criminal Procedure Code, 1898 (CrPC) — Section 423
Prevention of Food Adulteration Act, 1954 — Section 10, 16(1)

Citation : AIR 1970 Patna 104 : (1969) 17 BLJR 585 : (1970) CriLJ 583

Hon'ble Judges : B.P. Sinha, J

Bench : Single Bench

Advocate : L.M. Sharma and Babhunath Roy, for the Appellant; L.K. Choudhary and S.K. Choudhary, for the Respondent

Final Decision : Allowed

Judgement

B.P. Sinha, J.—A complaint was filed against Tejmal Sharma, proprietor of the grocery shop at Baridih, P.S. Golmur, Jamshedpur and Rewati Raman Sharma, alleging that on 23-12-1966 when the Food Inspector Upendra Narain Sinha (P. W. 2) went to the shop and wanted to take sample of mustard oil and Haldi for chemical analysis, the accused persons refused to sell the same to him and thereby prevented him from taking sample. On this complaint the prosecution was started against both the aforesaid accused persons u/s 16(1)(b) of the Prevention of Food Adulteration Act (hereinafter referred to as the Act).

2. The defence of Tejmal Sharma was that he was not present at the shop at the time of the arrival of the Food Inspector and that he did not prevent the Food Inspector from purchasing sample. The defence of Rewati Raman Sharma was that he had no concern with the shop. He was kept in charge of the shop just as a care-taker in the absence of his brother Tejmal Sharma, who was the proprietor thereof. His further defence was that his act of refusal to sell the articles to the Food Inspector, under the circumstances, did not amount to preventing him from taking the sample and as such no offence was committed by

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him.

3. The trial court held that accused Rewati Raman Sharma was working as salesman in the shop in question on 23-12-1966 when the Food Inspector wanted to take the sample of the mustard oil and Haldi for chemical analysis and that he refused to sell the same. It further held that this refusal amounted to preventing the Food Inspector from taking the sample. Hence it found him euilty of offence u/s 16(1)(b) of the Act and convicted and sentenced him to undergo rigorous imprisonment for six months and to pay a fine of Rs. 1,000/-, in default to undergo rigorous imprisonment for a further period of six months. So far Tejmal Sharma was concerned, the learned Magistrate found that he was found on the counter and was receiving the payment for the articles sold. Further he held that even assuming that he was not present in the shop at the time of occurrence, he would be liable of any act done by his servant or salesman. With such findings he held him also guilty u/s 16(1)(b) of the Act and imposed the same sentence on him as well. On appeal, the appellate court did not accept the finding about presence of Tejmal Sharma at the time the Food Inspector visited the shop and it rejected the contention that he had any vicarious liability for what was done by Rewati Raman Sharma. Consequently it acquitted him. The appellate court, however, affirmed the conviction and sentence of Rewati Raman Sharma. Rewati Raman Sharma has, therefore, filed this revision application.

4. Learned Counsel, for the petitioner, has submitted that the appellate court did not record any finding as to whether the petitioner, Rewati Raman Sharma was working as salesman in the shop at the relevant time and as such by refusing to sell the article to the Food Inspector he did not commit any offence. His next submission is that even assuming that Rewati Raman Sharma was the salesman at the relevant time, his mere refusal to sell the article did not amount to preventing the Food Inspector from taking the sample.

5. So far the first point is concerned, on perusal of the order of the appellate Court, I find that the contention is correct. Nowhere in the judgment the appellate court has held that Rewati Raman Sharma was the salesman at the relevant time in the shop in question. The appellate court has simply discussed the defence of Rewati Raman Sharma to the effect that he had been to the shop as his service was requisitioned for performing Pooja and that he was left there to wait in the shop as a caretaker of the articles. Rejection of that defence does not amount to a positive finding that Rewati Raman Sharma was working as salesman at the relevant time. This finding is wanting in this case. Learned Counsel for the opposite party has, however, submitted that there was positive finding by the trial court that Rewati Raman Sharma was working as salesman in the shop in question on 23-12-1966 and as this part of the finding was not specifically challenged and argued by the appellants in the lower appellate court and the judgment is of affirmance it must be taken that the appellate Court affirmed this finding as well. I do not see any force in this contention. In a criminal matter the appellate Court, irrespective of the fact whether any finding

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of the trial Court is challenged or not, has to come to its own finding about the facts which are alleged to have constituted the offence. If there is lack of finding of any necessary ingredient constituting an offence, the order of the appellate court affirming conviction becomes vitiated.

6. The second point urged by the learned Counsel for the petitioner needs careful consideration. The allegation against the petitioner in the complaint petition is that on 23-12-1966 the petitioner refused to sell to the Food Inspector the sample of mustard oil and Haldi which were kept in the shop for sale and thereby prevented him from taking the sample for chemical analysis. In the evidence also the Food Inspector stated that he demanded the sample from. Rewati Raman Sharma, for which he was prepared to pay the price, but Rewati Raman Sharma refused to give him the sample. He recorded this refusal in writing. There is no provision in the Act that mere refusal to sell by itself is an offence. It will be offence only when it amounts to prevention as contemplated by Section 16(1)(b) of the Act. The relevant part of Section 16 is as follows:

"(1) If any person. ....

(b) prevents a food inspector from taking a sample as authorised by this Act," The Food Inspector is authorised to take a sample u/s 10 of the Act. That section reads as follows:

"(1) A food inspector shall have power-

(a) to take samples of any article of food from

(i) any person selling such articles,

(ii) any person who is in the course of conveying, delivering or preparing to deliver such article to a purchaser or consignee,

(iii) a consignee after delivery of any such article to him".

Therefore this section empowers a Food Inspector to take sample of any article of food from any person selling such article. Even if it be assumed that petitioner Rewati Raman Sharma was selling the articles on the relevant date and at the relevant time it has to be seen if his refusal to sell amounted to prevention as contemplated by Section 16 of the Act. Section 10 of the Act empowers a Food Inspector to take the sample. It does not create any obligation on the part of the salesman or any other person mentioned therein to actively co-operate with the Food Inspector in taking the sample by physically handing over the article to him. It was for the Food Inspector to take the sample and if the salesman prevented him from doing so, he could be liable for an offence u/s 16(1)(b) of the Act.

7. The dictionary meaning of "to prevent" according to Oxford English Dictionary is to stop, keep, or hinder from doing something, to render an act or event impracticable or impossible by anticipatory action, to frustrate, defeat, bring to naught, render void or nugatory (an expectation, plan, etc). This means that

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there must be some action on the part of the person preventing any act, which would render the performance of that act impracticable or impossible. Such action of that person may be in the shape of physical obstruction or show of force or threat or show of any gesture which hinders performance of the act. Simply not co-operating by not handing over any article to the Food Inspector will not amount to preventing him from taking the sample. Mere refusal to sell the article unaccompanied by any gesture indicating that the Inspector would not be allowed to take the sample does not amount to prevention as contemplated by Section 16(1)(b). This view gets support from some cases cited on behalf of the petitioner. The first case referred to is a decision in Bishan Dass Telu Ram Vs. State, . In that case also the accused had refused to give sample even on payment and it was held:

"that is not the same thing as prevention which need not have an element of physical obstruction, but it does involve some act which hinders an inspector from taking a sample".

Another case referred to is a decision in State of Gujarat Vs. Laljibhai Chaturbhai, . It was held therein:

"Whether the Food Inspector was prevented or not would depend on the facts of the case in order to constitute the offence. There must be a physical obstruction or threat or an assault. Mere refusal to give a sample would not amount to such prevention. Nor would merely leaving the shop, we do not know for what purpose, amount to prevention".

As against this, the learned Counsel for the opposite party has relied upon a decision of the Allahabad High Court in Municipal Board, Sambhal Vs. Jhamman Lal and Another, in support of his contention that mere refusal to give the sample amounted to prevention as contemplated by Section 16(1)(b) of the Act. In this case when the Food Inspector reached the shop and demanded sample. Jhamman Lal instead of giving it to him left the shop and promised to come shortly. The Food Inspector waited for some time but he did not turn up. Then he asked one Tota Ram, who was sitting there in the shop, to supply the sample. This man also did not give him the sample saying that it would be given by Jhamman Lal and he was going to call him. He also left the shop. The Food Inspector prosecuted both of them for offence u/s 16(1)(b) of the Act. It was contended on behalf of the accused that before there could be prevention, there should be some kind of overt act. In that connection it was held:

"If a person disappears from the shop, in our opinion, he has done an overt act by means of which he made it impossible for the Food Inspector to obtain a sample from him. Apart from this fact we do not think that in cases of prevention an overt act is necessary".

In making the above observation, the learned Judge relied upon a decision of the Madras High Court in the case of Public Prosecutor Vs. Murugesan, . In that Madras case, however, the conduct of the accused was interpreted as sufficient

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overt act on his part to render the taking of sample impracticable. A sample of milk was demanded from the accused. He did not give it to the authority concerned. He went to the hotel and handed over the milk to the servant of the hotel. The milk was put into the milk pan in which milk was boiling. Therefore the whole conduct was such as made it difficult for the authority to take the sample for analysis. It is in that connection that it was held:

"On the facts alleged there could be no doubt that this accused, in the manner set out above and which need not be repeated, has effectively prevented the local executive officer from taking the sample and for this no further overt act is necessary than what has happened".

This observation does not say that no sort of overt act was necessary to constitute prevention as contemplated by Section 16(1)(b) of the Act. In the Allahabad case referred to above so far Jhamman Lal was concerned, his disappearance from the shop was treated as an overt act by means of which he made it impossible for the Food Inspector to obtain a sample from him. It is for that reason that the aforesaid Punjab case which was cited before their Lordships of the Allahabad High Court was distinguished by making the following observations:

"With respect we might say that the learned single Judge did not consider the point that by disappearance, the accused had made it impossible for the Food Inspector to obtain sample "from the persons selling such article" which he was entitled to obtain u/s 10(1) and thereby he had prevented the Food Inspector in taking the sample as authorised by the Act".

The learned Judges did not observe that the view taken by the Punjab High Court was wrong. They simply distinguished it by saying that disappearance of the accused amounted to prevention. So far Tota Ram, who had refused to give the sample, was concerned, it was observed that it was not clear from the evidence that he was selling the oil and that he refused to give sample and had prevented the Food Inspector from taking the sample from any person, who was selling such article. The point whether mere refusal to sell would amount to prevention was not considered in that Allahabad, decision. This case is, therefore, no authority for the proposition that mere refusal to sell the article as sample to the Food Inspector amounts to preventing him from taking the sample as contemplated by Section 16(1)(b) of the Act.

8. In the instant case the allegation in the complaint is that the accused refused to sell the sample to the Inspector. There is no evidence that the Inspector insisted on taking sample and that the accused spoke that he would not allow him to do so. Rewati Raman Sharma did not offer any physical obstruction. There is no evidence that he gave any threat or showed any undesirable gesture. He quietly wrote out his refusal to sell the articles when asked to do so. He did not do any thing from which it could be inferred that he would not allow the Inspector to take the sample if he wanted to do so. In my opinion, the facts

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alleged and proved did not amount to preventing the Food Inspector from taking the sample, and as such no offence u/s 16(1)(b) is made out.

9. The result is that the revision application is allowed. The order of conviction and sentence passed against the petitioner is set aside. He is discharged from the bail bond. Fine, if realised, shall be refunded.

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