

(1991) 08 OHC CK 0006

In the Orissa High Court

Case No : Criminal Revision No. 472 of 1987

Shakti Kumar Agrawala

APPELLANT

Vs

Stata of Orissa

RESPONDENT

Date of Decision : 08-08-1991

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 14, 19(2), 9
Prevention of Food Adulteration Rules, 1955 — Rule 4(5), 7(3)

Citation : (1992) CriLJ 993 : (1991) 2 OLR 428

Hon'ble Judges : B.N. Dash, J

Bench : Single Bench

Advocate : Gangadhar Rath, for the Appellant; H. Kanungo, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

B.N. Dash, J.—This revision is directed against the decision of the learned Sessions Judge, Bolangir upholding the conviction of the petitioner u/s 16(1)(a) (i) of the Prevention of Food Adulteration Act, 1984 (hereinafter to be referred to as "the Act") and sentence six months" rigorous imprisonment and a fine of Rs. 1000/-, in default, to rigorous imprisonment for a further period of two months.

2. The prosecution case, shortly stated is that on 10-3-1980 at about 11 A. M. the Food Inspector, Bolangir Chittaranjan Das (PW 2) inspected M/s. Bansal Store at Patnagarh, a grocery shop of which the petitioner and his father Sheonandrai Agrawala were the partners- and suspecting the stock of Suji exposed for sale to be adulterated collected sample thereof in accordance with the provisions of the rules framed under the Act. The sample so taken was aequally divided into three parts and each part was kept in dry clean bottle and thereafter each bottle was duly sealed and labelled. On examination of one part of the sample, the Public Analyst, Orissa, opined the same to be adulterated. Thereafter prosecution report was filed not only against the petitioner and his father partner but also against M/ s. Orissa Flour Mills, Khetrajpur, Sambalpur on the further allegation that the said

stock of Suji had been purchased from that Mill under Bill No. 987 dated 26-2-1980.

As summons could not be served on M/s. Orissa Flour Mills, the case against said accused was split up and the petitioner and his father-partner were tried.

3. The defence was one of denial.

4. At the trial, prosecution examined three witnesses to prove its case and they are PW1 Maniklal Jain, an independent witness to the seizure who did not support the prosecution case ; PW 2, the Food Inspector and PW 3 Anirudha Naik, another Food Inspector who proved despatch of the copy of the report of the Public Analyst to the accused persons.

5. On a consideration of the material on record, the trial Court acquitted accused Seonandrai Agrawala but convicted and sentenced the petitioner as stated above. In appeal, the learned Sessions Judge, as stated, having confirmed the judgment and order of the trial Court, the present revision has been filed.

6. Mr. C. Rath, the learned counsel appearing for the petitioner has raised the following contentions ;

(i) The appointment of PW 2 as Food Inspector is not in accordance with law.

(ii) Delay in analysis of the sample of Suji may have resulted in presence of insects therein and therefore, the petitioner cannot be held responsible for the same.

(iii) Prosecution case being that the petitioner had purchased the Suji in question from M/s. Orissa Flour Mills Limited under Bill No. 987 dated 26-2-1988, the petitioner was protected u/s 19(2) of the Act.

It is submitted by Mr. Rath that if any one of the aforesaid contentions is accepted by the Court, then the petitioner is entitled to an order of acquittal.

7. According to Section 9(1) of the Act, the Central Government or the State Government may, by notification in the official Gazette, appoint such persons as it thinks fit, having the prescribed qualifications to be Food Inspectors for such local area as may be assigned to them by the Central Government or the State Government, as the case may be.

PW-2 admitted in his evidence that he was reverted to the post of Sanitary Inspector after being appointed as Food Inspector in 1974. Although he denied the defence suggestion that no notification regarding his appointment had been published in the Official Gazette and asserted that he could produce the same, the fact remains that no such notification was produced in Court. On 10-5-1991, when the case was taken up for hearing the learned counsel for the State took time to reply on the question of validity of appointment of PW 2. Thereafter, the learned counsel for the State sought a number of adjournments and ultimately on 4-7-1991 copies of notification dated 18-4-1974 issued by the Director of

Health and FP. Services, Orissa regarding appointment of PW 2 and 20 others as Food Inspectors and notification dated 6-6-1974 issued by the State Government defining to local areas of the Food Inspectors were produced. Apart from the fact that the Court cannot take judicial notice of these notifications, it is clear from the notification dated 10-4-1974 that the same has not been issued by the State Government and further these notifications have not been published in the Orissa Gazette. That being so, there is no escape from the conclusion that the appointment of PW 2 as Food Inspector, Bolangir was not in accordance with law. The effect of such invalid appointment came up for consideration in the case of Vinod Kumar v. The State of Punjab 1982 (1) FAC 311 and in Hira Lal v. State of U. P. 1984 (1) FAC 136 and there it has been held that in case of invalid appointment the prosecution is liable to fail inasmuch as the person purporting to act as Food Inspector had no authority to take any sample of food. Having due regard to the aforesaid decisions. I also held in the same way.

The case of Abhimanyu Dash v. State of Orissa: 69 (1990) CLT 589 relied upon by the State Counsel in support of the proposition that the validity of appointment of Food Inspector cannot be questioned at the appellate stage is liable to be Ignored because in this case the validity of appointment of PW 2 as Food Inspector had been taken from the very beginning at the trial stage.

8. Coming to the second contention, it is seen that the sample was taken on 10-3-1980. The sample was received by the Public Analyst on 10-4-1980 and the report of the Public Analyst on 16-5-1980. Under Rule 7(3) of the Prevention of Food Adulteration Rules, 1955, it is obligatory upon the Public Analyst that after the analysis has been completed, he has to issue the certificate incorporating the result of the analysis Similarly it is laid down in Rule 4(5) of the aforesaid Rules that after the test or analysis, certificate has to be supplied forthwith to the authority sending the sample for analysis. Although, the report of the Public Analyst, Ext. 9 does not mention the actual date on which the sample was analysed in the laboratory, on a consideration of the aforesaid two rules, it has been taken that the sample of Suji was examined either on the date the Public Analyst's report was signed by him or one or two days prior to that date. Thus, there was delay of more than two months in the analysis of the sample of Suji by the Public Analyst. According to the Public Analyst, the sample of Suji was adulterated because the same was infested having contained eight wevils and pelenty of dead insects. In Ram Parkash v. The State of Punjab 1982 (1) FAC 10 and in Municipal Corporation of Delhi Vs. State, , the delay in examination of sample of food articles has been deprecated and it has been further held that if at the time of taking sample there was no insect there- in and there is possibility of the sample being insect infested at a later stage, then the accused is entitled to an acquittal. Keeping this principle of law in the background, let me examine if for the delay of more than two months in the analysis of the sample of Suji by the Public Analyst, the petitioner is entitled to benefit. In this connection, it is pertinent to note that PW 2 has admitted in his evidence that on 10-3-1980 when he took the sample he did not notice any insect in the sample of Suji. It is

common knowledge that insects like weevils are visible to the naked eye. Thus, the insect infestation found by the Public Analyst is a subsequent development and the petitioner cannot be held responsible for the same. In any case, when there was no insect in the Suji in question on the date the sample was taken, the charge against the petitioner has to fail.

9. For the purpose of third contention, Section 19(2) of the Act may be usefully quoted ;

"19. Defences which may or may not be allowed in prosecutions under this Act:

(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) xx xx xx "

The proviso to Section 14 of the Act provides that a bill, cash memorandum or invoice etc. issued by a , manufacturer, distributor or dealer is deemed to be a warranty in that prescribed form. So, according to the above provision, a vendor is protected from sale of any adulterated article of food, if he has proved that he purchased the article of food from any manufacturer, distributor or dealer under a bill". Since in this case the prosecution made the Orissa Flour Mills Limited, Khetrajpur, Sambalpur as an accused and issued notice in from VI (Ext. 7) quoting therein the bill number with date under which the said mill had sold the Suji to the farm of the petitioner, it is submitted by Mr. G. Rath appearing for the petitioner that the petitioner is protected u/s 19(2) of the Act. The learned counsel for the State on the other hand, contends, that the bill having not been proved by the petitioner, the aforesaid protection will not be available to him. When the prosecution itself came forward , with the case that the petitioner had purchased the Suji from M/s. Orissa Flour Mills Limited, Sambalpur under Bill No. 987 dated 26-2-1980, it was not necessary for the petitioner to prove the bill and consequently I hold that the petitioner is protected u/s 19(2) of the Act, particularly when M/s. Orissa Flour Mills, Sambalpur was undisputedly a manufacturer of Suji.

10. In view of the aforesaid discussion, the criminal revision is allowed and the conviction and sentence passed by the trial Court and upheld by the learned Sessions Judge are set aside and the petitioner is acquitted. Fine paid if any, shall be refunded.