
(1990) 11 P&H CK 0045
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 231 of 1989

Som Dutt

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 14-11-1990

Acts Referred:

Citation : (1991) 1 RCR(Criminal) 156

Hon'ble Judges : J.S.Sekhon, J

Advocate : Sandeep Narain, Sanjay Kumar, R. K. Anand, Nandini Sawhney, P. N. Lekhi, Swatanter Kumar, Advocates for appearing Parties

Judgement

J. S. Sekhon, J. (Oral)

1. The sample of Shakkar taken by the Food Inspector from the Kiryana shop of Som Dutt petitioner on 28.11.1986 at 1.40 p.m. was found by the Public Analyst to be adulterated as it contained unpermitted orange acid coal tar dye. The trial Court tried the accused on charge for offences under section 7 read with section 16 of the Prevention of Food Adulteration Act, 1954 and after finding him guilty of the said charge, sentenced the petitioner to rigorous imprisonment for one year and fine of Rs. 2000/ or in default of payment thereof to further suffer rigorous imprisonment for three months vide order dated 18.11.1988.
2. On appeal, the learned Additional Sessions Judge, holding that nonframing, of proper charge had resulted in prejudice to the accused petitioner, remanded the case for retrial after framing the fresh charge vide his order dated 7.11.1989.
3. Being aggrieved against the above referred order of the appellate Court, the petitioner has filed the present revision petition contending, inter alia, that the appellate Court should have acquitted the accused petitioner once it came to the conclusion that he has suffered prejudice in defending the case due to nonframing of the proper charge.
4. The law is wellsettled that the trial of an accused person even without framing a charge or a defective charge itself is a mere irregularity and would not result in

vitiating the trial unless prejudice has been caused to the accused due to this defect or irregularity. In the case in hand, Rule 29 of the Prevention of Food Adulteration Rules, 1955, prohibits the use of even permitted coal tar dye in all food items other than mentioned in the Rule. Shakkar is not included in the food items figuring in Rule 29. Thus, by the necessary implication, Shakkar shall have to be treated as adulterated article of food under clause (j) of section 2 (ia) of the Act, which defines "adulteration" and reads as under :

"adulterated" an article of food shall be deemed to be adulterated

* * * * *

(j) if any colouring matter other than the prescribed in respect thereof is present in the article, or if the amounts of the prescribed colouring matter which is present in the article are not within the prescribed limits of variability;"

The sale of adulterated article of food is prohibited under section 7 of the Act. The punishment for such an act is provided under section 16 (1A) of the Act. The perusal of the judgment of the trial Court reveals that charge was framed by the trial Court for offence under section 7 read with section 16 of the Act. While discussing the evidence of Ramesh, Assistant, Local Health Authority, in paragraph 8 of the judgment, the trial Court has found on fact that on 24/3/1986, the report of the Public Analyst was sent to the accused along with the forwarding letter Exhibit P.F. and the postal receipt Exhibit P.G. which proves that it was received by the accused. Under these circumstances, the appellate Court appears to have wrongly concluded that any prejudice, has been caused to the accused in not framing the detailed charge referring to Rule 29 and clause (j) of section 2 (ia) of the Act. Anyhow, since the State or the authority under the Prevention of Food Adulteration Act has not come up in revision petition, the order of the appellate Court cannot be set aside except by taking suo motu cognizance on the revisional side. There seems to be no need to take suo motu cognizance of this illegality in the impugned order of the Appellate Court as it had afforded another opportunity to the accused to defend himself by directing that the trial Court should reframe the proper charge and retry the case.

5. It cannot be said to be a case of that type where unnecessary delay had occurred in deciding the case. The sample of Shakkar was taken on 28/1/1986 while the trial had concluded on 18/8/1988 and the appeal preferred against that order was decided by the learned Additional Sessions Judge, Rohtak on 7/1/1989, i.e. within three years of the taking of sample. The vice of selling adulterated food has become deep rooted in the commercial world for the sake of earning easy money even at the risk of endangering the health of the nation. Thus, in view of the gravity of the offence and the circumstances of this case it cannot be said that the order of the appellate Court in remanding the case for retrial has resulted in miscarriage of justice.

6. For the reasons recorded above, there is no option but to dismiss this petition. It is ordered accordingly. The trial Court is however, directed to dispose of the

case expeditiously.

A copy of this order be sent to the trial Court forthwith.