

(1973) 08 OHC CK 0036
In the Orissa High Court
Case No : Criminal Revision No. 622 of 1972

State	Vs	APPELLANT
Chirangi Lal and Others		RESPONDENT

Date of Decision : 16-08-1973

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 439
Prevention of Food Adulteration Act, 1954 — Section 16, 16(1)
Probation of Offenders Act, 1958 — Section 4, 4(1)

Citation : (1973) 39 CLT 1019

Hon'ble Judges : R.N. Misra, J

Bench : Single Bench

Advocate : Government Advocate, for the Appellant; R. Mohanty, B.C. Panda and B. Panda, for the Respondent

Judgement

R.N. Misra, J.—The proceeding was initiated in exercise of suo motu jurisdiction of this Court u/s 439 of the Code of Criminal Procedure.

2. The three accused persons have been convicted by the learned Sub-Divisional Magistrate of Talcher for an offence punishable u/s 16(1) (a)(i) of the Prevention of Food Adulteration Act. According to the prosecution, opposite parties 1 and 2 have a grocery shop in Talcher town. On 28-5-1969, the opposite party No. 3, a salesman in that shop, was found selling adulterated mung dal and cumin seeds (zeera). The Public Analyst found as per Exts. 9 and 10 that the cumin seeds and the mung dal were adulterated. The learned Magistrate accepted the prosecution evidence and came to hold:

...In the premises of the above discussion of evidence both oral and documentary. I find that the prosecution has been able to prove the case against the accused persons beyond all reasonable doubts. I, therefore, hold the accused persons guilty of the charge u/s 16(1)(a)(i) of the Prevention of Food Adulteration Act and I convict them under the said section and sentence each of them to undergo rigorous imprisonment for six months and to pay a fine of Rs.

1,000/- (one thousand only), in default each will undergo rigorous imprisonment for a further period of three months....

Instead of, however, giving effect to the order, the learned Magistrate further directed:

Instead of executing the sentence immediately I consider it desirable to release the accused persons on their entering into bonds with sureties to appear and receive sentence when called upon under the provision of Section 4(1) of the Probation of Offenders Act, 1958. The accused persons have no previous conviction to their credit and accused Rabi, Bhutia is a boy of very tender age of 18 years only. Accused Ghisa Lal is also a young man and accused Chirangi Lal is an old man aged about 60 years. Accused Nos. 1 and 2 are respectable persons of the locality and all the 3 accused persons have fixed places of living in Talcher town. In these circumstances, I am inclined to release them on probation of good conduct. I therefore, direct that all the 3 accused persons be released on probation of good conduct on their entering into bonds with one surety for Rs. 2,000./- for each to appear and receive sentence when called upon during a period of one year from this date and in the meantime they shall keep the peace and be of good behaviour.

No action was taken by the prosecution to obtain variation of the order of the learned Magistrate admitting the opposite parties to bonds under the Probation of Offenders Act. Later on this matter came to the notice of this Court and a suo motu proceeding was initiated.

3. The considerations which have weighed with the learned Magistrate in releasing the accused persons by applying the provisions of the Probation of Offenders Act are wholly untenable. Opposite party No. 1 is a person aged 60, while the opposite party No. 2 is aged 35. Both of them have proprietary interest in the shop the fact that these persons were respectable persons of the locality is not a material feature. On the other hand, the fact that these persons had committed an anti-social offence should have weighed with the learned Magistrate.

In the case of Jai Narain Vs. Municipal Corporation of Delhi, , the learned Judges have indicated that the provisions of the Probation of Offenders Act apply to the persons found guilty under the Prevention of Food Adulteration Act, but the provisions are not to be lightly resorted to. In paragraph 9 of the judgment, it has been further stated:

...It is therefore, clear that the sale of such an article of food was an anti-social activity, deleterious to the health of those who would consume them as article of food, the eradication of which is the principal aim of the Act and in particular of Section 16 thereof. The evil would appear to be more pernicious when it is realised that patisa are more often than not purchased and consumed by children and by persons from the unaffluent sections of the society, who cannot afford to buy costlier sweets prepared by more sophisticated processes...The Appellant's

activity being thus distinctly anti-social, we do not think that it would be either expedient or in consonance with the object with which the Prevention of Food Adulteration Act was passed to apply Section 4 of the Probation of Offenders Act.

Accordingly I find no justification for the learned Magistrate to have released opposite parties 1 and 2 under the Probation of Offenders Act by suspending the sentence.

4. So far as the opposite party, No. 3 is concerned, he seems to be a young man and in the circumstances of the case, I am not prepared to set aside the order of the learned Magistrate so far as he is concerned.

5. The question for consideration now is as to what would be the sentence. The learned Magistrate had imposed rigorous imprisonment for six months and a fine of Rs. 1,000/- in default thereof a further, period of rigorous imprisonment for three months. Keeping in view the entire material on the record and the conclusions of the learned Magistrate, I think ends of justice would be satisfied if the sentence of fine is retained and in place of six months" rigorous imprisonment, fifteen days" rigorous imprisonment is imposed.

I would accordingly, while holding that all the three opp. parties are guilty of the offence punishable u/s 16(1)(a)(i) of the Prevention of Food Adulteration Act, direct that the opposite parties 1 and 2 shall be sentenced to pay a fine of Rs. 1,000/- each, or in default suffer rigorous imprisonment for three months and also undergo rigorous imprisonment for fifteen days each. The direction of the learned Magistrate to suspend the sentence and admit them to bonds is quashed. So far as opposite party No. 3 is concerned, the learned Magistrate's order is sustained.