
(1989) 04 SHI CK 0018
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 120 of 1985

State of Himachal Pradesh

APPELLANT

Vs

Noor Din

RESPONDENT

Date of Decision : 03-04-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Himachal Pradesh Land Revenue Act, 1954 — Section 37(3)
Prevention of Food Adulteration Act, 1954 — Section 2

Citation : (1989) 2 RCR(Criminal) 196 : (1989) 2 ShimLC 7

Hon'ble Judges : Bhawani Singh, J

Bench : Single Bench

Advocate : M.S. Guleria, Assistant Advocate General, for the Appellant; D.D. Sood and Vice Chhabil Dass, for the Respondent

Final Decision : Dismissed

Judgement

Bhawani Singh, J.—It is against the acquittal of the accused, Noor-Din, in Cr. Appeal No. 58 of 1983, decided on 23-3-1985 by the learned Sessions Judge, Kangra Division, u/s 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as "the Act") that the State has filed the present appeal.

2. The facts, in brief, are that on 9-8-1982 Shri Jagat Ram, Food Inspector (PW 1), intercepted the accused at Dogra Bazar, Chamba, while carrying one tin of desi-ghee for sale. Sample to the extent of 450 gms., on payment of Rs. 13.50, after serving a notice, as required, on the accused, was taken. After undergoing the formalities as required under the Act and the Rules, the same was sent to the Public Analyst for analysis and it was found; after analysis (Ex. PW) dated 21-9-1982, as under:

...I have caused to be analysed the aforementioned sample and declare the result of my analysis to be as follows;

1. Butyrorefractometer regarding at 40°C is 450. 2. Raichart value = 26.7 3.

Tree fatty acid = 2.9% 4. Moisture = 7.0% 5. B. T. = Negative.

And I am of the opinion that the Butyrefractometer reading at 40° C is 45.0 not within the prescribed limits of variabilities i. e. 40.) to 43.). The moisture is in excess by 6.5% that maximum prescribed limit.

3. The accused was prosecuted and on his pleading not guilty, the trial proceeded and ended in the conviction of the accused. In appeal, the accused succeeded before the learned Sessions Judge vide the impugned judgment.

4. The defence of the accused has been that he was not intercepted by the Food Inspector (PW 1) at Dogra Bazar, Chamba, as alleged; as a matter of fact, the Food Inspector came to the shop of Mataditta (PW 4), a wholesale dealer in desi-ghee. He further states that he was no longer the owner of the. ghee as, by this time, the same had been sold to Mattaditta (P.W 4). He admits receipt of notice to him by the Food Inspector (PW 1) at the time of taking the sample as well as on Panchnama but alleges that he signed the same as a witness,

5. The learned Counsel for the State, Shri M. S. Guleria, Assistant Advocate General, has raised two submissions. The first relates to the decision of the learned Sessions Judge relating to the point that the Public Analyst must, in his opinion, mention the fact of the article analysed being adulterated as well as the same being injurious to health u/s 2(ia)(m) of the Act.

6. On the other hand, Shri D. D. Sood, learned Counsel appearing for the accused, has supported the findings of the learned Sessions Judge on this point and has elaborated the submissions by asserting that the Public Analyst has just given a narration of his analysis only and no opinion has been given as to the article being adulterated nor has it been opined that the same is injurious to health. Such a report, the learned Counsel contends, is inaccurate, vague and incomplete. He seeks assistance to support his point by referring to a decision of the Madhya Pradesh High Court, namely, Gaffar Khan v. the State of M.P. and Anr. 1984 (1) FAC 79. I am in respectful agreement with the views expressed by the learned Judge in this case and proceed, therefore, to hold this point in favour of the accused and confirm the finding of the learned Sessions Judge on this point.

7. The second submission relates to the point of sanction. The learned Counsel refers to the decision of this Court in Criminal Appeal No. 47 of 1985 State of H.P. v. Mussa, decided on January 6, 1989 and argues that in view of this decision, the proceedings against his client are without jurisdiction. I made an effort to look into the file to examine on merit the nature of sanction if the same falls within the principles laid down in Mussa's case, but sanction order is not available on the file. The statement of Shri Jagat Ram, Food Inspector (PW 1), was perused to find out if there is any reference to the same in his deposition but neither he has stated anything about it nor proved the same by placing a copy thereof on the record of this case. In view of this, the question of the same being examined by this Court in the light of the decision of this Court (Mussa's case

supra) even does not arise. In the circumstances, it can be safely held that the prosecution is without any sanction. So, obviously without jurisdiction.

8. In view of the aforesaid discussion and conclusions, the result is that this appeal fails and is accordingly dismissed. The bail bond and surety bond, if any, executed by the accused at any stage of the case are hereby cancelled.