
(2011) 01 AHC CK 0245
In the Allahabad High Court
Case No : Criminal Revision No. 3127 of 2010

Suresh Kumar Jaiswal

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 03-01-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401
Penal Code, 1860 (IPC) — Section 272, 273, 420
Prevention of Food Adulteration Act, 1954 — Section 16, 7

Citation : (2011) 01 AHC CK 0245

Hon'ble Judges : S.C. Agarwal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.C. Agarwal, J.—This criminal revision u/s 397/401 of the Code of Criminal Procedure is directed against the judgment and order dated 24.7.2010 passed by the 3rd A.C.J.M., Varanasi, in Criminal Case No. 2496 of 2010 arising out of case crime No. 73 of 2010, under Sections 420, 272, 273 IPC, P.S. Adampur, District-Varanasi, whereby the application dated 28.6.2010 filed by accused-revisionist Suresh Kumar Jaiswal for de-sealing the room of his house was rejected.

2. In brief, the facts are that on 8.1.2010 Sri Balveer Singh Gaur, S.O., P.S. Adampur, District-Varanasi, in pursuance of a secret information, accompanied by police force, City Magistrate, Food Inspector Nagar Nigam, Varanasi, Chief Food Inspector and Food Inspectors raided the house No. A-38/439, Nai Basti, Koniya, P.S. Adampur and found that in a room, a spices grinding machine was fixed and labourers Vinod Verma and Om Prakash alongwith the revisionist-Suresh Kumar Jaiswal were mixing colour in the spices. In another room, the prepared goods and raw materials including mango seed, coriander, curry powder, red chillies, turmeric powder etc, were recovered. The samples were taken. Suresh Kumar Jaiswal managed to escape. Articles suspected to be adulterated were seized and sealed in a room and keys were handed over to

Smt. Gudiya wife of the revisionist. It was found that prohibited colours, rice husk and other un-edible articles were being mixed in the chilli powder, turmeric powder and curry powder etc. for sale.

3. An application was moved by the revisionist on 28.6.2010 before the Magistrate for de-sealing and release of the premises on the ground that grinding machine and other articles are kept in the sealed room. In absence thereof, the applicant is unable to conduct his business. After report of the Public Analyst, the case shall be disposed of on merits but the applicant had a right to conduct his business and the police had no power to seal his premises.

4. Learned Magistrate rejected the application on the ground that seized articles being in bulk quantity were kept in the room and were given in the supurdigi of wife of the applicant himself. Some of the articles may be adulterated, which cannot be released in favour of the applicant. Hence this revision.

5. Heard Sri Roopak Chabey, learned Counsel for the revisionist and learned AGA for the State.

6. Learned Counsel for the revisionist submitted that if the police found any article of food to be adulterated, the Food Inspector accompanying the police authorities could seize the same and send the samples to Public Analyst and if the same are found to be adulterated, the revisionist could have been prosecuted under provisions of law but the premises of the applicant cannot be sealed. It is further submitted that samples were taken on 8.1.2010 and report of Public Analysts must have been received by now. If the articles are not found to be adulterated or noxious, the same should be released in favour of the revisionist and his premises should be de-sealed. The submission is that even if articles seized by the raiding party are found to be adulterated or noxious, the police can take those articles with them and make arrangement for their safe keeping. For this purpose, the premises of the applicant cannot be kept in unauthorised possession by means of sealing the same.

7. Per contra, learned AGA supported the impugned order and submitted that the seized articles have been given in the supurdigi of the wife of the revisionist after sealing the room.

8. I find sufficient force in the submissions advanced by learned Counsel for the revisionist. The samples were taken on 8.1.2010. Report of Public Analyst must have been received by now. If Food articles are not found adulterated or noxious, revisionist is entitled to get back the seized articles alongwith the possession of his room seized by the police. On the other hand, if the Food articles or spices seized by the police and the Food Inspectors are found to be adulterated or noxious, the police and the administration or the Food Department have to make their own arrangement for keeping the seized articles in their possession and for this purpose the premises of the accused-revisionist cannot be used for storage on the pretext that wife of accused is the supurdgar. The accused might face prosecution u/s 272, 273 IPC and Section 7/16 of the Prevention of Food

Adulteration Act but no provision has been brought to my notice which entitles the State or its authorities to use the premises of the accused for the purposes of storing the seized articles. The State has to make its own arrangement for keeping seized articles. In this view of the matter, the revision deserves to be allowed.

9. The revision is allowed. The impugned order passed by the Magistrate is set aside and the matter is remanded to the Magistrate concerned for afresh decision in the light of the report of Public Analyst and the observations made above. If the articles are found to be adulterated, the State may make their own arrangements for keeping the seized articles but if the Food items are not found adulterated or noxious, the premises of the revisionist shall be immediately de-sealed and seized articles may be returned.