Chaturbhuj Vs State of Haryana

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 1, 1984

Hon'ble Judges: Pritpal Singh, J

Advocate: Ashok Kumar Aggarwal, P.S. Saini, Advocates for appearing Parties

Judgement

Pritpal Singh, J.

1. This revision has been filed by Chaturhbuj against the order of the Additional Sessions Judge (II), Faridabad, dated 10th February, 1984, by

which the conviction and sentence recorded by the trial Court against him under Section 16 (1)(a) of the Prevention of Food Adulteration Act

(hereinafter referred to as the Act), was set aside in appeal but the case was remanded to the trial Court for retrial.

2.The Government Food Inspector Ram Lal Chawla inspected the premises of the petitioner on 7th January, 1981, at 2.20 P.M. and he found that

the petitioner had displayed 7 Kg of Bura for sale in a thal. The Food Inspector took a sample of 750 grams out of the Bura in accordance with

the procedure prescribed under the Act. The sample was analysed by the Public Analyst who vide his report Exhibit P.D. reported that it

contained Sulphr dioxide more than the maximum prescribed standard. On receipt of this report, the Food Inspector launched a complaint against

the petitioner in the Court of teh SubDivisional Judical Magistrate, Palwal. The trial Court on appraisal of the evidence, convicted the petitioner

under Section 16(i)(a) of the Act and sentenced him to undergo six months'' R.I. and to pay a fine of Rs. 100/. Against this decision, the petitioner

filed an appeal which was heard by the Additional Sessions Judge, Faridabad. The appellate Court found that the contents of the report of the

Public Analyst, Exhibit P.D., had not been put to the petitioner when he was examined under Section 313, Code of Criminal Procedure. It was,

therefore, held that the petitioner was prejudiced as no opportunity had been granted to him to offer any explanation with regard to this report. In

the wake of this finding, the order of the trial Court convicting and sentencing the petitioner was set aside and the case was demanded for retrial

with the direction that the statement of the petitioner under Section 313, Code of Criminal Procedure, should be recorded afresh and he should be

granted reasonable opportunity to lead defence evidence.

3. The sole point urged by the learned petitioner''s counsel is that in that interest of justice the petitioner should have been acquitted and the case

ought not to have been remanded to the trial Court. This contention is not without merit. It was held by the Supreme Court in Machander. The

State of Hyderabad. A.I.R. 1955 S.C. 792, that the Judges and Magistrates must realize the importance of the examination under Section 342,

Criminal Procedure Code, (1898). It is their duty to question the accused properly and fairly, bringing home to his mind clear and simple language

the exact case he has to meet and each material point that is sought to be made against him and of affording him a chance to explain them if he can

and so desires. In that case the requisite question was not put to the accused by the trial Court. It was held that this error was not a mere

technicality and since the accused had been on trial for a long period, the Court would not be prepared to order a retrial. Following significant

observations were made by the Supreme Court in this Judgment :

We are not prepared to keep persons who are on trial for their lives under indefinite suspense because trial judges omit to do their duty. Justice is

not onesided. It has many facets and we have to draw a notice balance between conflicting rights and duties. While it is incumbent on us to see that

the guilty do not escape it is even more necessary to see that persons accused of crime are not indefinitely harassed. They must be given a fair and

impartial trial and while every reasonable latitude must be given to those concerned with the detection of crime and entrusted with the

administration of justice, limits must be placed on the lengths to which they may go.

Except in clear cases of guilty, where the error is purely technical, the forces that are arrayed against the accused should no more be permitted in

special appeal to repair the effects of their bungling then an accused should be permitted to repair gaps in his defence which he could and ought to

have made good in the lower courts. The scales of justice must be kept on an even balance whether for the accused or against him, whether for the

State or not; and one broad rule must apply in all cases.

4. The Supreme Court Judgment was relied upon in Division Bench Judgment of this Court in Municipal Committee, Amritsar v. Om Prakash,

1969 P.L.R. 793. In this case the Food Inspector had taken a sample of ghee which on analysis was found to be sub standard. However, the

report of the Central Food Laboratory, Calcutta, had not been put to the accused in his statement. The Division Bench held that prejudice to the

accused resulting from the failure of the trial Court to examine him with regard to the said report vitiated that trial. Then the question arose whether

a retrial should be ordered. The Court observed that ordinarily on the aforesaid finding a retrial would have been necessitated but in view of the

aforesaid Supreme Court Judgment an order of retrial would not have met the ends of justice because the accused had already faced trial for a

period of about 31/2 years. It was observed that the proceedings having gone one for more than 31/2 years during which period the accused had

suffered from suspense, it would not be conducive to justice if a retrial is ordered resulting in the proceedings starting afresh.

5. A Single Bench Judgment of this Court in Ram Chander v. The State of Haryana, 1982 (11) F.A.C. 331, also took the same view. The report

of the Public Analyst in that case had not been put to the accused by the trial Magistrate in his examination under Section 313, Code of Criminal

Procedure. It was held that in such circumstances the conviction of the accused could not be maintained and had to be set aside. Taking into

consideration that the burden of prosecution had been hanging on the accused for nearly three years the case was not considered fit for remand.

6. In the present case, the prosecution had been launched against the petitioner on 7th of January, 1981. The impugned order was passed on 10th

of February, 1984, that is, more than three years after the initiation of the prosecution. In the ratio of the above mentioned Judgments, it is manifest

that the trial of the petitioner was vitiated by reason on of the report of the Public Analyst not having been put to him under Section 313, Code of

Criminal Procedure, and it would not be conducive in the interest of justice to order for retrial in view of the fact that the proceedings against him

have already continued for more than three years.

7. For these reasons, the instant revision is allowed, the impugned order of the Additional Sessions Judge, Faridabad, is set aside and the petitioner

is ordered to be acquitted.