

(1995) 03 AHC CK 0023

Allahabad High Court

Case No: Criminal Revision No

Prem Kumar

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: March 9, 1995

Acts Referred:

- Prevention of Food Adulteration Act, 1954 - Section 16, 7

Hon'ble Judges: R.K.Singh, J

Final Decision: Allowed

Judgement

R.K. Singh, J.

By this revision petition the revisionist has challenged the validity of the order passed by Sri Prem Singh, Sessions Judge, Ghazipur passed in Criminal Appeal No. 96 of 1982 upholding the conviction and sentence of the appellant under Section 7/16 of the Prevention of Food Adulteration Act and dismissing the said appeal in full.

2. The argument of the learned Counsel for the revisionist is that the order is bad because the allegation is about the selling of haldi which was found by the Public Analyst as insect affected but he did not express opinion that it was unfit for human consumption. Reliance has been placed on the ruling reported in 1976 (1) S.C.C. page 412, Municipal Corporation Delhi v. Kacharu Mal. His argument is that haldi comes under the definition of primary food under Section 2 of the Prevention of Food Adulteration Act which reads as under:

Primary food means any article of food being a produce of agriculture or horticulture in its natural form.

This alleged adulterated article i.e. haldi is admittedly horticultural produce in the natural form. The simple allegation is that it was insect infected. This insect infected cannot mean that it was adulterated by human being with certain intention. It is natural decay system of the law of nature which causes such loss to the agricultural

produce in general. His argument is that in no way it comes as adulterated food and since there is no specific opinion of the Food Analyst that it was unfit for human consumption so, it does not constitute any offence. The learned AG.A has argued in opposition. He has pointed out that this business of selling to the customers enjoins upon the shopkeeper the responsibility to keep perfectly good articles for selling to the customers. This argument is also very much sound. There can be no dispute in this principle.

3. In the impugned order the revisionist has been sentenced to one year's rigorous imprisonment and to pay a fine of Rs. 1,000 and in default of payment of fine he was further sentenced for four months' rigorous imprisonment. The submission of the learned Counsel for the revisionist is that the sentence provided for articles for primary food is in the proviso attached to Section 16 of the Prevention of Food Adulteration Act which provides for the minimum Sentence of three months and a fine of Rs. 500.

4. The argument of the learned Counsel for the revisionist has much force and it is not contested by the learned A.G.A. also. Accordingly this revision is allowed in part. The conviction of the revisionist under Section 7/16 of the Prevention of Food Adulteration Act is maintained but the sentence awarded to their revisionist is modified and reduced to the extent of three months' rigorous imprisonment and the amount of fine is also reduced to the extent of Rs. 500 only. In default of payment of fine the revisionist is directed to undergo rigorous imprisonment for a period of 15 days. His bail bonds are cancelled. Revision allowed in part.