

(2006) 05 AHC CK 0229

Allahabad High Court

Case No: Criminal Revision No. 2533 of 1983

Nand Lal

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision: May 23, 2006

Acts Referred:

- Prevention of Food Adulteration Act, 1954 - Section 10(7), 13(2), 16, 2(1), 7

Citation: (2006) 2 ACR 2312

Hon'ble Judges: Shiv Shanker, J

Bench: Single Bench

Advocate: Siddharth Varma, V.B. Rao, Raghvendra Dwivedi and A.K. Pandey, for the Appellant; S.P. Agrawal, A.G.A., for the Respondent

Judgement

Shiv Shanker, J.

This criminal revision has been preferred against the impugned judgment and order dated 22.10.1983, passed by Sri Prem Singh, Sessions Judge, Ghazipur, dismissing Criminal Appeal No. 115 of 1983, Nand Lal v. State and Anr. Criminal Appeal No. 115 of 1983 and affirming the judgment and order dated 7.4.1983, passed by Sri Harihar Shukla, Special Judicial Magistrate, Ghazipur whereby he convicted the Appellant-revisionist u/s 7/16 of Prevention of Food Adulteration Act and sentenced him to undergo six months R.I. and to a fine of Rs. 1,000, and in default to undergo four months further R.I.

2. The brief facts, arising out of this revision, are that one Banshi Dhar son of Laxmi runs a grocery shop (Purtunee Shop) in village Saheri, Police Station Nandganj, district Ghazipur. Nand Lal-revisionist is said to be the salesman at this shop. On 7.12.1980, at 4.00 p.m., Sri K. P. Srivastava, the Food Inspector, visited the shop of Banshi Dhar. At that time the owner was not present but one Nand Lal was present at the shop and was selling the articles to the customers. Suspecting that there was adulteration in the mustard oil, the Food Inspector made sample purchase of 500

grams of mustard oil after disclosing his identity. He divided this sample purchase in three parts and after completing formalities, sent one phial to the Public Analyst for examination report of the Public Analyst revealed that there was about 20 per cent mixture of linseed oil in the sample. After obtaining the requisite permission from the Chief Medical Officer, Ghazipur, the Food Inspector filed a complaint against the revisionist and the owner of the shop Banshi Dhar.

3. Both the accused were charged. They pleaded not guilty and claimed to be tried.

4. To prove its case, complainant examined himself as P.W. 1, Kamta Ram, a vaccinator was examined as P.W. 2 Baleshwar, Food Clerk in the office of Chief Medical Officer was examined as P.W. 3.

5. No oral or documentary evidence was led by the accused in their defence.

6. On the basis of the evidence, the trial court convicted accused Nand Lal for the said charge and sentenced him to undergo R.I. for six months with a fine of Rs. 1,000 and in default to undergo four months further R.I. However, the another accused Banshi Dhar was acquitted for the charge. Thereafter, accused Nand Lal filed an appeal before the lower appellate court which was dismissed and the conviction and sentence, as awarded by the trial court was affirmed. Feeling aggrieved by it, Nand Lal accused filed the present revision in this Court.

7. Heard the arguments of the learned Counsel for both the parties and perused the whole record.

8. It is contended on behalf of revisionist that he was not the owner of the shop but was the sales-man. While the owner of the shop had already been acquitted by the trial court, in these circumstances, he is also entitled to be acquitted from the charge levelled against him. It is further contended that there was no compliance of Section 10(7) of the Prevention of Food Adulteration Act as the copy of notice on Form No. 6 (Ext. Ka-1) was not given by the Food Inspector to the revisionist which was mandatory. Therefore, there is violation of mandatory provision of Section 10(7) of the Act. It is further contended that the so called independent witness, whose name has been mentioned in Form 6 has denied his presence at the time of taking the sample in question. Therefore, the fact of taking the sample became suspicious in absence of the evidence of independent witness. It is also contended that there is violation of the mandatory provision of Section 13(2) of Prevention of Food Adulteration Act. It is further contended that there is endorsement on the report of the Public Analyst that such adulteration is not injurious to health. Therefore, this revision is liable to be allowed.

9. On the other hand, it is contended that there is no illegality and incorrectness in the impugned judgment and orders passed by both the courts below and, therefore, this revision deserves to be dismissed.

10. The owner of the shop Banshi Dhar was acquitted by the trial court on the ground that there was no evidence to establish the charge levelled against him. According to the statements of P. Ws. 1 and 2, the revisionist was found present on the shop at the time of taking the sample and the sample was taken from him by purchasing the same, and, therefore, his case is different from the co-accused Banshi Dhar, who was acquitted and, therefore, the revisionist is not liable to be acquitted from the charge framed against him.

11. So far as the contention of compliance of Section 10(7) of the Prevention of Food Adulteration Act is concerned. Form No. 6 (Ext. Ka-1) reveals that it was taken in presence of P. Ws. 1 and 2 and one independent witness. It has been opined by the courts below that the independent witness has admitted his signature upon Form No. 6 (Ext. K-1). Therefore, his presence cannot be deemed to be suspicious. It appears that he has been won over by the revisionist at the time of examination in the trial court. It has been opined by both the courts below that the revisionist has refused to take the copy of Form No. 6 (Ext. Ka-1). This finding is based upon the evidence of P. Ws. 1 and 2. In these circumstances, it is not liable to be deemed that there was violation of mandatory provision of Section 10(7) of the Act as the finding given by the courts below is based upon the testimony of P. Ws. 1 and 2.

12. So far as the compliance of Section 13(2) of the Act is concerned that a copy of the report of Public Analyst was not sent, the postal receipt Ext. Ka-13 reveals that the notice, as required u/s 13(2) of the Act, was sent to the revisionist by registered post, as stated by P.W. 3 Baleshwar. He further stated that the said notice sent through the registered post was not received back. Therefore, it was deemed that there is sufficient service of notice upon the revisionist as it was sent at the correct address. This finding is based on the basis of evidence of P.W. 3 and will be no effect of the denial by the revisionist regarding not receiving the copy of the report of Public Analyst. Therefore, there is no force in the argument made on behalf of the revisionist as the finding given by the courts below regarding the compliance of Section 13(2) of the Act is based on the evidence.

13. So far as the next contention is concerned that there is no endorsement on the report of the Public Analyst regarding the sample injurious to health, the report of the Public Analyst reveals that it was not found upto the prescribed standard. The sample was found adulterated to the extent of 20 per cent linseed oil which was injurious to health. The learned Counsel for the revisionist has relied upon a decision of Apex Court in the case of Dinesh Kumar v. State of M. P. 2005 (1) CCSC 79: 2005 (1) ACR 119 (SC): 2005 SCC 390, wherein it was observed as under:

B. Prevention of Food Adulteration Act, 1954-Section 2(1)(c).-Adulterated-Prohibition of sale of kesari dal in any form-Found in the sample of besan examined-In the absence of a finding by the Public Analyst that addition of such kesari dal injuriously affected the nature, substance or quality thereof, held, conviction cannot be sustained- Prevention of Food Adulteration Rules, 1955-R. 5 r/w Appendix B, Serial

No. A.18.04-Besan-Words and phrases-adulterated.

14. The above case law has no application in the present case as it was not related to the mustard oil but adulterated mixture of kesari dal besan. Therefore, I do not find any substance in the contention of defence.

15. No other argument has been advanced on behalf of the revisionist.

16. The revision thus fails and is consequently dismissed. The revisionist is on bail. His bail is cancelled and surety bonds are discharged. He shall be taken into custody forthwith and be sent to jail to serve out the sentence awarded by the trial court and affirmed by the lower appellate court.