

(1997) 03 AHC CK 0225

Allahabad High Court

Case No: Criminal Revision No. 2257 of 1983

Ram Chandar

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision: March 10, 1997

Acts Referred:

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

Citation: (1997) 21 ACR 484

Hon'ble Judges: C.A. Rahim, J

Bench: Single Bench

Final Decision: Allowed

Judgement

C.A. Rahim, J.

This revision is directed against the judgment and order dated 11.10.1983 passed by the Ist Additional Sessions, Judge, Ghazipur, in Criminal Appeal No. 152 of 1983, upholding the conviction of the applicant u/s 7/16 of the Prevention of Food Adulteration Act but reduced the sentence from one year R.I. and a fine of Rs. 2,000 to six months R.I. and a fine of Rs. 1,000 in default to undergo four months R.I.

2. The Additional Munsif-Magistrate Saidpur, convicted and sentenced the accused-applicant in the aforesaid manner by the judgment and order dated 13.5.1983 in Case No. 100/83.

3. Sri P. N. Mishra, appearing for the accused-applicant has submitted that the Identification of the salesman of the shop wherefrom the coloured PERA was purchased by the Food Inspector on 17.10.1979 at 3 p.m. has not been established. He has submitted that at first, the complaint was lodged against Anil Kumar son of the accused-applicant. After about 11 1/2 years, Anil Kumar was discharged and in his place, the accused-applicant, his father, was figured as accused and the case proceeded against him. It has been submitted that the prosecution having failed to establish the identity of the salesman whether it was Anil Kumar or Ram Chandra,

conviction cannot be sustained.

4. It is the prosecution case that Ram Chandar was selling the food products in the shop (sic) while disclosing his identity he told that he was Anil Kumar son of Ram Chandar and on that basis, memo, etc., were prepared according to the Rules having regard Anil Kumar as accused but later on when it transpired that it was not Anil Kumar but his father was selling food products, his name was deleted and Anil Kumar was discharged.

5. Learned counsel has also submitted that compliance of Section 10(7) of the Prevention of Food Adulteration Act has not been made in this case which has got particular relevance with the fact that identity of the salesman is disputed.

6. Section 10(7) of the Act provides that independent persons present at the spot should be called as witnesses. It is in evidence that some persons were present there. The Food Inspector has stated in his evidence that they were called to witness the fact of purchase but they did not agree. The learned counsel has rightly pointed out that in that case the Food Inspector should have noted in the memo the said fact of refusal, which he did not do, so according to him the evidence in this respect of the Food-Inspector is an afterthought. In this connection, he has referred the case Fateh Bahadur Srivastava and Anr. v. State 1983 A.Cr.R. 51, wherein it has been held that "if the independent witnesses are not prepared to give evidence, such fact should be mentioned in the memo prepared on the spot failure of which the conviction is not sustainable."

7. Having regard to the peculiar facts and circumstances of this case, the evidence of reliable witnesses or persons gathered at the spot is very relevant who could have identified the salesman who was present in the shop at the relevant time. The Food Inspector did not choose to call for those witnesses for which the dispute with regard to identity of the salesman arose thereafter.

8. Moreover, there is no corroborative evidence that it was Ram Chandra, a Government employee, who was present at the shop and not his son Anil Kumar. The said fact being a part of the prosecution case, it was duty of the prosecution to prove such a fact. The best course would have been that the handwriting signature of both the persons should have been tallied with the handwriting and signature made on the memo, etc. prepared at the spot, with the help of a handwriting expert, which would have been the conclusive proof who was the actual salesman.

9. Having not chosen (sic) with courses, the evidence of the Food Inspector, I feel, is not sufficient to hold that it was not Anil Kumar but Ram Chandra was the salesman. This should be the outcome of his evidence since he did not know the salesman from before.

10. For these two reasons, I do not consider that the prosecution was able to bring home the charge.

11. The revision is, therefore, allowed. The conviction u/s 7/16 of the Prevention of Food Adulteration Act and the sentence imposed by both the courts below are hereby set aside. He is acquitted to the charge. His bail bond is discharged. He need not surrender.