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Md. Hussain Ahmed Vs State of Assam

Criminal Revision No. 354 of 95

Court: Gauhati High Court

Date of Decision: July 25, 2003

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 433#Prevention of Food Adulteration Act, 1954 â€" Section 16, 7

Citation: (2003) 3 GLR 650

Hon'ble Judges: S.K. Kar, J

Bench: Single Bench

Advocate: H.R.A. Choudhury, M.H. Rajborbhuiyan and A. Begum, for the Appellant; B.S. Singh, PP, for the Respondent

Judgement

S.K. Kar, J.
This is a petition u/s 397/401 of the Cr.P.C. intended to challenge the judgment and order dated 23.6.1995 passed by the

Addl. Sessions Judge, Nagaon in Criminal Appeal No. 15/95 dismissing the appeal and upholding the order dated 28.2.1995 passed by the

learned trail Court, Hojai in case No. C.R. 503/93 u/s 16(1)(a) read with Section 7 of PF.A. Act, 1954.

2. By the impugned Judgment the learned trial Court Hojai in case No. C.R.503/93, convicted the accused/petitioner u/s 7 and 16 of the

Prevention of Food Adulteration Act, 1954 (hereinafter in short "the Act") and sentenced him to undergo rigorous imprisonment for 6 months and

to pay a fine of Rs. 1000, in default of fine, to further S.I. for one month.

3. The quintessence of the allegation is that on 5.4.1993 at 2 p.m. the Food Inspector concerned along with the office Peon of S.D.M. & M.O.

visited the premises of M/s Lutfur Rahman, a grocery shop, situated at daily bazaar, Dabaka and collected sample of "Chilly powder" suspecting

its purity from the petitioner/accused as Vendor for the purpose of the sample and observing formalities as prescribed in the Act and Rules, one

part of the sample so collected was forwarded to Public Analyst in the Govt. of Assam with a memorandum and after, analysing the public analyst

submitted his report with his finding that the Chilly powder is adulterated. The prosecution was lodged after obtaining necessary sanction from the

local Health authority.

4. Two witnesses were examined and the defence plea is denial simplicitor, Although several points were raised in the petition as ground for

revision, none were argued seriously.

5. I have heard learned counsel for the petitioner as well as the respondents.

6. Learned counsel for the petitioner without entering into the detail discussion and without challenging each and every aspects of the finding of the

trial court has restricted his submission to seek relief on sentence only.

7. Learned counsel has also referred me to law pronounced by the Hon''ble Apex Court in N. Sukumaran Nair Vs. Food Inspector, Mavelikara,

which has been followed in subsequent decision of the same Court reported as Santosh Kumar Vs. Municipal Corporation and Another, It was

held in paragraph 2 of the said judgment as follows :

Such report by the Public Analyst is ex facie evidence. There are methods to challenge the same which were not restored to.

8. Now coming to the submission of the learned counsel appearing for the petitioner that he may be given relief in so far the sentence is concerned

in due regard and obedience to the law as pronounced by the Hon''ble Apex Court and reported in the citation quoted above. Hon''ble Apex

Court held in N. Sukumaran Nair Vs. Food Inspector, Mavelikara, as follows :

Under Clause (d) of Section 433 of the Code of Criminal Procedure, ""the appropriate government"" is empowered to commute the sentence of

simple imprisonment for fine. We thing that this would be an appropriate case for commutation of sentence where almost a decade has gone by.

9. In the present case it was also the collection of the sample was on 5.4.93, i.e., about a decade back and hence by analogy in the present case is

also similar relief may be granted. I, therefore, direct the petitioner to deposit in the court a sum of Rs. 6000 as fine in commutation of the entire

sentence of 6 months'' simple imprisonment within a period of 6 weeks from today and intimate to the appropriate government that such fine has

been deposited. On deposit of such fine, the State Government may formalise the matter by passing appropriate order under Clause (d) of Section

433 of the Code of Criminal Procedure.

10. In the result, petition stands disposed of accordingly.