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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

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:ORDER:

Ishwar Singh

Vs.

The State of Raj.

S.B. Criminal Revision Petition No.311 of 1995
under Section 397 read with Section 401 Cr.P.C.
against the judgment dated 29.09.1995 passed
by the learned Special Judge cum Additional
Sessions Judge, Pratapgarh in Criminal Appeal
No.3/1995 (1/1992) whereby he upheld the
judgment dated 10.12.1991 passed by the
learned Additional Chief Judicial Magistrate,
Pratapgarh in Criminal Case No.35/1984 whereby
he convicted the petitioner for the offence
under Section 7/16 of the Food Adulteration Act.

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Date of Order

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31.01.2014

Present

Hon'ble Mr. Justice Banwari Lal Sharma

Mr. Vineet Jain, for the petitioner.

Mr. K.K. Rawal, Public Prosecutor.

By the Court:

The petitioner has preferred this revision petition against the
Judgement dated 29.09.1995 passed by the learned Special Judge
cum Additional Sessions Judge, Pratapgarh in Criminal Appeal
No.3/1995 (1/1992) whereby he upheld the judgment dated
10.12.1991 passed by the learned Additional Chief Judicial
Magistrate, Pratapgarh in Criminal Case No.35/1984 whereby he
convicted the petitioner for the offence under Section 7/16 of the
Food Adulteration Act and has sentenced him to undergo three
months' rigorous imprisonment and a fine of Rs.1,000/-, in default
whereof to further undergo six months' simple imprisonment.

The brief facts of the case are that the Food Inspector submitted a complaint before the learned trial court to the effect that on 28.09.1983 at about 06.30 a.m., he took sample of milk for examination and on chemical examination from the analyst, the milk was found adulterated and thus the petitioner-accused has committed the offence under Section 7/16 of the Food Adulteration Act.

The learned trial court, thereafter, framed charge under Section 7/16 of the Food Adulteration Act against the petitioner to which petitioner denied and claimed for trial. The prosecution examined as many as four witnesses and the petitioner-accused was examined under Section 313 Cr.P.C. wherein he stated the prosecution case as false. He did not lead any evidence in defence.

The learned trial court, after hearing the learned Assistant Public Prosecutor and the learned counsel for the petitioner-accused, convicted and sentenced the petitioner as aforesaid vide order dated 10.12.1991. Aggrieved by this Judgement of conviction and order of sentence, the petitioner-accused preferred appeal before the learned appellate court which was dismissed and the judgment of conviction and order of sentence passed by the learned trial court was affirmed. Hence, this revision petition.

Heard Mr. Vineet Jain, learned counsel appearing for the petitioner and Mr. K.K. Rawal, learned Public Prosecutor.

Mr. Vineet Jain, learned counsel appearing on behalf of petitioner-accused urged that since the case against the petitioner was not tried as a summary trial case, as required by Section 16A of the Act and was tried as a warrant trial case, the trial stood vitiated. However, no prejudice caused to the petitioner by the trial adopted in his case was pointed out.

In the case of Shyam Sunder Vs. State of Rajasthan & Anr. [1996(3) W.L.C. 722], a similar question had arisen and the question was referred to a Larger Bench for answer. The Larger Bench opined that in post conviction cases, the trial of a case for offence under Section 16(1) read with Section 7 of the Act by adopting the procedure of a warrant case does not stand vitiated unless prejudice caused to the accused is shown. Since no prejudice occasioned to the petitioner by trying the case of the petitioner as per procedure in a warrant trial court has been shown, the argument advanced by Mr. Jain has no substance and accordingly rejected.

It was next urged by Mr. Jain that before granting the sanction for prosecution of the petitioner, the sanctioning authority did not apply its mind and, therefore, the very basis for the prosecution of the petitioner was bad. However, no specific defect showing that the sanction (Ex.P/8) was not appropriate was pointed out.

In the case of Nand Kishore Vs. State of Rajasthan (SB Criminal Revision Petition No.24/1992), a Coordinate Bench of this court examined this issue and on the basis of decision of the Hon'ble Supreme Court in the case of Dhyani Singh Vs. Municipal Board, Saharanpur [1973 F.A.C. 404], took the view that what is required for initiation of prosecution for offence under the Act is, "written consent" of the authority concerned and not "sanction" within the meaning of the term used in other enactments like Prevention of Corruption Act, the Code of Criminal Procedure, 1973 and since "written consent" may be given even long before a particular offence has taken place to institute a particular case or class of cases, no question of applying one's mind to the facts of

the case before the institution of prosecution in that case arise. In view of such opinion held by the Coordinate Bench of this point, there is no merit in this argument also, which is rejected.

It was then urged by Mr. Jain that the report of the public analyst was not sent to the petitioner, as required by Section 13(2) of the Act, hence, prejudice was occasioned to him.

From the perusal of record of the trial court, it reveals that on 03.02.1984, petitioner-accused himself submitted an application before the learned trial court stating therein that he received analyst's report on 28.01.1984 and feeling dissatisfied by the report, urged before the trial court that the sample of milk be sent to Central Food Laboratory. Therefore, when petitioner-accused himself admitted that he received the analyst's report and availed the opportunity of examination of second sample from Central Food Laboratory, this argument too is rejected.

It was urged by Mr. Jain that panchnama was prepared of mixed milk, therefore, there will be different standard.

I have considered this argument too. According to the report of the Public Analyst, the milk fat was found to be 3.20% and milk solids not fat were found to be 5.60%. Cane sugar and starch were found as nil. As such, sample was found adulterated as it contained about 34% added water and as per the report of Central Food Laboratory also, milk fat was found to be as 3.60% and milk solids not fat was found 5.0% and test for presence of starch was found negative and as per the report of Central Food Laboratory (Ex.P/9) the sample did not confer to the standard of mixed milk laid down in the Table Item No.A.11.01.11 of Prevention of Food Adulteration Rules, 1955 (for short, 'the Rules of 1955'). As such, in both the reports, the mixed milk was found adulterated from standard

specifications of the mixed milk. Therefore, this argument is also not acceptable.

According to the Table Item A.11.01.11 of Rules of 1955, it would be clear that for mixed milk, percentage of fat and solid not fat should be 4.5 and 8.5 respectively for all over India and, therefore, the sample in question was found adulterated. Under such circumstances, the learned trial court as well as learned appellate court have rightly found that the petitioner sold adulterated milk and, therefore, both the courts below have rightly convicted the petitioner-accused for the aforesaid offences.

Lastly, learned counsel Mr. Jain submitted that the matter relates to the complaint filed in the year 1984 and the trial court vide its impugned judgment dated 09.12.1991, has awarded sentence of three months' rigorous imprisonment with a fine of Rs.1,000/- to the accused-petitioner and he is facing trial since 1984 and had remained in custody for about 22 days. He is suffering from agony of protracted trial since last 30 years. Presently, he is about 60 years of age during which the petitioner has already suffered a lot. Situated thus, Mr. Jain submitted that in the facts and circumstances of the present case, this court may commute the sentence of the accused-petitioner to one of fine only.

In support of the above submission, Mr. Jain has relied upon the decision of the Apex Court in N. Sukumaran Vs. Food Inspector, Mavelikara [(1997) 9 SCC 101].

The above submission of the learned counsel for the petitioner was not refuted by the learned Public Prosecutor. The sample was seized in the year 1983 and more than 30 years have passed in between. The petitioner was convicted after full trial.

His appeal failed. The petition before this court has been pending since 1995. The petitioner is now about 60 years of age, therefore, now no useful purpose will be served in sending him to jail at this distant point of time being on bail for so many years.

I, therefore, commute the sentence of imprisonment to fine of Rs.15,000/-. The petitioner would, within two months from today, deposit a sum of Rs.16,000/- (Rs.15,000/- + Rs.1,000/-) in all in the court of the learned Chief Judicial Magistrate, Pratapgarh 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 orders under clause (d) of Section 433 of the Code of Criminal Procedure. It is made clear that in case the petitioner fails to pay the fine as ordered, he would serve the sentence as imposed by the learned trial court and confirmed in appeal.

With the aforesaid observations, the present revision petition stands disposed of.

The record of the courts below be sent back with copy of the order forthwith for compliance.

[Banwari Lal Sharma],J.

/skm/ramesh/