

13.12.2022
Item No. 10
BR

CRR 800 of 2006
With
CRAN 3 of 2017

In the matter of : Utpal Kumar Basu @
Utpal Basu

Mr. Amal Kumar Mukhopadhyay,
Mr. R. Jana,
Mr. P.Chakraborty,
Mr. S.Kumar Bose
.... For the petitioner

Mr. Goutam Dinda,
Mr. Anindya Sundar Chatterjee
.... For the KMC

This application for revision is directed against the judgment and order dated 10th February, 2006 in Criminal Appeal No. 13 of 2002 by learned Additional District and Sessions Judge, 3rd Fast Track Court , Calcutta affirming the judgment and order dated 31st December, 2001 recording order of conviction against the petitioner for committing an offence within the meaning of Section 16(1)(a)(i) read with Section 7 of the Prevention of Food Adulteration Act, 1954.

Briefly stated the Food Inspector B.K.Bhowmik held an inspection on 7th January, 1999 at about 3.45 p.m. when he had been to Dilkhusa

Cabin at Mahatma Gandhi Road and found the article of food namely Acme Tomato Sause in closed and sealed bottle . Sample of the said food article weighing 700 gms was collected. One part of the said sample was sent to Public Analyst. The public analyst report indicated that the food item was adulterated. The Food Inspector thereafter submitted a report along with the Public analyst report to the Chief Health Inspector of Kolkata Municipal Corporation and the Local Health authority and the said authority accorded his consent to file prosecution before the appropriate Court. Thereafter the petition of complaint was filed before the learned Trial Court. Copy of the Public Analyst report was forwarded to Shri Utpal Bose in whose presence the food article was seized and sample was collected indicating his right to challenge the report of the Public Analyst. Learned trial Court after considering the evidence led by prosecution was pleased to record an order of conviction. The petitioner made an unsuccessful attempt in appeal to get the order reversed.

Learned counsel Amal Kumar Mukhopadhyay representing the petitioner strenuously argued that the petitioner was not given an opportunity to challenge the report of the public analyst. The public analyst was not brought to the Court to adduce evidence in

support of his report and no opportunity was given to the defence counsel to cross-examine the expert which caused prejudice to the petitioner. Even no independent witness was examined to substantiate the claim of the prosecution regarding correctness of taking sample from the place of occurrence.

Mr. Goutam Dinda vehemently opposed the prayer of Mr. Mukherjee and submits that the petitioner being the accused since did not avail the opportunity to challenge the report of public analyst. He is estopped from challenging the same before this Court and there is nothing to interfere with the judgment impugned.

Ext. 2 is the report of Public Analyst and the acknowledgement card indicates that report was sent to the petitioner under registered post with acknowledgement due and it was duly received by the petitioner on 8th April, 2002. The petitioner further decided not to exercise his right as given under Section 13(2) of the Prevention of Food Adulteration Act, 1954. Having accepted the report by his acquiescence, the petitioner has put a fetter on himself to turn round and challenge the report. Learned appellate Court discussed all the points of Mr. Mukherjee in course of argument and I do not find any reason to express my disagreement with the finding of the learned appellate

Court. There is no reason to discard the concurrent finding of learned Courts below. The order of conviction does not merit any interference.

Now coming to the sentencing part Mr. Mukherjee learned counsel for the petitioner submits that the petitioner is now close to 70 years and also suffered imprisonment for more than 80 days which may be considered to be sufficient punishment.

Under such circumstances, I am inclined to modify the sentence. The petitioner is directed to pay a sum of Rs. 25,000/- as fine out of which Rs. 10,000/- shall go to the High Court Legal Services Committee and remaining Rs. 15,000/- is to be paid to Kolkata Municipal Corporation which shall be used for the purpose of public health. The fine amount is to be paid within four weeks from date failing which the petitioner shall have to serve out sentence of six months' imprisonment subject to the provision of Section 428 of the Cr P C. Upon payment of fine the petitioner shall be discharged from the bail bonds and the learned trial Court shall have to release the title deed No. 03620 for the year 2012, claimed to have been deposited as a condition of bail, imposed upon the petitioner.

Copy of the order be sent down to learned trial Court for information and necessary action .

Urgent certified copy be made available , if applied, therefor, upon compliance of requisite formalities.

. (**Siddhartha Roy Chowdhury, J.**)