

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRREV No.508 of 2000

Tengunu Sahoo and another ***Petitioners***

-versus-

State of Orissa ***Opposite Party***

Advocates appeared in this case:

For Petitioner : Mr. Prabhav Behera, Advocate
on behalf of
Mr. S.C. Mohanty, Advocate
For Opposite Party : Mr. P.K. Muduli,
Additional Government Advocate

**CORAM:
THE CHIEF JUSTICE**

JUDGMENT
13.05.2022

Dr. S. Muralidhar, CJ.

1. The present revision petition is directed against a judgment dated 26th August 2000 passed by the learned Additional Sessions Judge, Balangir dismissing Criminal Appeal No.53/52 of 1997-99 whereby the judgment dated 26th November 1997 passed by the learned Judicial Magistrate First Class (JMFC), Loisingha convicting the Petitioners for the offences under Section 16(I)(a)(ii) of the Prevention of Food Adulteration Act (PFA Act) and sentencing them to undergo rigorous imprisonment (RI) for six months and pay a fine of Rs.500/- each and in default to undergo to R.I. for one month, was modified by reducing the term

of imprisonment to three months RI without altering the fine amount.

2. On 16th September 2000 while staying the realization of fine, this Court directed the Petitioners to be released on bail subject to the terms.

3. As noted in the order dated 6th May 2022 in the present revision petition, Petitioner No.2-Bhika Sahoo expired during the pendency of the present revision petition and the petition accordingly stood abated as far as he was concerned. It is therefore only Petitioner No.1-Tengunu Sahoo who is pursuing the present petition.

4. The case of the prosecution was that Chittaranjan Das (P.W.1), who was the Food Inspector, Bolangir visited Agalpur on 26th May 1994 along with the Food Peon Antabal Majhi (P.W.2). He inspected the Tiffin Stall of the Accused at around 10AM. He found that the accused Bhika Sahu (Petitioner No.2) had exposed Aluchap, Rasgola, Balesai, Gaja, Tea etc. for sale for human consumption. P.W.1 called persons from the locality to witness the inspection. One Laxmikanta Saraf (P.W.3) came to witness the inspection. Bhika Sahoo was asked to produce the food licence, but he could not do so.

5. After preparing a list of food articles exhibited for sale (Ext.1), P.W.1 put the signature of P.W.3 thereon. Later, he verified the

food license register. It was found that Petitioner No.1 had a food license which was valid up to 31st December 1988 which licence had not been renewed thereafter. Since both accused were selling food articles without license, they were found to have contravened Section 7(iii)(v) of the PFA Act and Rule 50 of the PFA Rules.

6. The local Health Authority-cum-CDMO after examining the documents granted sanction for filing of the prosecution case in the Court of the JMFC. The accused denied owning any Tiffin Stall at Agalpur or the visit of P.Ws.1 and 2 to their shop and claimed that the prosecution case was a false one.

7. Three witnesses were examined for the prosecution. P.Ws.1 and 2 were the Food Inspector and the Food Peon respectively whereas P.W.3 was a local witness who attended the inspection. The JMFC was satisfied that the prosecution had proved its case and proceeded, by the judgment dated 26th November 1997, to convict the two accused for the offence under Section 16 (I)(a)(ii) of the PFA Act in 2(c)CC No.116/1 of 1994-97 and sentenced them in the manner indicated hereinbefore.

8. It was argued before the appellate court that P.W.1 in his deposition stated that when he visited the shop Petitioner No.1-Tengunu was absent and only his father Bhika was present. The appellate court brushed aside this objection by stating that the inspection took place in 1994 whereas P.W.1 deposed three years later in April 1997 and therefore the discrepancy in his evidence

was not fatal to the prosecution case. It was further concluded by the appellate court that admittedly there was a relationship between the accused as son and father and that the licence in favour of Tengunu was valid only till 31st December, 1988.

9. The appellate court also discussed the wording of Section 7(iii) of the PFA Act which postulates that any person selling article or food without a licence would be committing an offence which is punishable under Section 16 (I)(a)(ii) of the PFA Act.

10. The crucial part of this entire discussion is regarding the presence of Tengunu at the time of inspection of the shop in question. If indeed Tengunu was not present, the question of his selling any food articles without a licence in the shop in question did not arise at all. Interestingly, in the subsequent period from 2nd July 1996 onwards the license for running a shop was issued in favour of another son of Bhika, viz., Indramani Sahoo.

11. Therefore, the evidence was totally insufficient as far as the role and presence of Tengunu Sahoo at the shop at the time of inspection is concerned.

12. As far as the present revision petition is concerned, it is only Tengunu Sahoo who remains in the fray and the evidence vis-à-vis him appears to be non-existent.

13. Consequently, the Court is satisfied that no case is made out for sustaining the conviction and sentence awarded to Tengunu Sahoo by the trial court which was affirmed by the appellate court. Consequently, vis-à-vis Tengunu Sahoo, the impugned judgment dated 26th November 1997 of the JMFC, Loisingha and the judgment dated 26th August 2000 of the ASJ, Balangir in Criminal Appeal No.53/52 of 1997-99 are hereby set aside. The bail bond of Tengunu Sahoo stands discharged.

14. The revision petition is disposed of in the above terms.

(S. Muralidhar)
Chief Justice

S.K. Guin/Sr. Stenographer

