

IN THE HIGH COURT OF ORISSA AT CUTTACK
CRREV No.458 of 2000

Manabhanjan Behera

....

Petitioner

Mr. Bikash Karna, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. P. K. Muduli, AGA

CORAM:
THE CHIEF JUSTICE

Order No.

ORDER
06.05.2022

13. 1. The present revision petition is directed against the judgment date 5th August, 2000 passed by the learned Sessions Judge, Keonjhar dismissing the Criminal Appeal No.54 of 1993 thereby affirming the conviction and sentence awarded by the learned SDJM., Keonjhar on 12th October, 1993 in 2 (c) CC No.197 of 1987 under Section 16(1) (a) (i) and (ii) of the Prevention of Food Adulteration Act ('PFA Act') sentencing the Petitioner to undergo rigorous imprisonment (RI) for one year and to pay a fine of Rs.1,000/-, in default to undergo RI for six months.
2. The background facts are that on 14th October, 1987 at 11 AM, the Food Inspector, Keonjhar visited the shop viz., Gayatri Shop in Keonjhar market and purchased from the present Petitioner i.e. the Accused, 750 grams of Mustard oil and 600 grams of Atta. The samples were prepared from the said articles in compliance with the PFA Act and were sent to the Public Analyst for examination.

Both samples were found to be adulterated. After obtaining sanction from the local health authority, the prosecution report was submitted against the present Accused.

3. To substantiate the charge, four witnesses were produced, which included the Food Inspector (P.W.3), an employee of Vigilance Department (P.W.1), the ADMO Public Health, who accompanied the Food Inspector to the shop of the Accused (P.W.2) and the Chief District Medical Officer (CDMO)-P.W.4.

4. In para 5 of the impugned appellate order, it is noted that although several points were raised, only three were urged in the appeal viz., (i) that Section 7 of the PFA Act, which states that “no person shall by himself or by any person on his behalf manufacture for sale, or store, sell or distribute” does not include the present Petitioner, who is not the owner of the shop in question; (ii) the sanction was not in accordance with law; and (iii) Rule 9 (e) of the PFA Rules was not complied with.

5. Before this Court also it is urged that the Petitioner not being the owner of the shop, could not have been prosecuted. The appellate Court has rightly repelled the said argument by pointing out the expression ‘person’ under Section 7 of the PFA Act would include anyone who sells adulterated food and, therefore, the ownership of the shop is immaterial.

6. The Court agrees with the above conclusion of the appellate Court and rejects the plea of the Petitioner in this regard.

7. As regards the non-grant of sanction by the appropriate authority, the appellate Court has referred to the evidence of

P.W.4, which shows that he actually went through the draft order and signed it. Exhibit 10 being the sanction order reveals that the designation of the Officer sanctioning the prosecution has been indicated as CDMO. With these findings being factual, the Court finds no reason to interfere.

8. As regards non-compliance of Rule 9(e) of the PFA Rules, the appellate Court has found that it is not mandatory and only directory. That point has not even been urged before this Court. Here certain fresh points regarding there being no independent witness to the samples which were taken and about the samples not being taken in a clean bottle have been urged. These were not urged either before the trial Court or the appellate Court and since they turn on facts, the Court declines to permit the Petitioner to raise them at this stage.

9. Having examined the concurrent judgments of the trial Court and the appellate Court, the Court is not inclined to interfere either with the conviction or the sentence awarded to the Petitioner.

10. The revision petition is accordingly dismissed. The interim order passed earlier stands vacated.

11. The Superintendent of the concerned Branch is directed to immediately communicate this order to the concerned Subordinate Court.

(Dr. S. Muralidhar)
Chief Justice