

13.03.2023
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SB
Ct. No.236

CRR 1071 of 2005

In the matter of : Suraj Kumar Gupta & Anr.

Mr. Himangshu De
Mr. Navanil De
Mr. Rajeswar Chakraborty
Mr. Srinjan Ghosh
Mr. Subhrajit Dey
Ms. Mamoni Mukherjee ... for the petitioners

Mr. N. P. Agarwala
Mr. Pratick Bose ... for the State

This criminal revision assails the judgement passed by the learned Additional Sessions Judge, 1st Fast Track Court, Paschim Midnapore in Criminal Appeal No. 25 of 2003 affirming thereby judgement and order of conviction passed by the learned Chief Judicial Magistrate, Midnapore in C.R. Case No. 1130 of 1992 on 30.7.2003.

At the outset, Ms. Mamoni Mukherjee, learned counsel representing the petitioner submits that Ramesh Gupta, petitioner no. 2 passed away on 02.5.2008. As a natural corollary the criminal proceeding has been abated as against the petitioner no. 2.

Briefly stated, the petitioner no. 1 was the owner of a shop under the style Ganga Zarda Bhandar at Golebazar, Khargpur, where he was selling "Hira Mitha Gulab". Inspector purchased six pieces of Pan Masala of Rs.30 against receipt. Thereafter, he divided those six containers into three equal parts, sealed and

labelled them and after obtaining the signature of Ramesh Gupta (since deceased) who was present at the relevant point of time in the shop samples were forwarded to local health authority for chemical examination by the public analysts. Local Health Authority thereafter received the report to the effect that the contents were adulterated. The local Health Authority thereafter gave direction to file a complaint against the accused persons and also to send a copy of the report of the public analyst to the accused persons. Thereafter the petition of complaint was filed. To crown success, prosecution examined two witnesses, the food inspector and Sreekumar Nanda, the Health Inspector.

Learned Trial Court after considering the evidence on record both oral and documentary was pleased to find the accused persons guilty to the charge under Section 16(1)(i) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the said Act) and sentenced them to undergo rigorous imprisonment for one year and to pay fine of Rs. 1,000/- each with default clause. The accused persons challenged the judgement passed by the learned Trial Court before the learned Sessions Judge, Midnapore in order to get the order of conviction reversed. The appeal was dismissed. Hence the application under consideration.

Assailing the impugned judgement, Ms. Mukherjee, learned counsel representing the petitioners submits that learned Appellate Court failed to appreciate the fact that the prosecution did not follow the statutory provision in its letter and spirit. According to Mr. Mukherjee, the alleged seizure was made but in absence of any

independent witness as laid down in subsection 7 of Section 10 of the said Act. That apart, learned appellate Court did not consider that the petitioners purchased articles seized and in support of such contention cash memo was produced before the learned Appellate Court to consider it as additional evidence under Section 391 of the Code of Criminal Procedure. But learned Appellate Court refused to admit the same as additional evidence. Had this document been considered, the learned Appellate Court would have extended the direction as laid down Subsection 2(b) of Section 19 of the said Act to the petitioners.

Ms. Mukherjee, further submits that there was infraction of provision of Rule 13(2) of the said Act as the sale was not considered by the learned Appellate Court.

I have perused the impugned judgement and I find that the food inspector did not comply with the provision of Subsection 7 of Section 10 of the said Act. Learned Appellate Court as well as learned Trial Court did not give any mess to such infraction on the ground that factum of seizure was never challenged. Sub section 2 of Section 19 Clause (b) enunciates;-

“that the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it.

A vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves.”

Learned Appellate Court did not agree to accept the document i.e., invoice dated 03.3.2005 produced by the accused persons with a prayer to admit to the same as additional evidence

on the ground that there was no mention of licence of the manufacturer, distributor, dealer or a written warranty in the prescribed format.

In my view the reason assigned by the learned Appellate Court in not considering the invoice produced by the appellants as additional evidence was not proper. Being a purchaser, the appellants cannot be said to have any control over the content of the invoice. The invoice speaks of the fact that certain quantity of containers containing Pan Masala was sold to Ganga Zarda Bhandar and the invoice does contain certain numbers relating to the UPST-CST apart from bill number. The materials were purchased from Kanpur, Uttar Pradesh and the invoice contained the address of the manufacturer. That apart under Subsection 2 of Section 13, it is incumbent upon the local health Authority to provide a copy of the report of the result of the analyst indicating their right to make an application to the Court within the period of ten days from the date of receipt of copy of the report to get the sample of article of food kept by the local (health) analyst by the Central Food Laboratory. There is nothing to suggest that provision of Subsection 2 of Section 13 was complied with in its letter and spirit. It is trite to say that when the statutory mandates certain things to be done in a particular manner, it is to be done in that manner only and not otherwise.

Therefore, in my humble opinion the impugned judgement suffers from infirmity. The order passed by the learned Additional Sessions Judge, 1st Fast Track Court, Paschim Midnapore in Criminal Appeal No. 25 of 2003 should not be allowed to remain in

force and be set aside, which I accordingly do. Resultantly the petitioner no. 1 is found not guilty to the charge and he stands acquitted.

The criminal revision is disposed of along with application, if any.

Let a copy of the order along with lower court record be sent down to the learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury, J.)