

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 1745 of 2005

TRINATH ROY
VS.
DEBASIS ROY

For the Petitioner : Mr. Y. J. Dastoor, Sr. Adv.
Mr. Prabir Majumder, Adv.
Mr. Snehansu Majumder, Adv.
Mr. Debraj Shil, Adv.

For the State : Ms. Sreyashee Biswas, Adv.

Hearing concluded on : 11th August, 2023

Judgement on : 24th August, 2023

Siddhartha Roy Chowdhury, J.:

1. This application under Section 401 read with Section 482 of the Code of Criminal Procedure is the manifestation of displeasure of the petitioner over the judgement and order dated 10th May, 2005 passed by learned Additional Sessions Judge, Fast Track Court-II, Krishnanagar, Nadia in Criminal Appeal No. 5 of 2004, thereby upholding the judgement and order of conviction passed by learned Chief Judicial Magistrate, Nadia in Case No. 407C of 1999 for commission of offence punishable under Section 16 (1)(a)(i) read with Section 7(i) of the Prevention of Food Adulteration Act, 1954.

2. Briefly stated, on 19th February, 1999 Sub-Divisional Officer, Krishnanagar had been to the grocery shop of Trinath Roy at Krishnanagar Station Road wherefrom he purchased 450 grams of turmeric powder by paying Rs. 27/-. Thereafter, having complied with Rule 12 of the Prevention of Food Adulteration Act he issued notice. Divided all turmeric powder into three equal parts and kept in empty clean and dry plastic container. The container was sealed, wrapped and labelled. One part of the sample was sent to Public Analyst, Naida and two other parts of the sample were sent to Local Health Authority, Sadar, Sub-Division, Nadia. The Public Analyst after due examination of the sample opined that the turmeric powder was adulterated. On the basis of the said report the accused person found to have committed an offence within the meaning of Section 16 (1)(a)(i) of the Prevention of Food Adulteration Act. He stood the charge and found guilty by the learned Chief Judicial Magistrate, Nadia. The accused/petitioner made an unsuccessful attempt to get the order of conviction reversed by preferring Criminal Appeal No. 5 of 2004.
3. Mr. Y. J. Dastoor, learned Senior Counsel for the petitioner submits that under Section 16A the offence under the Prevention of Food Adulteration Act, 1954 is required to be tried summarily but the provision of summary procedure was not adhered to by the learned Trial Court, as a result the entire trial got vitiated. To buttress his submission Mr. Dastoor places his reliance upon the judgement of Co-ordinate Bench of this Court in **Kanailal Das vs. The State of**

West Bengal reported in **2004 C Cr. LR (Cal) 311** and in the case of **Suresh Kumar Mittal & Anr. vs. State of West Bengal** reported in **2001 (1) CHN 494**. The Hon'ble Co-ordinate Bench while pronouncing the judgement relied upon the decision of Hon'ble Apex Court in **PAYARE LAL VS. STATE OF PUNJAB** reported in **AIR 1962 SC 690**, and held that the case which is required to be adjudicated by tried summary trial the provision of Section 326 (3) of Cr.P.C. is required to be followed, otherwise the irregularity caused in the breach of the said provision would vitiate the entire trial.

4. In this regard we can rely upon the judgement of Privy Council pronounced in the case of **NAZIR AHMED VS. THE KING-EMPEROR** reported in **AIR 1936 PC 253** wherein it is held :-

“The rule which applies is a different and not less well recognized rule-namely, that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.”

5. As I have pointed out, Section 16A of the Prevention of Food Adulteration Act, 1954 mandates summary trial of the offence committed under this Act. The trial of the present case since was conducted in the breach of the provision of Section 16A of the Prevention of Food Adulteration Act as well as in the breach of Section 326 of the Code of Criminal Procedure, the judgement passed by learned Chief Judicial Magistrate cannot be allowed to remain in force.

6. That apart Mr. Dastoor, learned Senior Counsel draws my attention to the fact that in the same transactions the Sub-Divisional Food Inspector seized mustard oil and based on the chemical examiners report filed Case No. 406C of 1999 against Trinath Roy. The said case was disposed of on 27th December, 2002 unlike this case learned Trial Court was pleased to record an order of acquittal on the ground that the seizure was not made in presence of independent witnesses and Section 10(7) of the Prevention of Food Adulteration Act was not complied with.
7. From the materials on record I find that admittedly three customers were available on the relevant point of time when the sample was collected. Therefore, the Inspector had no reason to draw sample in the beach of Section 10 (7) of the Act. Such action of the Food Inspector strikes at the root of the case of the prosecution.
8. That apart the accused person as a retailer and admittedly purchased the articles in question from the dealer. Therefore, in view of Section 19 Sub-Section 2 the retailer could not have been convicted by the learned Trial Court. These points since were not taken care of either by the learned Trial Court or by learned Appellate Court, the order impugned cannot be allowed to remain in force and should be set aside to avert the abuse of process of law, which I accordingly do.
9. Proceeding in Case No. 407C of 1999 together with the judgement and order passed by learned Additional District Judge, Fast Tract Court-II, Krishnanagar, Nadia in Criminal Appeal No. 5 of 2004 stands quashed.

10. The Criminal Revision is thus disposed of.
11. The petitioner Trinath Roy be discharged from bail bond.
12. Let a copy of this order be sent down to the learned trial court for information and necessary action.
13. Urgent photostat certified copy of this order be applied therefor, be given to the parties upon compliance of requisite number of formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)