

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 231 of 1997

**Corporation of Calcutta
-Vs-
Arun Kumar Agarwalla & Anr.**

For the Appellant	: Mr. Goutam Dinda Mr. Anindya Sundar Chatterjee
For the Respondent No.1	: Mr. Rajendra Chaturvedi
For the State	: Ms. Shreyashee Biswas
Heard on	: 06.02.2024, 08.04.2024
Judgment on	: 12.07.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order of acquittal dated 12.12.1996 passed by the Learned Senior Municipal Magistrate, Calcutta Metropolitan Magistrate & Judicial Magistrate, 1st Class, Calcutta in Case No.20D of 1990 and acquitting the accused persons of the charge under Sections 16(1)(a)(i)/7 of the Prevention of Food Adulteration Act, 1954.
2. The prosecution case precisely stated on 06.03.90, the Food Inspector visited a godown of Avishek Enterprise at 26, Lake Road, Calcutta, where he found the respondents themselves to be the proprietors. The Food Inspector purchased some Mustard Oil which was believed to be of inferior quality. Food Inspector asked two local witnesses to sign the seizure list and divided

the said sample in question into three equal parts and one part of the same was sent to the public analyst for analysis which was found to be adulterated.

3. After complying with the formalities a case was initiated under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act being Case No.20D of 1990 before the Senior Municipal Magistrate, Calcutta.
4. Prosecution examined 3 witnesses and exhibited certain documents.
5. The Learned Advocate for the appellant stated the prosecution was able to prove the ownership of the premises in which the go-down was located. From the evidence of PW-1, Dr. S.K. Basu, Food Inspector of Police it transpired that the accused was the owner of the seized material and it was also admitted in cross-examination of the witnesses. Ownership of the seized material had been proved beyond reasonable doubt.
6. It was further stated that from the written declaration of the accused dated 06.03.90 (exbt.-II) and also from the evidence of PW-1, PW-2 and PW-3 it revealed that accused Arun Kumar Agarwalla was the owner of Abhishek Enterprise and the Mustard Oil was sold to the Food Inspector (PW-1) from the go-down at 26, Lake Road. Moreover, the provisions under Section 11 of the Prevention of Food Adulteration Act did not require stirring of the mustard oil as the same had been a substance.
7. The Public Analyst Report mentioned the sample did not conform to the prescribed standard and the appellants had been erroneously acquitted.
8. Perused the evidence of the prosecution witnesses as well as the impugned judgment and considered the rival contentions of the Learned Advocate for the appellant-petitioner as well as the respondent-opposite party.

9. The prosecution has failed to prove the ownership of the disputed go-down through documents.
10. The prosecution further failed to prove that the respondents manufactured, sold, stocked and disputed the article of food through proper documents. The purported declaration had been rightly considered by the Learned Trial Court to be fabricated.
11. The prosecution could have taken steps to produce documents pertaining to the ownership of the go-down in favour of the appellants through proper investigation.
12. The prosecution failed to substantiate the genuineness of the document marked as Exhibit-11, i.e., the written declaration. The Learned Trial Court has vividly explained the procedure of stirring of the mustard oil for the purpose of acquiring the sample of the same to be sent for examination. The observation of the Learned Trial Court has been meticulous and reasoned and this Court is not inclined to interfere with the same.
13. Under the facts and circumstances, the instant criminal appeal being CRA 231 of 1997 is dismissed.
14. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
15. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)