Sitaram Son Of Laxminarayan Agarwal And ... vs State Of Maharashtra And Anr. on 15 February, 1979

Equivalent citations: AIR1979SC1569, 1979CRILJ1083, 1980SUPP(1)SCC162, 1979(11)UJ504(SC), AIR 1979 SUPREME COURT 1569, 1979 UJ (SC) 504, (1979) CURLJ(CCR) 210, 1979 CRILR(SC&MP) 251, 1979 (1) FAC 195, 1979 SCC(CRI) 623, 1979 FAJ 148, (1979) 1 FAC 195

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Bench: A.D. Koshal, S. Murtaza Fazal Ali

JUDGMENT

S. Murtaza Fazal Ali, J.

1. These two appeals by Special Leave are directed against a common judgment of the Bombay High Court by which the conviction of the appellants under Section 16(a)(1) under the Prevention of Food Adulteration Act was upheld in two separate cases. In case No. 837/1972, the sentence was two years whereas in case No. 830/1972, the sentence was one year. Both the sentences were directed to run concurrently.

2. A detailed narrative of the prosecution case has been set out in the judgment of the High Court and it is not necessary for us to repeat the same all over again. But briefly, the allegation of the prosecution was that P.W. 2 Ganeshrao Pandurangrao Mukhadkar, a lawyer had purchased among others Articles, ten kilograms of groundnut oil from the shop of the two appellants known as Balaji kirapa Stores. The purchase was made on 1 10 1970. The oil purchased from the appellants was used for cooking food in connection with a feast given to Mr., Justice Deshpande of the Bombay High Court. Soon after the feast was over, some of the guests developed stomache trouble and started vomitting. This ltd to the suspicion that there was something wrong with the oil in which the food was cooked. This feast was held on 4.11.1970. On 5. 11. 1970, P. W. 2 filed a complaint before the 'Chief Officer, Nandam Municipal Council and on receipt of the report, the Municipal Council directed Madhukar Marotirao Fode, the Food Inspector to make an enquiry into the matter. The Food Inspector contacted P.W 2 and thereafter took the sample of the remaining oil which was lying with P W. 2 and after complying with the necessary formalities, sent the same to Public Analyst. The Food Inspector then proceeded to the shop, demanded a sample of the oil sold by the appellants to P W 2 As that oil was not available, the appellant sold a sample from another oil which was known as Til Oil. The Food Inspector after preparing the usual sample sent that sample also for chemical analysis to the Public Analyst.

3. In case No. 830/1972 which related to the Til Oil, taken from the shop of the appellants, the report of the Analyst was that the oil contained argamone oil which was doubtless poisonous substance. In the other case i.e. 837 of 1972, the sample was taken from the house of P W. 2. The report of the Analyst was that it contained 50% of mineral oil. Thus both the samples were found to be adulterated and, accordingly, two separate complaints were filed by the Ford Inspector against the appellants. Due to certain formalities and infirmities, the two complaints were withdrawn and later on again filed after sometime. The appellants were tried under various provisions of the Prevention of Food Adulteration Act and convicted and sentenced as indicated above. The Magistrate as also the Sessions Judge upheld the conviction of the appellants. The appellants then the successfully filed revision petitions before the High Court. The revisions having been dismissed, the appellants have come to this Court by special leave.

4. Appearing in support of the appeal, Mr., Bhasme learned Counsel for the appellants has raised three points before us. In the first place, it was submitted that so far as the sample taken from the house of the Lawyer P.W. 2 is concerned no conviction can be recorded against the appellants because the prosecution has not at all excluded the possibility of the oil taken by the Food Inspector, having been tempered with between the time when it was purchased from the appellant on 1.10.1970 to the time when the sample was taken by the Food Inspector on 5.10.1970. In our opinion, this contention is well founded and must prevail. From the evidence led by the prosecution, it is manifestly clear that between 1.10.70 to 5.10 1970, the tin of oil purchased by P.W 2 bad changed number of hands. First it was taken by P.W.2 to his house and kept in his store room. Then it was transferred to the cook for the purpose of cooking the food at the Dharamshala. Thereafter it was brought back to the house of the appellant and kept there until the Food Inspector took the sample. Neither P.W. 2, nor any witness has even given any indication that the possibility of tampering with this oil during this period has been completely excluded or that the oil was kept at a place which was not accessible to any body but P.W 2 For these reasons, there fore, we find it extremely unsafe to convict the appellants in case No. 837/1972 under Section 16(a)(1) of the Prevention of Food Adulteration Act. Thus criminal Appeal No. 330/1975 is allowed and the appellants are acquitted of the charges framed against them.

5. As regards Criminal Appeal No. 331/1975 which arises out of case No. 830 of 1972, we do not find may merit in this appeal. Mr., Bhasme submitted that the prosecution was entitled to fail because the complaint filed by the Food Inspector was invalid as the conditions mentioned in Section 20 of the Food Adulteration Act had not been complied with. Section 20 of the Food Adulteration Act runs thus:

> No prosecution for an offence under this Act shall be instituted except by, or with the written consent of the Central Government or the State Government or a local authority or a person authorized in this behalf, by general or special order, by the Central Government or the State Government or a local authority.
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> It was argued that the authority with which the Food Inspector was argumed while taking sample from the appellants shop, was invalid and contrary to the resolution passed by the Municipal Council. It would be seen that amongst the various

authorities who had been empowered to grant authority to the Food Inspector under this Section, is a local authority which in this case was Municipal Council. Reliance was placed on resolution of the Municipal Council which runs thus; After full consideration on the subject matter noted above and in accordance with the recommendations of the Standing Committee made in the Resolution hearing No. 117 dated 16.11.1971, in exercise of the provisions of Section 20, Sub-section (1), the General Body of the Nanded Municipal Council unanimously empowers the below mentioned Health Inspectors (Who have been appointed as Food Inspectors) to prosecute in a Court of Law those who violate the provisions of the Prevention of Food Grains Adulteration Act of 1954 and the Rules framed thereunder by the Central Government and the State of Maharashtra. Like wise, the Central Body or the Nadad Municipal Council also unanimously resolves that before prosecuting in a Court of Law, the Health Inspectors concerned, should in matter, obtain previous permission from the Chief Officer of the Nanded Municipal Council and should file case in Court.

It was argued that if this resolution was to stand unchanged, then there would be no infirmity in the complaint. But it was however submitted that this resolution was later on amended and certain amendments were incorporated into it and the complaint filed by the Food Inspector was contrary to the amendments so made. The amended resolution appears at page 204 of the paper book and runs thus:

For the cases (arising) from this day, the dated 16.11.1971 were there. Hence a proposal should also be made for amending the said resolution being No. 67 dated 27.12.1971. The same condition exists even today. Hence this amendment should be made. Likewise, Point of order or a Ruling Given C.O.: It will be got amended.

Chairman : Mistakes will be rectified at any stage. The minutes of the previous meeting are confirmed unanimously.

Actually this is not an amended resolution but record of the proceedings of the General Body meeting of the Council which has accepted certain proposals made by the Standing Committee. Reliance was placed by the learned Counsel for the Appellant on the Words: "For the cases (arising from this day, the date 16-11-1971". It was contended that having regard to the date mentioned in the amended resolution, the original resolution must be deemed to be applicable to such complaints as were filed on or after 16-11-1971. In the instant case, it was argued that the offence was committed long before 16-11-1971. The authority given to the Food Inspector did not cover the present case and, therefore, the prosecution launched against the appellants was completely without jurisdiction. We have carefully considered the resolutions as also the words quoted above, particularly the date i.e. 16-11-1971, and we are unable to agree with the contention of the learned Counsel that these words relate to the date of the commission of the offence. In the first place it is obvious that a complaint would be filed not on the date when the offence is committed but after

the Food Inspector is satisfied that an offence has, in fact, been committed. In other words, even though the adulteration might have taken place earlier, the Food Inspector takes the sample, completes all the necessary formalities sends it to the Public Analyst, and gets the report of the Public Analyst. He is not in a position to decide whether or not any prosecution should be launched unless receives the report of the Public Analyst. Even if the report of the Public Analyst shows that there was some adulteration, but if the adulteration was of trivial or marginal nature, the Food Inspector may chose not to file any complaint The Municipal Council has not given a blanket authority to the Food Inspector to file complaint in all cases. Therefore, the date 16-11-1971 merely refers to the date when the Food Inspector decided to file a complaint regarding the case which is the subject matter of the same. If a different view of the interpretation of these resolutions is taken, it will lead to absurd results and will also defeat the very purpose of Section 20. Mr., Bhasme relied on a decision of the Bombay High Court where the Court had taken the view that the words contained in the amended resolution would indicate that the complaint could be filed only with respect to the offences committed on or after 16-11-1971 With due respect to the learned Judge, the interpretation put by the Bombay High Court on these resolutions is directly against the plain language employed in the resolution and runs counter to the very object and spirit of the same. Municipal Council was fully aware of the fact that the question of setting the machinery of law in motion by filing a complaint would arise only after the report of the Public Analyst that the offence of adulteration has been committed. Indeed, if the intention of the amended resolution was to authorise the Food Inspector to lodge complaint not after the case was complete but the moment the adulteration was detected, the Council would have said to expressly in the resolution. In these circumstances, therefore, we are unable to agree with the view of the Bombay High Court which according to was not correctly decided. In this view of the matter, the argument of Mr. Bhasma is over-ruled.

6. Lastly, it was submitted that so far as the appellant No. 2 concerned, he appears to be of 19 years of age. This was a fit case in which he should be dealt with under the Probation of Offenders Act. There are, however, some redeeming features which pursuade us to apply the provisions of Probation of Offenders Act in this particular case. Apart from the young age of the appellant No. 2 Papalal, It appears that he merely happened to be present in the shop accidently as bis father had gone to some other place and he sold the Articles to PW 2. The main person who was incharge of the business was the first appellant. Secondly, having regard to the young age of Papalal, if we send him back to jail, he is likely to become hardened criminal, and the present policy of penology is to reform criminal rather than punish him. For these reasons, therefore, we would suspend the sentence of Papalal, second appellant. While upholding his conviction we would release him on executing a personal bond of Rs. 2000/- to maintain good behavior for a period of two years failing which he will be called upon to serve the sentence imposed on him. As regards the first appellant, we do not see any reason to reduce the sentence, For these reasons, therefore, we dismiss Criminal Appeal No. 331 of 1975 with the modification made in the sentence of Papalal.