Raj Kumar vs The State Of Uttar Pradesh on 4 October, 2019

Equivalent citations: AIR 2019 SUPREME COURT 4902, 2019 (9) SCC 427, AIRONLINE 2019 SC 1171, (2019) 109 ALLCRIC 943, (2019) 13 SCALE 614, (2019) 203 ALLINDCAS 11, 2019 (3) SCC (CRI) 874, (2019) 3 UC 1621, (2019) 4 ALLCRILR 906, (2019) 4 KER LT 341, (2019) 4 PAT LJR 174, (2019) 4 RECCRIR 797, (2019) 76 OCR 721, 2019 CRILR(SC MAH GUJ) 1223, (2020) 1 BOMCR(CRI) 49, AIR 2020 SC(CRI) 408

Author: Deepak Gupta

Bench: Aniruddha Bose, Deepak Gupta

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1541 OF 2019
(@ SPECIAL LEAVE PETITION (CRL.) NO.6687 of 2017)

RAJ KUMAR …APPELLANT(S)

Versus

THE STATE OF UTTAR PRADESH …RESPONDENT(S)

JUDGMENT

Deepak Gupta, J.

Leave granted.

2. On 30.10.1995 a sample of milk was collected from the appellant by the Food Inspector. The same was sent to the Public Analyst who received the same on 02.11.1995. The sample was analysed and Milk Fat (MF for short) was found to be 4.6% and Milk Solid Non□Fat (MSNF for short) was 7.7%, against 15:35:09 IST Reason:

the prescribed standard of 8.5%. The appellant was prosecuted after obtaining consent of the Chief Medical Officer, and was convicted by trial court, which conviction was upheld by the Sessions Court and the High Court.

3. Learned counsel for the appellant raised number of issues.

The first was that there was delay in analysing the sample and, therefore, marginal shortfall in MSNF should be overlooked, since it would have been caused by the delay in testing the sample. We cannot accept this contention because there is no material on record to support this assertion. The appellant did not even deem it fit to summon the Public Analyst for cross□examination for this purpose. In similar circumstances where the delay in testing the samples was of 44 days, this Court in Shambhu Dayal vs. State of U. P.1 held that since the sample had been preserved by using formalin, as in the present case, the accused cannot get any benefit.

4. The second contention raised was that the provisions of Section 13(2)2 of the Prevention of Food Adulteration Act, 1954 1 (1979) 1 SCC 202 2 13.Report of public analyst.- (1) xxx xxx xxx (hereinafter referred to as the Act) were not complied with in as much as the appellant was not given an opportunity to send his second sample to the Central Food Laboratory (CFL for short) for analysis. This argument is also without any merit. All the courts have given a finding of fact that notice under Section 13(2) of the Act was sent to the appellant on 18.02.1996. The appellant did not choose to exercise his option to get his sample analysed by the CFL. Learned counsel for the appellant urges that this option was given to him three months after the sample had been taken and the second sample would have obviously become unfit for analysis. It is also contended that the complaint filed on 15.02.1996 was defective and the defects were removed only on 27.06.1996 and, thereafter, no option under Section 13(2) of the Act was given. This argument is totally without any merit. The appellant was given an option to have the second sample sent to the CFL when the Magistrate took cognizance of the complaint.

(2) On receipt of the report of the result of the analysis under sub- section (1) to the effect that the article of food is adulterated, the Local (Health) Authority shall, after the institution of prosecution against the persons from whom the sample of the article of food was taken and the person, if any, whose name, address and other particulars have been disclosed under section 14A, forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both of them may make an application to the court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory. The complaint may not have been complete in the sense that the list of witnesses was not filed but this, in any way, did not impact the right given to the appellant to get the second sample analysed from CFL. If the appellant had exercised his option and the Magistrate had not sent the second sample to the CFL, or if the CFL had reported that the sample is not fit for analysis, then alone the appellant could have got some benefit. The appellant waived his right by not applying to the Magistrate for sending the second sample for analysis to the CFL, and he cannot have any grievance in this behalf.

5. Another ground raised by the appellant is that he is illiterate and cannot sign, but the Food Inspector has obtained signatures. All the courts have given a finding that the signatures are of the appellant and this cannot be gone into in these proceedings.

6. Learned counsel for the appellant quoted a large number of judgments of various High Courts viz., Dattappa vs.Buldana Municipality3; Duli Chand vs. State of U.P4; Karunan vs. 3 AIR (38) 1951 Nagpur 191 41987 All.L.J.971 Food Inspector5; Ram Kumar vs. The State of Punjab6; Hans Raj vs. The State of Punjab7 and Ujagar Singh vs. The State of Punjab8, to submit that when there is a marginal variation from the standards prescribed, the courts should give benefit of doubt to the accused. It is contended that the quality of milk depends not only on the quality of food given to the cattle but also on the health of the cattle and marginal deficiencies can be caused due to natural causes beyond control of humans.

7. We are constrained to point out that out of the judgments cited by the learned counsel above, several have been overruled. Referring to the case of Karunan (supra), a Division Bench of the Kerala High Court in Food Inspector, Palghat Municipality vs. Karingarappully Co□op. Milk Society Ltd. & Ors. 9 has stated that the proposition laid down in Karunan's case is not good in law. The appellant has also placed reliance on Ujagar Singh's case (supra) as well as Ram Kumar's case (supra). Ram Kumar's case (supra) relied upon Ujagar Singh's case (supra) to 51985 KLT.523 6 1982 (I) F.A.C. 68 71980(II) F.A.C. 396 81980 (I) F.A.C. 432 9 1986 K.L.J. 29 conclude that the accused in that case is not guilty of adulteration. However, a Division Bench of the Punjab and Haryana High Court, in the case of State of Punjab vs. Ramesh Kumar10 relying on a Full Bench judgment of the High Court in State of Punjab vs. Teja Singh11 has held that Ujagar Singh's case (supra) is no longer good in law. It is unfortunate that at the Supreme Court level counsel cite judgments which have been overruled.

8. We are of the considered view that once standards are laid down by the Legislature then those standards have to be followed. In items like milk which is a primary food, under the Act, it is not necessary to also prove that the food item had become unfit for human consumption or injurious to health. In cases of food coming under the Act, it is not required to prove that article of food was injurious to health. In this case, the only question to be determined is whether the article complies with the standards laid down or not? If it fails to comply with the standards then it will have to be treated as an adulterated article 101984 Cri. L.J. 381 111976 Cri. L.J. 1648 even if it is not rendered injurious to health. Even marginal deviation from the prescribed standard cannot be ignored.

9. We may point out that this Court in M.V. Joshi vs. M.U. Shimpi and Anr.12 held as follows :□"7. ...Therefore, if the quality or purity of butter falls below the standard prescribed by the said rule or its constituents are in excess of the prescribed limits of variability, it shall be deemed to be adulterated within the meaning of S. 2 of the Act. If the prescribed standard is not attained, the statute treats such butter, by fiction, as an adulterated food, though in fact it is not adulterated. To put it in other words, by reason of the fiction, it is not permissible for an accused to prove that, though the standard prescribed is not attained, the article of food is in fact not adulterated. The non□conformity with the standard prescribed makes such butter an adulterated food. Section 7 of the Act prohibits the manufacture, sale, storage or distribution of such food...."

10. There were some observations in the judgment of this Court in Malwa Co□operative Milk Union Ltd., Indore & Ors. vs. Bihari Lal & Anr.13 decided on 14.08.1967, which were interpreted by some High Courts to mean that acquittal was justified in case there were marginal deficiencies in meeting the requirements. Dealing with the Malwa Co□operative case (supra) this Court held as follows in Municipal Committee, Amritsar vs. Hazara Singh14:□12AIR (48) 1961 SC 1494 131973 F.A.C. 375 14(1975) 1 SCC 794 "4. ...Indeed, this Court's decision cited above discloses that Hidayatullah, J. (as he then was) was not laying down the law that minimal deficiencies in the milk components justified acquittal in food adulteration cases...." Further, this Court quoted with approval, the judgment of the Full Bench of the Kerala High Court in State of Kerala vs. Parameswaran Pillai Vasudevan Nair15, which held as follows:□"13. The Act is a piece of consumer legislation. It regulates to some extent the consumer□supplier relations. Consumerists demand enforcement of discipline among the producers or manufacturers of food to ensure safety in the realm of food. The consumer's legitimate ignorance and his almost total dependence on the fairness and competence of those who supply his daily needs have made him a ready target for exploitation. The Act is intended to protect him against outright frauds.

14. The Act does not make a distinction between cases coming under it on the basis of the degree of adulteration. It does not provide for aggravation of offence based on the extent of contamination. The offence and punishment are the same whether the adulteration is great or small. Food pollution, even if it be only to the slightest extent, if continued in practice, would adversely affect the health of every man, woman and child in the country. Hence even marginal or border line variations of the prescribed standards under the Act are matters of serious concern for all and as public interests are involved in them, the maxim, De Minimis Non Curat Lex. law does not concern itself about trifles, does not apply to them.

15. The standard fixed under the Act is one that is certain. If it is varied to any extent the certainty of a general standard would be replaced by the vagaries of a fluctuating standard. The disadvantages of the resulting unpredictability, uncertainty and impossibility of arriving at fair and consistent decisions, are great.

151975 Cri. L.J. 97

16. The Act does not provide for exemption of marginal or border line variations of the standard from the operation of the Act. In such circumstances to condone such variations on the ground that they are negligible is virtually to alter the standard itself fixed under the Act.

17. The standards of qualities of the articles have been fixed by the Government under the provisions of the Act after due deliberation and after consulting a committee of competent men. It is for them to give due allowance for probable errors before fixing a standard. They may have done it also. There is no reason to assume otherwise. Therefore the conclusion is that for an article of food when a standard has been fixed under the Act it has to be observed in every detail."

11. In view of the above settled law, we hold that if the standards are not complied with, the Court is not justified in acquitting the accused charged with adulteration only on the ground that the

deficiency is marginal.

12. The last submission of the counsel was that this Court may follow what was done in Santosh Kumar vs. Municipal Corporation and Anr.16, where under similar circumstances the sentence of six months imprisonment was commuted and the State Government was directed to pass formal orders of commutation. It appears that the Bench in Santosh Kumar's case (supra) followed the judgment in N. Sukumaran Nair vs. 16(2000) 9 SCC 151 Food Inspector, Mavelikara17, and we find that in both these cases there is no discussion of scope and ambit of Section 433 of the Criminal Procedure Code, 1973 (for short the Cr.PC). We are, therefore, of the view that these judgments are per incuriam and do not lay down any legal proposition that provisions of Section 433 of Cr.PC can be invoked in such cases.

13. Section 433 of Cr.PC reads as follows :□"433. Power to commute sentence.–The appropriate Government may, without the consent of the person sentenced commute□

(a) a sentence of death, for any other punishment provided by the Indian Penal Code (45 of 1860);

(b) a sentence of imprisonment for life, for imprisonment for a term not exceeding fourteen years or for fine;

(c) a sentence of rigorous imprisonment, for simple imprisonment for any term to which that person might have been sentenced, or for fine;

(d) a sentence of simple imprisonment, for fine." A bare perusal of Section 433 of Cr.PC shows that the powers under Section 433 can only be exercised by the appropriate Government. These powers cannot be exercised by any court including this Court. At best, the court can recommend to the State Government that such power may be exercised but the power of the appropriate Government cannot be usurped by the 17 (1997) 9 SCC 101 courts and the Government cannot be directed to pass 'formal compliance order'. We are, therefore, not inclined to pass a similar order because that is beyond the jurisdiction of this Court.

14. It was also urged that we may exercise powers under Article 142 of the Constitution of India because the occurrence took place more than twenty years back. We are clearly of the view that the power under Article 142 cannot be exercised against the specific provision of law. Section 16(1)(a) of the Act lays down a minimum sentence of six months. Considering the bane of adulteration and the deleterious effect of adulteration and sub□standard food on the health of the citizens (especially children when milk is involved), the Legislature provided a minimum sentence of six months. Passage of time can be no excuse to award a sentence lower than the minimum.

15. Furthermore, the power under Article 142, in our considered view, cannot be used in total violation of the law. When a minimum sentence is prescribed by law, this Court cannot, in exercise of its power under Article 142, pass an order totally contrary to law. If such power could be used in a food adulteration case to impose a sentence lower than the minimum prescribed, then even in cases of murder and rape, this Court applying the same principles could impose a sentence less than the

minimum. This, in our opinion, is not the purpose of Article

142. We have no doubt in our mind that powers under Article 142 cannot be exercised in such a manner that they make a mockery of the law itself.

16. In view of the above discussion we find no merit in the case and the same is dismissed. Application(s), if any, shall also stand dismissed. The bail bonds of the accused-appellant are cancelled and he is directed to surrender within four weeks and undergo the remaining part of the sentence. A copy of this judgment be forwarded to the trial court so that if the appellant does not surrender, appropriate action be taken against him.

.....J. (Deepak Gupta) .....J. (Aniruddha Bose) New Delhi October 04, 2019