

MOHINDER KUMAR
v.
STATE OF HARYANA

A

JANUARY 15, 2004

[K.G. BALAKRISHNAN AND B.N. SRIKRISHNA, JJ.]

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Prevention of Food Adulteration Act, 1954:

S. 7 r/w s.16, ss. 19(3) and 20A—Prosecution u/s 7 read with s. 16—Salt of a particular brand sold by shopkeeper—Found deficient of requisite quantity of iodine—Prosecution of shopkeeper—Accused contending that he purchased the article from the appellant, the original vendor—Prosecution of appellant—First accused acquitted and appellant convicted by trial court—Conviction and sentence confirmed by High Court—Held, the trial court proceeded on the assumption that the appellant admitted genuineness of the Bill and that he conceded that he had sold the adulterated article to the first accused—But the evidence on record shows that the bill produced by the first accused was standing in the name of a third person and there is no evidence to show as to who was that person—In the absence of specific evidence as to whom invoice was issued and to whom adulterated article was sold by the appellant it is difficult to prove complicity of the appellant—Unfortunately, neither the trial court nor the appellant adverted to this aspect of the case—Appellate court had ample power to invoke section 20(A) of the Act to prosecute the person who was really guilty of the offence punishable under the Act—As the genuineness of the bill is not proved before the court, the conviction and sentence against the appellant is not sustainable under the law—Conviction and sentence set aside.

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 760 of 1997.

From the Judgment and Order dated 23.7.1997 of the Punjab and Haryana High Court in CrI. R. No. 637 of 1997.

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R.S. Jain, Durgainder Singh and S. Singh for the Appellant.

D.P. Singh, V.K. Garg and Ms. A. Toor for the Respondent.

The following Order of the Court was delivered :

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- A** This appeal is against the conviction and sentence of the appellant for the offence punishable under section 7 read with section 16 of the Food Adulteration Act. The appellant was prosecuted before the Chief Judicial Magistrate, Jagadhari along with first accused Naresh Kumar and he was found guilty of the charge against him. The trial Magistrate acquitted the first accused Naresh Kumar and the present appellant was found guilty and was sentenced to undergo the imprisonment for a period of one year with fine of Rs. 1000 in default further imprisonment for a period of 3 months. He preferred an appeal before the Sessions Court which confirmed the conviction and sentence. The revision filed before the High Court was dismissed in-limine.
- B**
- C** The prosecution case is that on 24.2.1988 PW-1 Food Inspector of Chhachhrauli along with Doctor working in the local authority visited the shop of 1st accused Naresh Kumar and purchased 5 packets of Iodized Tata Salt. He prepared samples in accordance with law and sent the same for examination by the Public Analyst. Report of the analyst indicated that the sample did not conform to the standard prescribed as it did not contain iodine. After the receipt of the report of the Public Analyst the first accused was informed of the result. Thereafter, first accused filed application for sending remaining sample for the examination by the Central Food Laboratory. The report from the Central Food Laboratory also disclosed that the sample did not conform to the standard prescribed under the Act and the Rules as it contained only 5.0 ppm of iodine as against the required quantity of 15.0 ppm of iodine. The Food Inspector launched prosecution against the first accused. At the time of purchase he had served the first accused with Form-VI notice and in the notice it was indicated that Iodized Tata Salt purchase from M/s. Ajudhia Prasad Kapoor marketing Maharaja Agarsen Marg, Yamuna Nagar (Ambala) against Bill No. 4987 dated 27.1.1998. But Food Inspector did not implead original vendor as an accused. During the course of the trial, first accused Naresh Kumar filed application under section 14-A of the Food Adulteration Act and furnished the address and other particulars of the present appellant. The appellant herein was thus impleaded as the second accused.
- D**
- E**
- F**
- G** On the side of the prosecution PW-1 the Food Inspector and PW-2 Doctor, who accompanied the PW-1 were examined. During the course of the cross-examination of PW-1 the Bill No. 4987 allegedly issued by M/s. Ajudhia Prasad Kapoor Chand was marked as Ex. PA. The report of the local authority as well as the report of Central Food Laboratory showed that the sample did not contain the required quantity of Iodine.
- H**

The first accused by way of defence relied on the invoice allegedly issued by the appellant. But the invoice allegedly issued by the appellant herein was in the name of one Darshan Lal. It is pertinent to note that the first accused Naresh Kumar did not adduce any evidence to show that he had purchased the adulterated article from the appellant under the said invoice. Though section 19(3) of the Act is an enabling provision by which accused could have given evidence by appearing as a witness. When the present appellant was questioned under section, 313, Cr.P.C. he gave a statement to the following effect:

“I have not sold any salt to accused Naresh Kumar vide Bill No. 4987 till the day. The salt sold vide Bill No. 4987 dt. 27.1.1988 is not Tata Salt. If Naresh Kumar have made any such statement to F.I. the same is wrong and devoid of any basis.”

The Trial Court proceeded on the assumption that the appellant admitted the genuineness of the Bill No. 4987 and that he conceded that he had sold the Tata Salt to the first accused Naresh Kumar but the evidence on record shows that the bill produced by the first accused Naresh Kumar was standing in the name of one Darshan Lal and there is no evidence to show that who was Darshan Lal. That apart, in the bill it is not specifically stated that it was sold in packed condition. Only the weight of the article is shown as 3, presumably 3 quintal and the total amount paid is Rs. 375, the value being Rs. 125 per quintal. Had Naresh Kumar chosen to give evidence to explain the invoice obtained by him the matter would have been different. In the absence of specific evidence as to whom invoice was issued and to whom adulterated article was sold by the appellant it is difficult to prove complicity of the appellant. Unfortunately, neither the Trial Court nor the appellate Court adverted to this aspect of the case. The Court had ample power to invoke section 20(A) of the Act to prosecute the person who was really guilty of the offence punishable under the Act.

The conviction of the appellant was solely based on the invoice allegedly issued to Darshan Lal. As the genuinences or that bill of the invoice is not proved before the Court, the conviction and sentence against the appellant is not sustainable under the law. We set aside the conviction and sentence and allow the appeal. The bail bond executed by the appellant shall stand cancelled.

The appeal is disposed of.