

Deepak Sarkar and Another

Vs

State of Bihar and Another

Criminal Appeal No. 363 of 1975

(P.N. Bhagwati, A.C. Gupta, P.N. Shinghal JJ)

09.12.1976

JUDGMENT

BHAGWATI, J. –

This appeal by special leave arises out of an application made by the appellants under Section 561A of the Code of Criminal Procedure, 1898 for quashing a criminal prosecution pending against them in the court of Munsif Magistrate, First Class, Dhanbad under the Prevention of Food Adulteration Act, 1954. Two contentions were raised on behalf of the appellants challenging the validity of the criminal prosecution, but both of them were negatived by the High Court. The appellants also sought to raise at the hearing of the application before the High Court a further contention, namely, that Jharia Mines Board of Health was not a local authority within the meaning of Section 2(viii) of the Act and hence the Food Inspector attached to the Jharia Mines Board of Health was not entitled to launch a prosecution against the appellants and no cognizance of the complaint lodged by him could be taken under Act. This contention was, however, not allowed to be raised by the High Court since it had not been taken in the petition and was sought to be urged for the first time at the hearing of the application. Now it is true that this contention was not raised in the application, but that is no reasons why it should not have been allowed to be taken in argument at the hearing of the application. We accordingly allow the appeal, set aside the order made by the High Court and remand the case to the High Court so that the High Court may hear the parties on this further contention and dispose of the application before it. We may make it clear that the two contentions which were urged before the High Court and negatived by it in the judgment under appeal will not be allowed to be raised again before the High Court. We hope and trust that the High Court will dispose of the application at an early date in the light of the observations contained in this judgment.

</html