

Dhan Kumar

Vs

Municipal Corporation of Delhi

Criminal Appeal No. 276 of 1974

(R. S. Sarkaria, P. S. Kailasam JJ)

20.02.1979

JUDGMENT

SARKARIA, J. –

1. The appellant was tried and convicted under Section 7/16 of the Prevention of Food Adulteration Act, for selling adulterated rocksalt, by the Judicial Magistrate, First Class, Delhi, and sentenced to six months' rigorous imprisonment and a fine of Rs. 1000 on March 17, 1971. The Additional Sessions Judge on September 6, 1971, accepted his appeal and set aside his conviction and sentence. Against that acquittal an appeal was filed in the High Court of Delhi which reversed the acquittal and convicted the appellant, restoring the sentence awarded by the Judicial Magistrate.

2. Dhan Kumar has now come in appeal after obtaining special leave under Article 136 of the Constitution, to this Court.

3. The prosecution case was as follows :

4. On May 30, 1970, at about 11.30 a.m., Shri R. P. Singh, Food Inspector, found five bags of white (rock) salt belonging to the appellant lying on the footpath near the entrance to Munshi Ram Flour Mills. The appellant, Dhan Kumar, was there. The Food Inspector, Shri R. P. Singh, then in the presence of Shri O. P. Sehgal (PW 3) another Food Inspector, Bishamber Dayal (PW 4) an employee of the said Mills, and Police Constable Jungpal Singh (DW 4) purchased 600 grams of that salt for five paise for the purpose of getting the same analysed, and obtained the receipt (Ex. P-A) from the appellant. A notice (Ex. P-B) was given by the Food Inspector to the appellant, intimating that the sample would be got analysed. The sample was divided into three parts which were put into three separate bottles and sealed. One sealed bottle was handed over to the accused and the remaining two were retained by the Food Inspector. Shri R. P. Singh prepared the inventory (Ex. P-C) in the presence of the said witnesses and obtained the signature of the appellant thereon. This inventory was attested by the witnesses who were present there including Police Constable Jungpal Singh (DW 4).

5. One of the samples was sent to the Public Analyst, together with memo (Ex. P-D), for examination. The Public Analyst made the report (Ex. P-E) to the effect, that the sample of white salt was adulterated due to 3.31 excess of matter insoluble in water and due to the presence of extraneous matter like grit.

6. At the close of the prosecution case, the accused was examined under Section 342 of the Code of Criminal Procedure. He admitted that the Food Inspector had taken a sample of salt from him at the

said time and place; but added that the bags of salt were not meant for sale but had been brought there to Munshi Ram Flour Mills for getting the same grinded after cleaning and washing. He further stated that the sample had been taken by the Food Inspector under threat of being arrested by the Police Constable who had been called to the spot.

7. The Judicial Magistrate rejected the defence plea. The Additional Sessions Judge, in appeal, accepted it with these findings :

(a) That the salt was not lying stored for sale, but had been brought there to the Mill for the purpose of having the same grinded after cleaning.

(b) The sample was obtained under coercion and threat. The transaction of so obtaining the sample was not a voluntary sale by the appellant, notwithstanding the fact that he accepted five paise as consideration of the sample obtained.

8. In arriving at the finding (a) Additional Sessions Judge did not accept the ipse dixit of Shri R. P. Singh (PW 1), to the effect, that the appellant was actually selling the salt from the bags, there, for the reason that there was no evidence, whatever, that the appellant had, apart from the lifting of the sample by the Food Inspector, sold salt at that place to any one. The learned Additional Sessions Judge also noticed several tell-tale circumstances, pointing to the conclusion that the bags of salt were not lying there for sale. The first of such circumstances, appearing in the evidence of the other Food Inspector (PW 3) was that no scale or balance was found lying at the spot. The second admitted circumstance which, according to the Sessions Judge, was a pointer to the same conclusion was that the shop and the residential house of the appellant were situated at a distance from the Mill near which the bags of salt were lying. His shop is in Subhash Nagar, while his house is suited in Regarpura No. 2. The third admitted circumstance taken into consideration by the Sessions Judge was, that two or three days prior to the lifting of this sample, the appellant had told PW 4 who is an employee of the Munshi Ram Flour Mill, that the former would bring his salt to their Mill for grinding. In this connection, PW 4 had further stated that they had been grinding rock-salt, also at their flour Mill, after cleaning and washing the same.

9. In support of finding (a) the Additional Sessions Judge further relied upon the non-denial by Shri O. P. Sehgal, Food Inspector (PW 3) of the defence plea when it was put to that witness in cross-examination. It was put to PW 3 that at the time of lifting the sample, the appellant told the Food Inspector that salt was not for sale but had been brought for cleaning and grinding to the Mill. The witness did not deny this suggestion but simply stated that he did not remember, if the accused had said so.

10. For its findings (a) and (b), the Additional Sessions Judge further relied on the evidence of Constable Jungpal Singh (DW 4). This Constable is an attesting witness of the documents which were prepared by the Food Inspector at the time of lifting the sample. He was cited as a prosecution witness, but was not examined. He was therefore examined by the accused. DW 4 stated that the appellant had told the Food Inspector at the spot, that the salt had been brought there from the Railway Station and the accused refused to give sample from that salt, but the Food Inspector threatened him that if he did not do so, he would be handed over to the police.

11. In arriving at finding (b), the Additional Sessions Judge further observed that "there was nothing on the record to show that the appellant had asked for five paise as the price of 600 grams of salt or how the Food Inspector thought of paying five paise at the price thereof". The Sessions Judge

further noticed that apart from the oral evidence, there was some writing on the inventory (Ex. PC) in the hand of the appellant which had subsequently been deleted. The deleted words as are 'Bori ka saaf'. These words, in the opinion of the Sessions Judge, indicate that the appellant wanted to make a note on the inventory (Ex. PC) viz. that the salt in the bags was to be got cleaned etc., before putting it to sale.

12. On the basis of the above reasoning and appreciation of evidence, the Additional Sessions Judge acquitted Dhan Kumar, appellant.

13. The learned Judges of the High Court did not deal with all the reasons given and all the evidence relied upon by the Sessions Judge in support of the order of acquittal. They did not at all touch the circumstantial evidence which, according to the Additional Sessions Judge, was a clear pointer to the conclusion that the salt in bags had been brought to the mill for grinding and was not lying there for sale. Nor did they consider the effect of the failure of the Food Inspector (PW 3) to refute the defence plea when it was specifically put to him in cross-examination. They culled out from the evidence of Bishamber Dayal (PW 4) that portion wherein he had said that the accused did not tell the Food Inspector that he had brought the salt for being grinded at the mill. The learned Judges, however, overlooked that the witness had further stated that two or three days before this occurrence, the accused had told the witness that he would be bringing salt to their mill for cleaning and grinding. The High Court has further observed that PW 4, in fact, stated that the accused was carrying the bags of salt in a 'tempo' "and had taken the tempo ahead of the Flour Mills". From a perusal of the copy of the statement of PW 4 now furnished to us, it appears that the witness did not say that the tempo with the load of salt had been taken "ahead of the Flour Mills" when it went out of order. On the contrary, what the witness had stated was, that the salt "was unloaded at that place as the tempo went out of order". In other words, according to the witness, the tempo went out of order just at or near the place where the salt in bags was lying outside the mill.

14. The High Court did not advert to that portion of the evidence of PW 4 also wherein he had stated that "salt is also grinded in their mill", and that the salt brought at the mill for grinding is first cleaned and then grinded. These portions of the evidence of PW 4 which have not been noticed by the High Court while probabilising the defence plea, viz., that the salt was there not for sale but for grinding at the mill, undermine the veracity of the isolated version of the witness culled out by the High Court.

15. In support of their conclusion that the plea of the accused regarding the salt being kept there not for sale but for grinding, was an afterthought, the High Court repeatedly observed that Jungpal Singh (DW 4) had stated that the accused "had told the Food Inspector that he had not brought the salt for getting it grinded but that the truckwalla had unloaded the bags of the salt at the spot wherefrom the samples were lifted". We have perused the copy of the deposition of Jungpal Singh (DW 4) placed before us. We do not find any such statement therein, which the High Court has attributed to the witness. In order to verify whether the copy of the statement of DW 4 is correct, we wanted to peruse the original record. We were told by the learned counsel on both sides, that the original record had been destroyed by fire, and the entire record of the case, had therefore, been 'reconstructed'. Even so, there is reason to suspect that it was through some mistake or error that the High Court has ascribed this statement to DW 4. The Additional Sessions Judge has observed in his judgment that Constable Jungpal Singh(DW 4), "has stated that the appellant had told the Food Inspector that the salt was not meant for sale". The High Court has not said in its judgment that the Additional Sessions Judge had misquoted or misread the evidence of DW 4 on this point.

16. Be that as it may, the view of the evidence taken by the Additional Sessions Judge could not be said to be unreasonable. It is well settled that if two views of the evidence are reasonably possible, one favouring acquittal and the other conviction, the High Court should not reverse the order of acquittal.

17. There has been a non-observance of this salutary rule of practice.

18. These, then, are the reasons which we now give in support of our order dated February 7, 1979, by which we allowed Dhan Kumar's appeal and acquitted him.

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