

SATYA NARAYAN AGARWAL

v.

STATE OF ASSAM

APRIL 26, 2007

[DR. ARIJIT PASAYAT AND D.K. JAIN, JJ.]

Code of Criminal Procedure, 1973; Section 433/Prevention of Food Adulteration Act, 1954; Ss. 7 and 16(1):

Food adulteration—Chilli powder—Adulterated—Trial Court found the accused shopkeeper guilty of committing the offence punishable under Section 7 r/w Section 16(1) of the 1954 Act and sentenced him accordingly—Appeal was dismissed by the first appellate Court—Second appeal dismissed by High Court—Application u/s/ 433 dismissed by the appropriate Government—Appeal—Held: Dismissed on merit—Appellant may, if so advised, challenge the order passed by the State Government u/s. 433 Cr.P.C.

A sample of chilli powder was collected by the food Inspector from the shop of the appellant. The sample was found to be adulterated. The trial Court convicted the appellant for offence punishable under Section 7 read with section 16(1) of the Prevention of Food Adulteration Act and sentenced him to imprisonment for six months and to pay a fine of Rs.1,000/-. An appeal preferred against the order of the trial Court was dismissed by the Court of Sessions. The Revision Petition was dismissed by the Single Judge of the High Court. Hence the present appeal.

Appellant contended that the High Court should have directed release of the appellant on probation, or instead of custodial sentence, sentence of fine could have been imposed.

Dismissing the appeal, the Court

HELD: 1.1. In the instant case, it is pointed out by the counsel for the respondent that an application in terms of Section 433 of the Code was made which has been rejected. There is no merit in this appeal which is accordingly dismissed. However, the appellant, may, if so advised, challenge the order stated

A to have been passed by the State Government under Section 433 of the Code.
[Paras 11 and 12] [672-B-C]

N. Sukumaran Nair v. Food Inspector, Mavelikara [1997] 9 SCC 101 and *Santosh Kumar v. Municipal Corporation & Anr.*, [2000] 9 SCC 151, referred to.

B CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 629 of 2007.

From the Judgment and Order dated 22.8.2001 in the High Court of Assam at Gauhati in Cr. R.P. No. 208/93.

C Nilofar Qureshi, Shankar Divate and Vipin Kumar, Mumtaz Ahmad for the Appellant.

J.R. Luwang, (for M/s Corporate Law Group) for the Respondent.

D The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

E 2. Challenge in this appeal is to the judgment rendered by a learned Single Judge of the Guwahati High Court dismissing the revision petition filed by the appellant.

3. Background facts in a nutshell are as follows:

F 4. The appellant was found guilty of offences punishable under Section 7 read with Section 16(1) of the Prevention of Food Adulteration Act, 1954 (in short the 'Act') by the trial Court. First Appellate Court dismissed the appeal. The revision, as noted above, was dismissed by the High Court.

5. Background facts in a nutshell are as follows:

G On 20.5.1987 the Food Inspector collected sample of chilli powder from the shop of the appellant. The sample was sent for analysis to the prescribed laboratory and on such analysis it was found to be adulterated. The appellant was tried. On conclusion of the trial, the trial Court convicted the appellant for offences punishable under Section 7 read with Section 16(1) of the Act and sentenced him to imprisonment for six months and to pay a fine of Rs.1,000/-.

H

6. An appeal was preferred before the learned Sessions Judge, Dibrugarh, which was dismissed. As noted above, the revision before the learned Single Judge was also dismissed. A

7. Learned counsel for the appellant re-iterated the submissions made before the courts below and submitted that it is a case of misbranding and, therefore, it is not a case where minimum sentence is to be imposed. The High Court did not accept the contention. It was of the view that it is not a case of misbranding. Additionally, it was submitted that the High Court should have directed release of the appellant on probation, or instead of custodial sentence, sentence of fine could have been imposed. B

8. Learned counsel for the respondent-State on the other hand supported the judgment. It is to be noted that the High Court found that there was no scope for interference. However, it enhanced the fine to Rs.5,000/- and permitted the appellant to move the State Government under Section 433 of the Code of Criminal Procedure, 1973 (in short the 'Code'). C

9. In *N. Sukumaran Nair v. Food Inspector, Mavelikara*, [1997] 9 SCC 101 this Court observed as follows: D

“The offence took place in the year 1984. The appellant has been awarded six months' simple imprisonment and has also been ordered to pay a fine of Rs.1,000/. Under clause (d) of Section 433 of the Code of Criminal Procedure, “the appropriate government” is empowered to commute the sentence of simple imprisonment for fine. We think that this would be an appropriate case for commutation of sentence where almost a decade has gone by. We, therefore, direct the appellant to deposit in the trial Court a sum of Rs.6000 as fine in commutation of the sentence of six months' simple imprisonment within a period of six weeks from today and intimate to the appropriate Government that such fine has been deposited. On deposit of such fine, the State Government may formalize the matter by passing appropriate orders under clause (d) of Section 433 of the Code of Criminal Procedure.” E F

10. In *Santosh Kumar v. Municipal Corporation and Anr.*, [2000] 9 SCC 151, similar view was expressed in the following terms: G

“We, therefore, direct the appellant to deposit in the trial court a sum of Rs.10,000/- as fine in commutation of the sentence of 6 months' imprisonment within a period of 6 weeks from today and intimate to H

A the appropriate Government that such fine has been deposited. On deposit of the fine the State Government may formalize the matter by passing appropriate order under clause (d) of Section 433 of the Code of Criminal Procedure. In the meanwhile the appellant will remain on bail.”

B 11. It is to be noted that in both the cases there was no direction to formalize the sentence. On the other hand it was clearly noted that the State Government may formalize the sentence. It is pointed out by learned counsel for the respondent that an application in terms of Section 433 of the Code was made which has been rejected.

C 12. We find no merit in this appeal which is accordingly dismissed. However, the appellant, may, if so advised, challenge the order stated to have been passed by the State Government under Section 433 of the Code.

S.K.S.

Appeal dismissed.