

APPELLATE CRIMINAL.

Before Falshaw and Kapur JJ.

THE STATE,—Appellant

versus

ISHAR DAS AND OTHERS,—Respondents.

Criminal Appeal Case No. 657 of 1954.

1956
 ———
 March 8th

Code of Criminal Procedure (Act V of 1898)—Section, 264—Summary Trial—Order of Acquittal—Duty of Court as to quantum of evidence stated.

Punjab Pure Food Act (VIII of 1929)—Punjab Pure Food Rules, 1930—Addition of words “more than 20 per cent of stalks” by notification No. 13747-3-HB-52/35720, dated 29th December, 1951, construction of.

On 11th March, 1954, Food Inspector took sample of tea from the shop of I. D. from a container having no label that it was adulterated as required by Rule 18. Sample on analysis found to contain stalk more than 20 per cent as provided by the rules. F. I. registered a case under the Punjab Pure Food Act, against I. D. The Magistrate without recording evidence in the summary register acquitted I. D. On appeal by the State.

Held, that though a case is tried in a summary way it is incumbent on the Magistrate to put on record sufficient evidence to justify his order of acquittal.

Held also, that the words “and more than 20 per cent of stalks” by notification No. 1347-3-HB-52/35720, dated 29th December, 1952, must be read disjunctively and not conjunctively.

Appeal from the order of Shri Amolak Singh, M.I.C., Moga, dated the 16th August, 1954, acquitting the respondent.

K. S. CHAWLA, Assistant Advocate-General, for Appellant.

H. R. SODHI, for Respondent.

JUDGMENT.

KAPUR, J. This is an appeal against acquittal of Ishar Das under section 13 of the Punjab Pure Food Act.

Kapur, J.

On the 11th March, 1954, the Food Inspector took a sample of tea from the shop of Ishar Das out of a container which had about 100 lbs. of tea and had no label that the tea was adulterated as required under the provision of Rule 18. That sample was sent to the Public-Analyst for analysis and he found stalks to be 36 per cent which is more than 20 per cent as is provided under the amended rules made on the 29th December, 1952. It appears that no evidence was recorded because nothing is shown in the extract from the summary register under the column "summary of evidence for prosecution" and the whole of the judgment of the learned Magistrate consists of these words —

"No case made out under section 13, Punjab Pure Food Act, Acquitted."

As I have said, it is not shown in the extract from the summary register as to what the summary of the evidence of the prosecution witnesses or the other witnesses was. There is nothing from which the appellate Court can come to the conclusion as to what the evidence was and why the accused has been acquitted.

Counsel for the accused made two submissions. One was that no reason need be given when the Magistrate acquits. They are only required when he convicts and the learned counsel relied upon *Emperor v. Sagnomel Bhoijrai* (1), That was a case which came to the Chief

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Court on a reference, but with respect I am unable to agree with the reasons given in that Judgment, and moreover in the present case there is nothing to show whether any evidence was recorded by the learned Magistrate or considered by him. In *Ainuddi Sheikh v. Queen Empress*, (1), it was held that though a case had been tried in a summary way, it was incumbent upon the Magistrate to put on record sufficient evidence to justify his order and in *Emperor v. Akbarali* (2), a similar view was taken. In my opinion, and I say so with deference that the view taken in the Calcutta and the Oudh cases is correct and would apply to the facts of the present case. The section which applies to the facts of the present case is 264 and not 263, Criminal Procedure Code, because under section 414, Criminal Procedure Code, no appeal lies from summary conviction where the sentence is a fine not exceeding Rs. 200. I would, therefore, overrule the submission of the counsel for the respondent.

In regard to the rules the addition of the words "and more than 20 per cent of stalks" by notification No. 13747-3HB-52/35720, dated the 29th December, 1952, must be read disjunctively and not conjunctively, and in my opinion this plea is also not available to the accused.

As there has been no proper trial in the present case, I would allow the appeal, set aside the order of acquittal and send back the case to the learned Magistrate to try it in accordance with law.

Falshaw, J.

FALSHAW, J. I agree

(1) I.L.R. 27 Cal. 450

(2) A.I.R. 1934 Oudh 177