

(10) The Act received the assent of the President on the 16th September, 1985, and was published in the Gazette of India, Extraordinary, Part II, Section 3(1), No. 75, dated September 16, 1985 and this recovery took place on 29th April, 1986. No doubt, according to section 74 of the Act, every officer or other employee of the Government exercising or performing, immediately before the commencement of this Act, any powers or duties with respect to any matters provided for in this Act, shall, on such commencement, be deemed to have been appointed under the relevant provisions of this Act to the same post and with the same designation as he was holding immediately before such commencement, but this provision is only a transitional provision and it cannot be taken advantage of for any period to the discretion of the officer, the Central Government or the State Government. The very word 'transitional' used in the heading of this section leaves no doubt that this provision was meant only for a very limited period to enable the Central Government or the State Government to specially authorise officers by general or special orders at an early date.

(11) Even otherwise, section 74 does not lay down that the mandatory provisions other than the provisions of sections 41 and 44 of the Act can be ignored by officer with the help of section 74. It is very clear that mandatory provisions of the Act have been ignored altogether and this has caused a material prejudice to the appellant.

(12) In view of the above discussion, this appeal is accepted; conviction and sentence imposed by the trial Court are set aside and the appellant is acquitted of the charge. Fine if paid, be refunded.

R.N.R.

Before Ujagar Singh, J.
ROSHAN LAL,—Appellant.

versus

STATE OF HARYANA,—Respondent.

Criminal Revision No. 370 of 1985.

May 22, 1987.

Prevention of Food Adulteration Act (XXXVII of 1954)—as amended by Act No. 34 of 1976—Sections 16(1)(a)(i) and 16-A—Code of Criminal Procedure (II of 1974)—Sections 262 to 265—Summary trial of offence under Section 16(1)—Trial Court's power to try cases summarily under Section 16-A—Accused convicted in a regular trial—Regular trial—Whether stands vitiated in view of Section 16-A of the Act.

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Held, that Judicial Magistrate have been given powers of summary trial for the purpose of Section 16-A of the Food Adulteration Act, 1954 to try an offence under sub-section (1) of Section 16. The Trial Court had the power to try the case by summary trial as provided in Sections 262 to 265 of the Code of Criminal Procedure, 1973 and the trial thus stands vitiated. Since the sample of *Bura* was taken in the year 1980 and the complaint was filed in 1981 and decided by the trial Court in the year 1984 the trial, appeal and this Revision has taken about 6½ years it will not be in the interest of justice to remand this case. Revision allowed. (Para 9).

Petition for revision of the order of Shri R. D. Aneja, Additional Sessions Judge, Gurgaon, dated 6th March, 1985 affirming that of Shri S. S. Singh Dahiya, Chief Judicial Magistrate Gurgaon dated 22nd March, 1984; convicting and sentencing the petitioner.

CHARGES AND SENTENCES :—R.I. for six months and a fine of Rs. 1,000. In default of payment of fine further R.I. for three months under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954.

Ashok Kumar Aggarwal, Advocate with Mohinder Singla, Advocate, for the Petitioner.

G. S. Bawa, Advocate, for the Respondent.

JUDGMENT

Ujagar Singh, J.

(1) On 11th December, 1980, Food Inspector Satpal Malik, accompanied by Dr. R. K. Sharma, the then Deputy Chief Medical Officer (Health), Gurgaon, came to the business premises of the petitioner and served notice Ex. P.A., after disclosing his identity. The Food Inspector then purchased 600 grams of *Bura* from one of the two gunny bags, lying there. These gunny bags contained 90 kg of *Bura* each. Payment of Rs. 3.60 paise was made by the Food Inspector to the petitioner,—*vide* receipt Ex. PB for the purpose of analysis. The sample was divided into 3 equal parts and made into sample bottles, as per memo Ex. PC which was attested by Ram Parkash, an independent witness, associated by the Food Inspector from there.

(2) One of the sealed bottles was sent to Public Analyst and report Ex. PC was received. According to the report, the sample

contained 437 PPM (parts per million) of sulphur-dioxide against maximum prescribed standard of 70 PPM. The Food Inspector filed this complaint against the petitioner, as well as the firm.

(3) Intimation for launching the prosecution and the petitioner's right to get the sample analysed from the Director, Central Food Laboratory, Gaziabad was given to the petitioner,—*vide* letter dated 26th February, 1981, Ex. PF.

(4) The prosecution examined Food Inspector Satpal Malik as PW1 and after examining him, a charge was framed for the commission of an offence punishable under section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (hereinafter called the Act). The petitioner pleaded not guilty and claimed trial.

(5) After the charge was framed, Food Inspector Satpal Malik (PW1) was recalled for further cross-examination and the prosecution produced Om Parkash (PW2), Sales Tax Assistant from the office of the Deputy Excise and Taxation Commissioner; Dr. R. K. Sharma (PW3) and Ram Parkash Wason (PW4). After close of the prosecution case, the petitioner was examined under section 313 of the Code of Criminal Procedure and an opportunity was given to him to produce his defence, but no witness was produced in defence.

(6) Ultimately, the trial Court came to the conclusion that the petitioner was guilty under the said section and after convicting him thereunder, sentenced him to undergo rigorous imprisonment for six months and to pay a fine of Rs. 1,000 and in default of payment of fine, to undergo further rigorous imprisonment for three months. The trial Court, in view of the statement of Om Parkash (PW2) to the effect that the firm was a sole proprietorship of the petitioner did not pass any separate sentence on the firm, M/s Rameshwar Dass Hari Ram.

(7) The petitioner filed an appeal before the Sessions Court which was heard by the learned Additional Sessions Judge and dismissed on 6th March, 1985, maintaining the conviction and sentence.

(8) The learned counsel for the petitioner has laid stress that after section 16-A was added in the Act by the amending Act 34 of 1976 which came into force with effect from 1st April, 1976, the trial

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could be held only in a summary manner. He has relied upon our own Full Bench Decision in *Budh Ram and others v. State of Haryana* (1), wherein the provisions of section 16-A have been held to be mandatory and therefore, the trial in this case stands vitiated. Section 16-A of the Act is reproduced as under:

“16-A. Power of court to try cases summarily.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under sub-section (1) of Section 16 shall be tried in a summary way by a Judicial Magistrate of the first class specially empowered in this behalf by the State Government or by a Metropolitan Magistrate and the provisions of Sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial:

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year :

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.”

(9) As required by the added section 16-A, the State of Haryana issued Notification No. 4201-4HBII-77/32799, dated 20th October, 1977 and in that Notification all the Judicial Magistrates were given powers of summary trial for the purpose of this section to try the offence under sub-section (1) of section 16 of the Act. In view of this provision, the trial Court had the power under the said Notification to try this case by a summary trial as provided under the Code of Criminal Procedure. Thus, the trial stands vitiated. In this case,

the sample of Bura was taken on 11th December, 1980 and the complaint was filed on 25th February, 1981 and decided by the trial Court only on 22nd March, 1983. The appeal was filed and thereafter decided on 6th March, 1985. This revision was filed on 11th March, 1985. It was admitted on 15th March, 1985.

(10) In view of the above dates, it is clear that the petitioner has undergone the agony of trial and subsequent proceedings in this case since 11th December, 1980 till today which comes to about 6½ years. In such a situation, it would not be in the interest of justice to remand the case to the trial Court for proceeding according to law. Rather, it is a case where the petitioner has undergone harassment for a period of 6½ years and I would, therefore, allow this revision.

(11) With the foregoing observations, this revision is accepted and the orders passed by the first Appellate Court and also by the trial Court are set aside and the petitioner is acquitted of the charges.

R.N.R.

Before S. P. Goyal, J.

AMRITSAR RAYON AND SILK MILLS LTD.,—*Petitioner.*

versus

AMIN CHAND SAJDEH,—*Respondent.*

Civil Revision No. 181 of 1987.

May 27, 1987.

Companies Act (I of 1956)—Section 299—Code of Civil Procedure (V of 1908)—Order 37 Rule 3(5)—Indian Contract Act (IX of 1872)—Section 23—A, a Director of Company B, bringing suit under order 37 against B as sole proprietor of firm C to which B owed sums on a contract for supply of yarn—Company B granted leave to defend suit on the ground that A failed as a Director of B to disclose his interest in the contract as required by Section 299—Contract in violation of Section 299—Whether opposed to public policy—Failure to disclose interest—Its effect on the contract—State.

Held, that nothing contained in Section 299 of the Companies Act, 1956 either bars the entering into of a contract by a Director