

as the three votes were fake, they had to be deducted from the total number of votes cast in favour of that person. The inference that was to be drawn was that if the three tendered votes had been cast in favour of Niranjn Singh appellant that would take his tally to 346 and if the three fake votes were to be deducted from Joginder Singh's total, that would bring his total down from 347 to 344. It was on this basis that Niranjn Singh appellant was declared elected.

(3) The matter was once again taken in appeal to the Appellate Authority, i.e., the learned District Judge, who after examining the matter afresh, came to the conclusion that no evidence had been produced by the election-petitioner which could positively determine that the fake votes had been cast in favour of Joginder Singh, respondent and as such, in this view of the matter, it was difficult to hold that three votes were to be deducted from the total number of votes cast in favour of Joginder Singh.

(4) After hearing the learned counsel, we are of the opinion that no interference is called for in this Letters Patent Appeal.

(5) Admittedly, the onus was on Niranjn Singh to prove that three fake votes had been positively cast in favour of Joginder Singh. That onus has not been discharged. It is, therefore, not possible to hold that any deduction is to be made in the tally of Joginder Singh, as it has not been proved that these votes had been cast in his favour.

(6) In view of the facts of the case as set out above, the matter could have been remanded for fresh decision to the prescribed or the appellate authority. However, since the matter pertains to the year 1983, it would not be in the interest of justice to remand the case. The Letters Patent Appeal is, therefore, dismissed, but with no order as to costs.

P.C.G.

*Before Jai Singh Sekhon, J.*

SHYAM LAL,—*Petitioner.*

*versus*

STATE OF HARYANA AND OTHERS,—*Respondents.*

*Criminal Misc. No. 237 of 1989.*

22nd April, 1991.

*Criminal Procedure Code, 1973—S. 482—Prevention of Food Adulteration Act, 1954—Ss. 7 & 16(1)(c)—Food Inspector prevented from taking sample of Haldi powder—Trial Court taking 2½ years*

Shyam Lal v. State of Haryana and others (J. S. Sekhon, J.)

*to decide procedure—Complaint—Whether liable to be quashed on ground of delay.*

*Held, that no doubt, the judicial forums are allergic to the unnecessary delay in the disposal of the criminal cases as it amounts to denial of the right of speedy trial to the accused, yet all the same no uniform standard in this regard can be laid down that every prosecution of criminal offence has to be quashed on the ground of delay in the disposal of the case for a certain number of years, because aggravating circumstances of the case as well as the other prevent circumstances which resulted in such delay have to be taken into consideration.* (Para 6)

*Petition under Section 482 Cr. P. C. praying that the petition may kindly be accepted, the complaint filed against the petitioner and charge framed against him on 26th September, 1988 complaint and the proceedings pending against him may kindly be quashed.*

*Under Section 7/16(1)(c) of the Prevention of Food Adulteration Act and the charge framed against the petitioner on 26th September, 1988 under section 16(i) (c) read with section 7 of the Prevention of Food Adulteration Act.*

H. N. Mehtani, Advocate, for the Petitioner.

P. L. Verma, Advocate, for the Respondent.

#### JUDGMENT

J. S. Sekhon, J.

(1) Sham Lal, petitioner has invoked the inherent jurisdiction of 1973 for quashing the complaint and the order of the trial Court framing charge for offences under section 16(1)(c) read with section 7 of the Prevention of Food Adulteration Act, *inter alia*, on the ground that the trial Court had no jurisdiction to pass the order under section 16-A of the Act at a belated stage to the effect that the case should be tried as a warrant case as adequate punishment cannot be awarded in a summary trial. It is further maintained that the pendency of the trial for a number of years had resulted in negating the spirit of Article 21 of the Constitution.

(2) The brief resume of facts figuring in complaint Annexure P. 1, relevant for the disposal of this petition is that on 16th May, 1984, at about 11.30 a.m. Shri Inder Nath Sehgal, Food Inspector, Assandh, along with Dr. Balbir Singh Chaudhry, Medical Officer,

Civil Hospital, Karnal went to the shop of Sham Lal, petitioner. The petitioner had kept 80 Kgs. of Haldi powder for sale at his business premises. The Food Inspector then disclosed his identity and asked the accused-petitioner to give sample of the Haldi but the latter refused saying that he had already been implicated in another case under the Food Adulteration Act although the adulteration was done by the Company. On hearing the commotion, Madan Lal and Piare Lal, witnesses also arrived there. They tried to make the accused understand that he will not be falsely implicated but the sample will be got analysed from the laboratory and thereafter if it is found to be adulterated, only then he will be prosecuted. The accused is then stated to have lost his temper and pushed out the Food Inspector from the verandah of the shop and pulled down its shutters. The complaint was filed by the Food Inspector on 18th May, 1984.

(3) The trial Court framed the charge for the above-referred offences against the accused on 7th October, 1985. Thereafter, on 14th March, 1988, the trial Court having become aware of the illegality in trying this case as a warrant case although it was required to be tried in a summary manner as per provisions of section 16-A of the Act, then passed the order to the effect that it should be tried as a warrant case as in the trial of the case in a summary manner, adequate punishment cannot be awarded for the above-referred offences. The trial Court then reframed the charge on 26th September, 1988 and directed that the evidence of the witnesses be recorded.

(4) The controversy whether the trial Court can pass order dated 14th March, 1988, i.e., about 2½ years of the framing of the charge to justify that the case should be tried as a warrant case and not in a summary manner on the ground of adequacy of sentence was referred by this Court to the Division Bench,—*vide* order dated 11th January, 1990. The Division Bench had answered the reference in favour of the powers of the trial Court to pass the order justifying the trial of the case as a warrant case by holding that no one has a vested right in any procedure.

(5) Mr. H. N. Mehtani, the learned counsel for the petitioner by placing on *Ram Chander v. State of Haryana*, (1); *Balwant Singh v. State of Haryana* (2); *Daya Ram v. The State of Haryana* (3); *Nand*

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(1) 1982 (2) F.A.C. 331.

(2) 1990 (1) F.A.C. 172.

(3) 1988 (1) F.A.C. 143.

Shyam Lal v. State of Haryana and others (J. S. Sekhon, J.)

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*Lal v. State of Haryana*, (4); *Chaturbhuj v. State of Haryana*, (5) and *Mahabir Prasad v. State of Haryana*, (6), contended that the delay of three to six years in the above-referred cases was considered sufficient for not remanding the case for retrial by this Court as it will result in further harassment to the accused-petitioner. Mr. P. L. Verma, the learned counsel for the State, on the other hand maintained that it is a case of heinous nature as the accused-petitioner had restrained the Food Inspector from performing his duties under the Act and that mere delay in the disposal of such like cases should not be considered sufficient to quash the proceedings under section 482 of the Code.

(6) No doubt, the judicial forums are allergic to the unnecessary delay in the disposal of the criminal cases as it amounts to denial of the right of speedy trial to the accused, yet all the same no uniform standard in this regard can be laid down that every prosecution of criminal offence has to be quashed on the ground of delay in the disposal of the case for a certain number of years, because aggravating circumstances of the case as well as the other prevalent circumstances which resulted in such delay have to be taken into consideration. The Apex Court in *Mangilal Vyas v. State of Rajasthan* (7), had refused to quash the proceedings on the ground of delay in the disposal of the case although it was pending before the trial Court for about 25 years, by keeping in view the nature of the allegations and the availability of evidence.

(7) In the case in hand, the accused-petitioner is alleged to have committed a crime of heinous nature by restraining with force the Inspector to take the sample of the Haldi powder, although this is the only mode under the Act to restrain the evil of selling the petition is ordered to be dismissed. The petitioner through his counsel is directed to appear before the trial Court on 13th May, 1991. The trial Court is directed to dispose of the case expeditiously, preferably within six months.

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P.C.G.

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- (4) 1987 (2) F.A.C. 95.
  - (5) 1985 (2) F.A.C. 205.
  - (6) 1989 (1) F.A.C. 282.
  - (7) JT. 1990 (1) S.C. 74.