

The State of Maharashtra Vs. Ashok Kumar Netram and anr.

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Court : Mumbai

Decided On : Dec-04-1974

Reported in : 1975CriLJ1576

Judge : Bhole, J.

Appellant : The State of Maharashtra

Respondent : Ashok Kumar Netram and anr.

Judgement :

Bhole, J.

1. The State has come here .in appeal against the order of acquittal passed in favour of the respondents accused, who are father and son and who were charged of having sold on 28-3-1072 adulterated 'Dalda' Vanaspati to the Food Inspector Kurlekar (P.W. 1). The accused own a shop by name 'Ashok Oil Depot' at 21 Babulal Tank Road and they deal in Vanaspati and other things. When the Food Inspector visited their shop, there was a smell of ghee emanating from the articles, which were being boiled in open tins as well as in aluminium vessels on kerosene stoves. According to the Food Inspector Accused No. 1 who is son of accused No. 2 was present at that time and later accused No. 2 also arrived there. Both were unable to tell him what the purpose was of boiling ghee on stoves. He, therefore collected panch witnesses and in the presence of panch witnesses purchased 1500 grams of Vanaspati for samples. After dividing the quantity in three parts he

gave as usual one part of each of the samples to the accused. After following the procedure according to the rules when he purchased Vanaspati and paid money, he filled up the necessary forms, which is usually done in case when adulterated food is detected by the Food Inspector. One bottle of each sample was then sent by him to the public analyst of the Municipal Corporation for analysis and after he received a report from the public analyst to the effect that both the samples were adulterated he after taking the sanction from the Commissioner of Food and Drugs Administration, Bombay prosecuted both the accused.

2. Both the accused pleaded not guilty to the charge and said that the samples purchased by the Food Inspector were not adulterated. They also examined their own analyst Maganlal, who had analysed the sample given to the accused and reported that those samples were not adulterated. The learned Magistrate, who tried both the accused was not satisfied with the evidence led by the prosecution and therefore acquitted both the accused of the offence punishable under Section 16 (1) (a) (i) read with Section 7 (i) of the Prevention of Food. Adulteration Act and Rule 5, App. A-19 of the Rules. This order, therefore, is now challenged here. We have gone through the evidence as well as the judgment with the help of the Assistant Govt. Pleader, Mr. Garud and I do not think that the order of acquittal passed by the learned Magistrate is improper.

3. The only deficiency in the sample which was analysed by the Public Analyst was on account of the flavour, which according to the report, resembled like that of ghee. Under Rule 5, para A 19 if any flavour is used in Vanaspati it shall be distinct from that of ghee and it shall be in accordance with the list of permissible flavour and in such quantity as may be prescribed by the Government. In this case because the flavour was that of ghee, therefore the accused is alleged to have committed the offence.

4. I do not think that the prosecution have established that Vanaspati which was purchased by the Food Inspector was adulterated. Although the case of the Food Inspector is that there was some Vanaspati which was boiled in the shop, when he went there and that it was smelling of ghee, he did not mention about this fact in his complaint before the Court. This was an important fact and if the substance

which was being boiled was smelling of ghee, then the Food Inspector would not have forgotten to mention it in his complaint filed in Court. Moreover, the Public Analyst was called for cross-examination by the accused as a defence witness, and he admitted in his evidence that barring the flavour, which was of ghee, everything else in the sample which he analysed was of standard quality. This opinion that the substance was of flavour of ghee was only on the basis of his smelling the substance. The public analyst says that the flavour of ghee in the sample could also be due to the presence of diacetyl but he said that he was unable to carry out any test for detecting the presence of diacetyl in the Vanaspati because he had no sufficient quantity of Vanaspati with him. Evidently, therefore his only basis for saying that Vanaspati was smelling of ghee was his smelling the substance. The learned Magistrate has referred to various dictionaries and according to the general consensus the meaning of the word 'flavour' is 'combination of taste, feeling and a dour by taking a little into mouth'. Now even if taste of flavour has to be taken, such test should be not only by smell but also by putting some quantity in the mouth. The Public Analyst does not say that he had tasted the flavour by either feeling it or by putting something of it in his mouth. Therefore since the flavour which is defined as that characteristic of a substance, which affects the smell or taste, has not at all been tested properly by the public analyst, his test cannot therefore be said to be satisfactory. I, therefore, think that the learned Magistrate was right in coming to the conclusion that the prosecution have not established that 'Dalda' purchased by the Food Inspector was adulterated.

5. This appeal, therefore, should fail. I, therefore, confirm the order of acquittal passed by the trial Court and dismiss this appeal.