

Mithan Lal Vs. Emperor

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Court : Allahabad

Decided On : Dec-19-1933

Reported in : AIR1934All439

Appellant : Mithan Lal

Respondent : Emperor

Judgement :

Niamatullah, J.

1. This is an application for revision by one Mithan Lal, who was convicted of an offence under Section 4, U.P. Prevention of Adulteration Act, No. 6 of 1912, and sentenced to a fine of Rs. 30 by a Magistrate, 1st Class, Moradabad. The applicant deals in wheat flour. A sanitary inspector in the employment of the local Municipal Board took a sample of the flour which was then in his shop and sent it to the public analyst, who detected a mixture of barley flour. The analyst did not, however, mention the proportion in which barley flour was found mixed with the wheat flour. His report is consistent with the hypothesis that the percentage of barley flour was negligible or infinitesimal. It is equally consistent with the hypothesis that the extent of barley flour was quite appreciable. In this state of uncertainty the case must be decided on a hypothesis most favourable to the accused. The question is whether the applicant can be held to be guilty of an offence described in Section 4, U.P. Prevention of Adulteration Act. That section is

divisible into two main parts and may be stated as follows:

(A). Whoever sells to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance or quality of the article or drug demanded by such purchasers; or (B) whoever sells or offers or exposes for sale or manufactures for sale any article of food or any drug which is not of the nature, substance or quality which it purports to be, shall be punished....

2. The proviso to the section mentions several exceptions, one of which will have to be taken into consideration for the purposes of this case. It lays down that:

No offence shall be deemed to have been committed where in the process of production, preparation or conveyance of such article of food or drug some extraneous substance has unavoidably become intermixed therewith.

3. It seems to me that in a case falling under category (A) mentioned above, the seller is taken to have given an absolute warranty of quality. If the purchaser demands pure wheat flour and the seller professes to sell pure wheat flour, which turns out on analysis to have even a negligible mixture of barley flour, warranty of quality expressly given is clearly broken and the seller is guilty of an offence under Section 4. If the purchaser demands pure wheat flour but the seller warns him that a negligible percentage of barley flour is mixed with or may be found to be mixed with it, as is generally the case, it would seem that the seller cannot be held to be guilty under the first part if a mixture of barley flour is detected to an extent which is negligible and which does not prejudice the purchaser. The whole object of this part of the section seems to be to prevent deception or misrepresentation. If the accused frankly informed the purchaser that the wheat flour, which he offered for sale must contain a negligible quantity of barley flour as is the case with wheat flour generally accepted as pure wheat flour, he cannot be considered to have been guilty of any deception or misrepresentation if, on analysis barley flour is merely detected in the wheat flour. The purchaser, in such a case, should be deemed to have demanded, after hearing the statement of the seller, such wheat flour as is generally accepted as pure wheat flour but in fact contains a negligible proportion of barley flour. In *Budh Sen v. Emperor* : AIR1934 All329 the purchaser demanded 'pure wheat flour' and the seller supplied flour representing it to be such

and without mentioning the fact that a negligible proportion of barley flour might be found mixed with the wheat flour. It was held that the offence was technically made out. It was clearly a case falling within the category (A) mentioned above. The public analyst had not mentioned in his report that barley flour was discovered in any particular proportion. It was also a case in which barley flour had merely been detected in the wheat flour. Conviction was upheld because of the unqualified warranty of quality given by the accused. The other cases contemplated by class (B) mentioned above stand on a slightly different footing. In such cases the seller is assumed to have given an implied warranty to the effect that the article of food which is offered or exhibited for sale is, in fact what it purports to be. If a particular article of food is commonly assumed to contain a foreign mixture not injurious to health and the article offered or exhibited for sale by the accused is found to contain such mixture and no more, the implied warranty held out by him is not] broken and he cannot be held to be guilty of an offence falling under class (B) mentioned above. In the present case the applicant offered to sell wheat flour, which is generally understood to mean wheat flour with a negligible admixture of barley flour. It is in evidence that wheat flour, however pure, must contain mixture of barley flour to an extent which can only be traced by an analyst and cannot be detected by an ordinary consumer, however fastidious he may be. It is a matter of common knowledge that wheat crop, when gathered, generally contains a certain percentage of barley which it is not worth while to remove in view of the trouble involved in the process and in view of the negligible proportion in which it exists. Mixture of barley flour arising from such a cause cannot make the flour any the less pure wheat flour, as is popularly understood. Where, however, barley flour is mixed with wheat flour so as to increase the bulk of the latter, different considerations would obviously arise. Barley is cheaper than wheat, and if a seller takes advantage of the great resemblance between the barley flour and the wheat flour and sells as pure wheat flour an article which has an appreciable proportion of barley flour, he cannot be considered to be selling what purports to be wheat flour and generally accepted as such. In such a case an offence falling under the second category mentioned above is clearly made out.

4. In the case before me there is nothing to show that the applicant offered to sell or exhibited for sale wheat flour which contained barley flour to any but a negligible

extent and that it was due to a cause other than the inevitable one, namely the presence of barley in wheat crop when the latter was threshed. There is nothing to indicate that the flour which the accused offered for sale was to the prejudice of the purchaser desirous of purchasing wheat flour commonly accepted as such. In this view I am of opinion that the evidence falls short of the requirements of Section 4 of the U.P. Prevention of Adulteration Act.

5. It appears that the applicant moved the Magistrate, though at a somewhat late stage, to obtain a further report from the public analyst showing the extent to which barley flour was discovered in the sample of wheat flour in the shop of the applicant. The Magistrate agreed to ask for a further report but on condition of the applicant paying the fee of the public analyst. The applicant does not appear to have complied with this condition and no further report was asked for. It is not possible to draw any inference for or against the accused from the circumstances mentioned above. The municipal authorities should ascertain before launching a prosecution whether the case is one in which adulteration can be clearly shown to be of the character made punishable by the Act. It is highly desirable that if there is any danger of a prosecution proving abortive, no attempt should be made to launch it.

6. For the reasons given above I accept this revision, set aside the conviction and sentence passed on the applicant Mithan Lal and direct that the fine, if paid be refunded.