

Laldas Sahu Vs. State of U.P.

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Court : Allahabad

Decided On : Dec-12-1986

Reported in : AIR1987All184

Judge : B.N. Katju, ;S.I. Jafri and ;Rajeshwar Singh, JJ.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 2 and 13(2);
Prevention of Food Adulteration Rules, 1955 - Rule 9A;

Appeal No. : Criminal Revn. No. 2235 of 1982

Appellant : Laldas Sahu

Respondent : State of U.P.

Advocate for Pet/Ap. : V.B. Singh, Adv.

Disposition : Revision dismissed

Judgement :

B.N. Katju, J.

1. The applicant was convicted under Section 7/16 of the Prevention of Food Adulteration Act (hereinafter referred to as the Act) and sentenced to three months' rigorous imprisonment and a fine of Rs. 500/-by the judgment of the Judicial Magistrate 1st Class, Special Court (Economic Offences), Hamirpur dated

24-8-1982 passed in case No. 16 of 1981. In default of payment of fine, he was ordered to undergo one month's rigorous imprisonment. He filed Criminal Appeal No. 124 of 1982, which was dismissed by the Special Judge (E. C. Act), Hamirpur by his judgment dated 4-12-1982. He thereafter filed this revision in this Court.

2. The case of the prosecution is that on 4-9-1979 at about 12.30 p.m. Nagendra Rai, Food Inspector (PW 1) purchased 750 gms. of Lahi oil on payment of Rs. 7.50 from the shop of the applicant in the market of qasba Rath Kot. It was divided into three phials and one of the phials was sent to the Public Analyst for analysis. The report of the Public Analyst (Ext. Ka 5) dated 23-10-1979 showed that the said sample was adulterated as it contained 4 per cent of Tisi oil. After obtaining the necessary sanction (Ext. Ka 7), the Food Inspector filed a complaint against the applicant under Section 7/16 of the Act in the Court of the Judicial Magistrate on 21-11-1980.

3. The prosecution examined two witnesses to connect the applicant with the crime, namely, Nagendra Rai, Food Inspector (PW 1) and Nathoo Ram (PW 2).

4. The applicant pleaded not guilty and stated that no Lahi oil was sold by him to the Food Inspector. He had brought Lahi oil for the purpose of marriage and the Food Inspector took it forcibly. He examined one witness in defence, namely Ram Ratan (DW 1).

5. The trial Court after considering the evidence on record came to the conclusion that the prosecution had succeeded in establishing the guilt of the applicant and convicted and sentenced him as mentioned earlier. The appeal filed by the applicant was dismissed by the Special Judge (E. C. Act), Hamirpur as mentioned earlier.

6. It was contended by the learned counsel for the applicant before the learned Single Judge, who heard this revision, that Lahi oil, which is alleged to have been sold by the applicant to the Food Inspector, could not be held to be adulterated as it contained only 4 per cent of Tisi oil. In support of this contention he relied on the undermentioned decisions: --

1. Badri Prasad v. State, 1979 ALL WC 297 : (1979 Cri LJ 1095); 2. Om Prakash v. State, 1982 All WC 844 : (1983 Cri LJ 216); 3. Santosh Kumar Dutta v. Chairman, Sapatgram Small Town Committee, 1975 Cri LJ 1330 and 4. Gaffar Khan v. State of M.P., 1984 FAJ 108.

The learned Single Judge did not accept the aforesaid contention of the learned counsel for the applicant and also did not agree with the view taken by this Court in Badri Prasad v. State (supra) and Om Prakash v. State (supra) and the view taken by the Gauhati High Court in Santosh Kumar Dutta v. Chairman, Sapatgram Small Town Committee (supra) and the Madhya Pradesh High Court in Gaffar Khan v. State of M.P. (supra). He consequently referred this revision to a Full Bench. That is how it has come up before us for hearing.

7. In order to determine whether or not the sample of Lahi oil, which was found to contain 4 per cent of Tisi oil, can be held to be adulterated it is necessary to examine the undermentioned provisions of the Act and the Rules framed thereunder : --

Section 2(i-a)(m) of the Act is as follows: --

'2(i-a) adulterated' -- an article of food shall be deemed to be adulterated-

(a)to(1) ;

(m) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability but which does not render it injurious to health.

Provided that, where the quality or purity of the article, being primary food, has fallen below the prescribed standards or its constituents are present in quantities not within the prescribed limits of variability, in either case, solely due to natural causes and beyond the control of human agency, then, such article shall not be deemed to be adulterated within the meaning of this sub-clause.'

Explanation (xii-a) to Section 2 of the Act is as follows :

'Primary food' means any article of food, being a produce of agriculture or horticulture in its natural form.'

Item A.05.15 of Appendix B to the Rules framed under the Act is as follows : --

'A. 05.15-- Mustard (Rai, Sarson), whole means the dried seeds of *Brassica alba*(L) Boiss, (Safed rai), *Brassica campestris* L. var, *dichotoma* (Kali Sarson), *Brassica campestris* L. var, Yellow Sarson, Syn. *Brassica Campestris* L. var, *glauca* (Pili Sarson), *Brassica campestris*, L. var, *toria*, (*toria*) *Brassica Juncea* (L) Coss. et. Czern. (Rai, Lothni) and *Brassica Nigra* (L), Koch (Banarasi rai). The proportion of extraneous matter which includes dust, dirt, stones, lumps of earth, chaff, stem, straw, edible foodgrains, edible oilseeds of any other variety or any other impurity shall not exceed 7.0 per cent by weight. It shall be free from seeds of *argemone mexicana* linn.

The amount of insect damaged matter shall not exceed 5 per cent by weight.

Explanation-- The term 'insect damaged matter' means spices that are partially or wholly bored by insects,'

Item A. 17.04 of Appendix B to the Rules is as follows :

'A. 17.04-- 'linseed oil (Tisi ka tel) means the oil obtained by process of expressing clean and sound linseed (*linum usitatissimum*). It shall be clear, free from rancidity, suspended or other foreign matter, separated water, added colouring or flavouring substances, or mineral oil Item A.17.06 of Appendix B to the rules is as follows :

'A. 17.06- Rapeseed Oil (Tora Oil) or Mustard oil (Sarson-ka-tel) means the oil expressed from clean sound mustard seeds, belonging to the *campestris juncea* or *napus* varieties of *brassica*. It shall be clear, free from rancidity, suspended or foreign matter, separated water, added colouring, or flavouring substances or mineral oil.....'

8. A plain reading of Item A. 17.06 shows that mustard oil means oil expressed from clean mustard seeds free from suspended or foreign matter. The word 'Clean' means pure or free from foreign matter. Thus, the fact that 4 per cent of Tisi oil was found in the mustard oil sold by the applicant to the Food Inspector goes to

show that it was not expressed from clean mustard seeds as they were not pure or free from foreign matter. It thus fell below the standard of purity prescribed under Item A.17.06 of Appendix B to the Rules. It may be mentioned that the Proviso to Section 2(i-a)(m) of the Act is not applicable as it cannot be held that the presence of 4 per cent of Tisi oil in the mustard oil sold by the applicant to the Food Inspector was solely due to natural causes and beyond the control of human agency as there is no material on the record to indicate this. It is true that in Item A.05.15 of Appendix B to the Rules, which prescribes the standard for mustard, it is mentioned, 'The proportion of extraneous matter which includes dust, dirt, stones, lumps of earth, chaff, stem, straw, edible foodgrains, edible oil seeds of any other variety or any other impurity shall not exceed 7.0 per cent by weight', but from this it cannot be inferred that the presence of linseed oil up to 7 per cent in mustard oil must be held to be solely due to natural causes and beyond the control of human agency for it is obvious that the presence of 7 per cent of extraneous matter including dust, dirt, stones, lumps of earth, chaff, stem, straw, or any other impurity in mustard oil cannot be held to be solely due to natural causes and beyond the control of human agency. The standard prescribed for mustard oil must be considered separately when the question of adulteration of mustard oil is to be determined and the standard prescribed for mustard alone must be considered when the question of adulteration of mustard is to be determined. The standard prescribed for mustard cannot be taken into consideration when considering the standard prescribed for mustard oil. We are fortified in our view by the decision of the Supreme Court in Jagdish Prasad v. State of W. B. : 1972 CriLJ1309 , in which it was held : --

'An attempt was made to refer us to certain technical books and the decisions in Jagdish Chandra Jain v. Corporation of Calcutta : AIR1953 Cal706 ; Netai Chandra and Surendra Nath Day v. Corporation of Calcutta : AIR1967 Cal65 and In re, Padmanabha Chetty Perumal & Co. AIR 1943 Mad 47 : (1943-44 Cri LJ 190) for the proposition that the standard prescribed by A 17.06 in Appendix B to the rules is not conclusive because in some places mustard can yield a higher reading. We cannot allow any fresh evidence to be used, nor do we think that the decisions referred to, even if they justify that contention, can alter or vary the standard fixed in exercise of the powers conferred by the Act in appendix B to the

Rules.....'

9. It is clearly mentioned in the standard prescribed for mustard oil that it must be expressed from clean mustard seeds. All impurity and foreign matter must be removed from the mustard seeds before oil is expressed from it. Thus mustard oil containing 4 per cent of tisi oil must be held to be below the standard prescribed for mustard oil in Item A.17.06 of Appendix B to the rules and it must, therefore, be held to be adulterated in view of Section 2(i-a)(m) of the Act.

10. For the reasons given above, we are with respect not in agreement with the view taken by this Court in *Badri Prasad v. State*, (1979 Cri LJ 1095) (supra) and *Om Prakash v. State*, (1983 Cri LJ 216) (supra), the Gauhati High Court in *Santosh Kumar Dutta v. Chairman, Sapatgram Small Town Committee*, (1975 Cri LJ 1330) (supra) and the Madhya Pradesh High Court in *Gaffar Khan v. State of M.P.* (1984 FAJ 108) (supra), that any other edible oil up to a limit of 7 per cent is permissible in mustard oil.

11. It may be mentioned that it is true that a copy of the report of the Public Analyst dated 23-10-1979 was sent to the applicant on 4-6-1981 after about 6 1/2 months of the filing of the complaint on 21-11-1980, but from this it cannot be inferred that there was non-compliance of Section 13(2) of the Act and Rule 9A of the Rules, which was fatal to the prosecution. It is noteworthy that after receiving the copy of the report of the Public Analyst the applicant never applied to the Court to have the sample sent to the Central Food Laboratory. He cannot, therefore, complain of the delay in the receipt of the report by him. It is also noteworthy that the applicant has not been able to establish that any prejudice has been caused to him by this delay. We are fortified in our view by the decision of the Supreme Court in *Tulsiram v. State of Madhya Pradesh* : 1984 CriLJ1731 .

12. There is thus no merit in this revision. It is accordingly dismissed.

13. The applicant is on bail. He shall be taken into custody forthwith to serve out the sentence awarded to him.

14. The interim order dated 15-12-1982 is vacated.

