

Badri Prasad Vs. State

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Court : Allahabad

Decided On : Feb-28-1979

Reported in : 1979CriLJ1095

Judge : S. Malik and ;M.P. Saxena, JJ.

Appellant : Badri Prasad

Respondent : State

Judgement :

S. Malik, J.

1. This is an application in revision by Badri Prasad against the judgment and order dated 8-9-1977 of the 3rd Additional Sessions Judge, Jalaun at Orai, dismissing his appeal and upholding his conviction recorded by the trial Court under Section 16 read with Section 7(i) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the Act) and sentence of six months' rigorous imprisonment and a fine of Rs. 1,000/-.

2. As usual, the revision application came up before a learned Judge of this Court who, while admitting it, directed that the case be listed before a larger Bench, as may be ordered by the Hon'ble the Chief Justice, for reconsidering the decision recorded by another learned Judge of this Court in Ajodhiya Prasad v. State 1977 All Cr C 195 for reason given by the learned Sessions Judge in the impugned

judgment. The learned Sessions Judge did not follow the said decision.

3. It was held in *Ajodhiya Prasad v. State* (supra) that mixture of mustard oil and linseed oil sold as mustard oil cannot be said to be adulterated as both are edible oils and that though it may be a case of cheating and deception, it could not be an offence punishable under the Act. The learned Sessions Judge did not follow the decision as it is apparent from its perusal that Rule 44(e) of the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as the Rules) was not brought to the notice of the learned Judge.

4. The question before us is whether a mixture of two edible oils is 'adulterated food' within the meaning of the Act. Before we take up the question, it may be mentioned that in the instant case, the applicant sold as sample of mustard oil to the Food Inspector on 23-11-1974, oil of which 16.8% was linseed oil as appears from the report of the Public Analyst dated 8-1-1975.

5. The law, as will appear from a perusal of the relevant provisions of the Act and the Rules, is quite clear, and does not create any difficulty.

5-A. Section 7 of the Act lays down:

Prohibition of manufacture, sale etc. of certain Articles of food. No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute:-

(i) any adulterated food;

(ii) any misbranded food;

XX XX XX XX(v) any article of food in contravention of any other provision of this Act or of any rule made thereunder.

6. Contravention of any of the provisions of Section 7 is punishable in accordance with Section 16 of the Act as laid down thereunder and it is not necessary to refer to it.

7. The relevant rule for the purposes of this case is Rule 44(e). It lays down:

44 Sale of certain admixture prohibited - Notwithstanding the provisions of Rule 43 no person either by himself or by any servant or agent shall sell:(e) a mixture of two or more edible oils as an edible oil.

8. No sale of an admixture of edible oils as an edible oil contravenes Section 7(v) of the Act read with Rule 44(e) and is punishable under Section 16 of the Act.

9. In this connection, we would also like to refer to Section 2(a) of the Act which defines adulteration. It lays down:

an article of food shall be deemed to be adulterated -(a) if the article of mustard oil and linseed oil sold as mustard oil would be 'adulterated' within the meaning of Section 2(i-a)(a) as quoted above.

10. The 'Explanation' appearing below the proviso to Sub-section (m) of Section 2 of the Act lays down:

where two or more Articles of primary food are mixed together and the resultant article of food:

(a) is stored, sold or distributed under a name which denotes the ingredients thereof; and

(b) is not injurious to health, then such resultant article shall not be deemed to be adulterated within the meaning of this clause.

11. In the instant case, mustard oil and linseed oil may be Articles of primary food and a mixture of the two may not be injurious to health, but such a mixture would be adulterated if stored, sold or distributed under a name which does not denote their nature. In other words, a mixture of mustard oil and linseed oil may not be adulterated food provided the same is sold as mixture of mustard oil and linseed oil. If the same is sold either as mustard oil or as linseed oil, it would be 'adulterated'.

12. We may, however, observe that it does appear that a mixture of other edible oils upto a limit of 7% is permissible in law with mustard oil in view of R, 5 and Items A-17.06 and A-05.15 appearing in Appendix 'B' of the Rules. Admixture of

Argemone Mexicana Linn with mustard oil is prohibited as it is injurious to health. Mixture of edible oils up to a limit of 7% with mustard oil can be said to be permissible keeping in view the standard laid down for purity of mustard seeds in these Rules. In this connection, we may refer to the observations made by the Gauhati High Court in Santosh Kumar Datta v. Chairman, Sapatkram Small Town Committee 1975 Cri LJ 1330. These provisions are understandable as it is practically impossible to prevent admixture of a small percentage of oil-seeds of other varieties with mustard seeds which are very small in the size. Even if the admixture of other edible oils does not exceed 7% the mustard oil must conform to the standard laid down in Item No. A-17 in Appendix 'B' of the Rules.

13. It is therefore apparent that admixture of two or more edible oils sold as an edible oil is prohibited in view of Rule 44(e) and its violation is punishable in view of Section 7(v) read with Section 16 of the Act. The law laid down in Ajodhiya Prasad v. State 1977 All Cri C 195 (supra), therefore, we would like to observe with respect, was not correct.

14. Let the revision application be now listed before the learned Judge for its disposal.