

Satya Prakash Vs. State

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Court : Allahabad

Decided On : Aug-08-1979

Reported in : 1980CriLJ78

Judge : P.N. Bakshi, J.

Appellant : Satya Prakash

Respondent : State

Judgement :

ORDER

P.N. Bakshi, J.

1. The applicant has been convicted under Section 7/16 of the Prevention of Food Adulteration Act and sentenced to 6 months' R. I. and a fine of Rs, 1000/-. In default of payment of fine, he is to undergo 3 months' R. I. His conviction and sentence has been maintained in appeal by the Sessions Judge Moradabad, hence this revision,

2. A sample of Besan (gram flour) was purchased by the Food Inspector from the applicant on 21st Jan. 1976 at 10.30 A. M. in accordance with the procedure prescribed by law. One of the sample phials in the possession of the Food Inspector was sent for analysis the report of the Public Analyst was as follows:

Sampoorn Bhasm - 2.6%. Halke Hydrochloric Ami me abiley bhasm - 0.2% Khesari ke liye hydrochloric ami Parikshan - Dhanatmak. Microscopy - adhik matra men Ghana tatha thori matra men Khesari ke starch paye gaye.

and am of the opinion that namune men thori matra men Khesari (Lathyrus sativus) ka Aatta mila hua hai. Khesari ka prayog Khadya Padarth ke roop men barjit hai.

After obtaining sanction, the applicant has been prosecuted and convicted as above.

3. I have heard learned Counsel for the applicant and have also perused the impugned order. I do not find any illegality or perversity in the findings recorded concurrently by the courts below upholding the conviction of the applicant.

4. Learned Counsel for the applicant has placed before me a copy of the letter No. P. 15025/84/74-PH, which is alleged to have been issued by the Central Government New Delhi on 7th June, 77, the contents of which are quoted below.

All State Governments/Union Territories, Health Department.

Subject : - Tolerance limit for Kesari dal in the Wheat and other food grain.

Sir,

I am directed to say that at present the Primary foods like wheat should be free from Kesari peas/dal under the Prevention of Food Adulteration Rules. It has been represented that the presence of Kesari gram in whole food-grains may be tolerated up to certain limit. The Govt. of India have considered the matter carefully and have come to the conclusion that the total foreign matter as defined under item.

A. 18.06 of the Prevention of Food Adulteration Rules, 1956 as modified from time to time may include, if unavoidable, Kesary grains. I am to clarify that the total extraneous matter which at present is allowed to an extent of 3% in wheat may include Kesary grains.

Formal amendments to the Prevention of Food Adulteration Act, Rules will be issued in due course. In the meantime, it is requested that no action may be taken in those cases where a sample is found to contain Kesari grain provided the total organic foreign matter (foreign) does not exceed 3% by weight.

Yours faithfully,

Sd : - G. Panchapakesan,

Under Secretary.

5. On its basis he has submitted that a mixture of Kesari Dal to the extent of 3 per cent is permissible in Besan. Assuming that this letter, referred to above, is genuine and that such directions have been issued by the Central Government, the question for consideration is as to what is the legal effect of this letter.

6. Section 23 of the Prevention of Food Adulteration Act empowers the Central Government after consultation with the Committee, and after previous publication of Notification in the official Gazette to make rules to carry out the provisions of the Act. This is the only method provided under the Act by which the fresh rules can be framed under the said Act or the existing Rules, amended. Section 22A, runs as follows:

22A : - Power of Central Government to give Directions: The Central Government may give such directions as it may deem necessary to a State Government regarding the carrying into execution of all or any of the provisions of this Act and the State Government shall comply with such direction.

It is clear from a perusal of Section 22A that directions can only be issued for carrying out or executing the provisions of the Act. The relevant portion of R. 44-A of the Prevention of Food Adulteration Rules 1955 provides that 'no person in any State shall.... sell, or offer or expose for sale, or have in his possession for the purpose of sale, under any description or for use as an ingredient in the preparation of any article of food intended for sale-

(a) Kesari gram (*Lathyrus sativus*) and its products.

(b) Kesari Dal (*Lathyrus sativus*) and its product.

(c) Kesari Dal flour (*Lathyrus sativus*) and its products.

(d) a mixture of Kesari gram (*Lathyrus sativus*) and Bengal gram (*Cicer arietinum*) or any other gram.

(e) a mixture of Kesari Dal (*Lathyrus sativus*) and Bengal gram dal (*Cicer arietinum*) or any other dal.

(f) a mixture of Kesari dal (*Lathyrus sativus*) flour and Bengal gram (*Cicer arietinum*) flour or any other flour.

This rule makes it amply clear that Kesari Dal in whatever proportion or form it might be, whether in the form of Gram or in the form of ingredients used in the preparation of any article of food etc., is totally prohibited from sale or exposure for sale by the citizen. Since this rule exists even today a direction can only be issued under Section 22A by the Central Government for the implementation of this Rule. The Central Government has no power to issue a direction, contrary to the existing Rules. As I have mentioned above, the purpose of R. 22A is to authorise the Central Government to issue directions for carrying into execution any of the provisions of the Act or the Rules, framed therein. So long as R. 44-A is not amended by the Central Government in exercise of its powers under Section 23 of the Adulteration Act, the direction embodied in letter No. P. 15025/84/74 P. H. dated 7-6-77 issued by the Central Government New Delhi is a waste paper and has no force in the eyes of law. In this view of the matter, I am of the opinion that the applicant cannot derive any benefit from the aforesaid letter, i

7. Learned Counsel for the applicant has argued that from the report of the Public Analyst, it appears that there was only traces of Kesari in the sample, in question. The extent of adulteration has not been specified. In my opinion even this submission does not have any weight. In the first place, a fair reading of the report of the Public Analyst indicates that the sample sent to him contained a small proportion of Kesari. It is not correct to say that only traces of Kesari were present. Since there is total prohibition for the use of Kesari in any form, whatsoever under

R. 44-A of the Prevention of Food Adulteration Rules, therefore, it was not necessary at all for the Public Analyst to give too exact percentage of adulteration in his report. The percentage of adulteration would only be necessary in those cases where certain proportion of mixture of extraneous organic or inorganic matter is permissible under the rules, that is not the position at present. There is a total bar to use of Kesari under the Rule 44A. Therefore, in my opinion that even though the sample in question contained a small proportion of Kesari, the offence of adulteration under Section 7/16 of the Prevention of Food Adulteration Act was complete.

8. Kesari being totally prohibited and also being injurious to health as is well known, there can be no reduction on the question of sentence either. A sentence of 6 months' R. I. and a fine of Rs. 1000/- as ordered by the courts below is an appropriate sentence in the instant case.

9. For the reasons given above. I do not find any merit in this revision, which is hereby dismissed. The applicant is on bail. He shall be taken into custody forthwith to serve out the unexpired portion of the sentence of imprisonment.