

Raj Narain Singh Vs. Additional District and Sessions Judge and ors.

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Court : Allahabad

Decided On : Sep-07-1981

Reported in : 1981CriLJ1495

Judge : R.B. Lal, J.

Appellant : Raj Narain Singh

Respondent : Additional District and Sessions Judge and ors.

Advocate for Pet/Ap. : Sri. U. K. Pandey

Judgement :

ORDER

R.B. Lal, J.

1. This is an application under Section 482, Cr.P.C. for quashing the orders dated 6-6-81 and 8-7-81 passed by the Corporation Magistrate, Varanasi and the First Additional District & Sessions Judge, Varanasi, respectively.

2. Shyam Lai Shah opposite party No. 3 is a dealer in edible oils at Varanasi. On 13-3-1980 the Food Inspector of the area accompanied by some higher authorities, raided the shop and godown of opposite party No. 3 and found mustard oil of different qualities and 45 tins of soyabean oil, and seized and sealed the same under Section 10(4) of the Prevention of Food Adulteration Act (briefly

the Act). Samples of these oils were also taken and sent to the Public Analyst for analysis and report. The sample of soyabean oil was found to conform to the prescribed standard. This sample was also got analysed by the Public Analyst at Chandigarh and he also reported that the sample conformed to the prescribed standard.

3. The mustard oil sample was not found to conform to the prescribed standard and was also found to contain a prohibited coal-tar dye. The prosecution was launched against opposite party No. 3 for storing adulterated mustard oil and that prosecution is still pending.

4. A complaint was filed on 6-10-1980 against opposite party No. 3 in the court of the Corporation Magistrate, Varanasi with the allegation that the soyabean oil was being stored and used as an adulterant within the meaning of Section 2(i) of the Act. The accused appeared before the Magistrate and contended that the sample of soyabean oil was found to conform to the prescribed standard and there was nothing to make out a prima facie case that he was storing soyabean oil as an adulterant. On a consideration of all the facts the Magistrate accepted this contention of the accused and ordered his discharge by an order dated 6-6-1981. The Food Inspector did not feel satisfied and filed Criminal Revision No. 2280 of 1981 which was also dismissed by the learned First Additional District and Sessions Judge, Varanasi on 8-7-1981; hence this application by the Food Inspector for quashing the aforesaid orders of two courts.

5. The learned Counsel for the applicant had prayed for and was granted two weeks time on 10-8-1981 to file a rejoinder affidavit; but no such affidavit was filed. The case was listed for hearing on 25 8-1981, but was passed over on the illness slip of Sri U. K. Pandey, learned Counsel for the applicant. The case came up for hearing on 2-9-1981. No one cared to appear for the applicant at the time of hearing. The learned Counsel for opposite party No. 3 appeared and made his submissions opposing the application.

6. The term 'adulterant' is defined in Section 2(i) of the Act thus:

'Adulterant' means any material which is or could be employed for the purpose of adulteration.

7. The above definition is very wide and its amplitude can be comprehended by reference to the definition of the term 'adulterated' contained in Section 2(i-a) of the Act, and the standards of quality of articles of food prescribed in Appendix B to the rules framed under the Act. This definition will take within its sweep, on the one hand, prohibited colouring, flavouring or sweetening substances and preservatives and also such other substances which may be employed to increase the mass or substance of an article of food; and on the other material which may be articles of food in their own right, but which could be employed for the purpose of adulteration of some other article of food. An instance of the second category which readily comes to mind is hydrogenated edible vegetable oil which is a common article of food, and for which a standard of quality has been prescribed. It would become an 'adulterant' if it is employed for the purpose of adulteration of 'ghee' for which a different standard of quality has been prescribed. It may not be difficult to identify a material falling within the first category as an 'adulterant' within the meaning of Section 2(1) of the Act. The difficulty, however, would arise in case of a material falling in the second category. Should such an article of food be taken or presumed as an 'adulterant' merely because it could be employed for the purpose of adulteration of another article of food? In my view the answer is a clear 'no'. Treating such an article as 'adulterant' simply because it could be employed to adulterate another article of food, is likely to lead to great mischief. In my opinion, to take or presume such an article as an 'adulterant' there must be something more than the mere fact that such an article could be employed as an adulterant of another article of food. What that 'something more' should be, may vary from case to case and would depend on the facts and circumstances of each particular case. It is not possible to give an exhaustive list of the circumstances in which such an article may be taken or presumed to be an 'adulterant'.

8. Soyabean oil is an edible oil. It can be used as an article of food in its pure form. It can also be mixed with some other edible oil and in that case it may play the role of 'adulterant' if one or more of the conditions to be found in the definition of the term 'adulterated' are also fulfilled. Simply because soyabean oil can be mixed

with some other edible oil as an 'adulterant', it will not be reasonable to presume that soyabean oil found in a shop or godown was stored there to be used as an adulterant in other edible oils. There must be something more to show that it was an 'adulterant'.

9. Opposite party No. 3 had filed a photostat copy of the report of the Public Analyst relating to the Mustard oil taken from him. The Public Analyst inter alia found:

(i) Butyro-refractometer reading at 40 per cent ... 61. (ii) Saponification value ... 179.9 (iii) Iodine value ... 116.9

10. These readings were slightly above the maximum standard prescribed for mustard oil. The analyst also found that the sample contained oil soluble coal-tar dye of yellow shade. He found that tests for Mineral oil, Cotton seed oil. and linseed oil were negative.

11. In paragraph 5 of the affidavit the applicant mentioned that his information was that opposite party No. 3 was converting soyabean oil into mustard oil after mixing colouring matter in it. If that was so, action with regard to soya-bean oil found in the godown, should have been taken under Sub-section (6) of Section 10 of the Act, but it was not so done. The seizure was made only under Section 10(4) of the Act. That Sub-section authorises a Food Inspector to seize any article of food if he suspects it to be adulterated or misbranded. Hence, it may be said that the averment made in paragraph 5 is an afterthought.

12. The Magistrate gave reasons for discharging the accused. He noted that action was not taken under Section 10(6) but under Section 10(4) of the Act when the samples were taken. The public analyst did not mention in his report relating to the mustard oil sample that it contained a mixture of soyabean oil. These grounds also found favour with the learned Additional Sessions Judge.

13. Much importance may not be attached to the fact that at the time of the raid action was taken under Section 10(4) of the Act and not under Section 10(6) of the Act. However, it cannot be ignored that there is nothing else to indicate that

soyabean oil was being used or was stored for being used as an adulterant. If after receiving the report of the Public Analyst with regard to the sample of soyabean oil, the Food Inspector suspected that this oil was stored for being used as an adulterant for mustard oil, he should have requested the Public Analyst to analyse the sample of mustard oil again to find out if the test for presence of soyabean oil was positive or negative. This was not done. I have earlier mentioned that the Public Analyst reported that tests for the presence of cotton seed oil and linseed oil were negative. It can, therefore, be reasonably said that the public Analyst would have been in a position to report if the test for soyabean oil was positive or negative. In the absence of a test to this effect, the lower courts were right in taking the view that there was no material before them to come to the conclusion that soyabean oil was stored or was being used as an adulterant.

14. Sub-section (7-B) of Section 10 of the Act too cannot help the applicant. This Sub-section will come into play if the article seized is either apparently an adulterant' or is found stored in the circumstances indicating that it was being used or stored for being used as an adulterant. When the recovered article is indicated to be 'adulterant' in this manner, only then the burden would shift to the Raghbir v. State of Haryana person from whose possession such an article was seized, to prove that it was not meant for the purpose of adulteration. Since soyabean oil is an edible oil, which is an article of food in its pure form, its storage by itself cannot lead to the presumption that it was an adulterant. If it had been found that other edible oils found in the same godown were mixed with soyabean oil, it could be said for a moment that it was stored to be used as an 'adulterant'. As said earlier, the report of the Public Analyst with regard to the mustard oil does not indicate presence of soyabean oil.

15. Opposite party No. 3 was not found to have a licence for stocking and sale of soyabean oil. This opposite party had a licence for dealing in oil seeds and oil seed products under the Control Order of the year 1966. However, soyabean oil was not one of the oils covered by that order. The fact that opposite party No. 3 had no licence for soyabean oil, cannot lead to the conclusion that this oil was stored to be used as an 'adulterant'.

16. For the foregoing reasons I am clearly of the view that the Magistrate rightly held that there was no prima facie case against opposite party No. 3, The order of discharge was well founded and legally correct. It was rightly upheld by the learned Additional Sessions Judge. There was no abuse of process of the court in passing the two impugned orders.

17. There is no merit in this application and it is hereby dismissed. The stay order dated 15-7-1981 is vacated.

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