

Om Prakash Vs. the State

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Court : Allahabad

Decided On : Jul-27-1982

Reported in : 1983CriLJ216

Judge : D.N. Jha and ;M. Murtaza Husain, JJ.

Appellant : Om Prakash

Respondent : The State

Judgement :

M. Murtaza Husain, J.

1. While hearing arguments in Criminal Revision No, 280 of 1980 (Om Prakash v. State) a learned single Judge of this Court was faced with the problem whether or not the presence of Tisi oil in the ratio of less than 7% in a sample of mustard oil purchased from a vendor by the Food Inspector, would make the mustard oil 'adulterated' so as to attract the provisions of Sections 7 and 16 Prevention of Food Adulteration Act. He has, therefore, referred the following question for decision by a larger Bench:

Whether in a mustard oil. which is sold to the Food Inspector, if Tisi Oil is found below 7 per cent. could such a mixture be deemed to have adulterated the mustard oil so as to attract the provisions of Section 7/16, Prevention of Food Adulteration Act.

While making the said reference the learned single Judge has relied upon a decision of a learned single Judge of Gauhati High Court in Santosh Kumar Datta v. Chairman Sapatgram, Small Town Committee (1975 Cri LJ 1330) and also upon a decision of a learned single Judge of this Court in Ajodhiya Prasad V. State of U. P. (1977 All Cri C 195). Both these decisions were earlier considered by a Division Bench of this Court in Badri Prasad v. State (1979 Cri LJ 1095). The Bench agreed with the decision of Gauhati High Court in Santosh Kumar Dutta's case (supra) and overruled the single Judge decision of this Court in Ajodhiya Prasad v. State (supra). That Bench decision was perhaps not brought to the notice of the learned Judge who has made this reference,

2. So far as sale of admixture of two varieties of edible oils as particular oil is concerned, the Bench has observed in Badri Prasad's case (supra) that:

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 as mustard oil or as linseed oil, it would be 'adulterated'.

Their Lordships went on to observe:-

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 Cr C 195) (supra) therefore, we would like to observe with respect, was not correct.

We respectfully agree with the above observations of the Division Bench and reiterate that admixture of two edible oils cannot be said to be 'adulterated food' provided the same is sold as mixture of the said oils but if the same is sold as either one oil or the other in spite of it being an admixture it would be deemed to be 'adulterated' for the purposes of Rule 44(c) and Sections 7/16. Prevention of Food Adulteration Act.

3. In Santosh Kumar Datta's case (1975 Cri LJ 1330) (supra) it was observed by a learned single Judge of Gauhati High Court that where in the sample of mustard oil all the ingredients of that oil were found to be within limits prescribed in Item A 17.06 of Appendix B edible oil of any other quality, if found did not exceed 7 per cent the mustard oil could not be deemed to be 'adulterated'. Citing this decision with approval the Division Bench of this Court laid down in Badri Prasad's case (1979 Cri LJ 1095) (supra) that (para 12):

We may, however, observe that it does appear that a mixture of other edible oils up to a limit of 7% is permissible in law with mustard oil in view of Rule 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.

4. The standard of mustard oil 'Sarson Ka Tel' prescribed in Items A-17.06 and A-05-15 of Appendix 'B' to the Rules framed under the Prevention of Food Adulteration Act lays down that presence of extraneous matter, including edible oil seeds of any variety (barfing *Arge-mbne Mexicana* Linn), up to 7% is permissible because while collecting mustard seeds for crushing it is practically impossible for the miller to avoid mixing up of other seeds like Tisi etc., in small quantity. On account of that practical difficulty law has given allowance for the existence of extraneous matter up to 7%. So long as the sample of mustard oil conforms to the prescribed standard and does not contain extraneous matter more than 7% in quantity, the sample for all practical purposes shall be deemed to be that of unadulterated mustard oil. Rule 44 (e) of the Rules framed Under the Prevention of Food Adulteration Act undoubtedly prohibits sale of mixture of two or more

edible oils as an edible oil but mustard oil which does not contain more than 7% of extraneous matter, including unprohibited edible oils, cannot be said to be an admixture of two different oils. We are, therefore, of the opinion that mustard oil should not, be deemed to be either 'adulterated' for the purposes of Section 2(1) Prevention of Food Adulteration Act. or an admixture of two different oils for the purposes of Rule 44 (e) of the Rules framed under the Act, if presence of some other edible oil like Tisi is noticed in it but it along with other extraneous matter does not exceed the prohibited limit of 7 per cent.

5. Our reply to the question referred to us is therefore as follows:

If Tisi Oil up to 7% is defected in a sample of mustard oil and the sample in all other respects conforms to the standard laid down in Item No. A-17.06 of Appendix B of the Rules framed under the Prevention of Food Adulteration Act, it shall continue to be mustard oil for all practical purposes and will not be deemed to be an admixture of edible oils so as to attract the provisions of Section 7/16 of the Act. It will be deemed to be an admixture and consequently adulterated if the percentage of other edible oils exceeds 7 per cent, or it contains argemone oil or it does not conform to the standard laid down in Item No. A-17.06 of Appendix B of the aforesaid Rules.

6. Let our opinion be laid before Hon'ble single Judge concerned.

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