

Khacheroo Mal Vs. the State

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Court : Delhi

Decided On : Dec-24-1970

Reported in : 7(1971)DLT138

Judge : V.D. Misra, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 2

Appeal No. : Criminal Revision Appeal No. 120 of 1970

Appellant : Khacheroo Mal

Respondent : The State

Advocate for Pet/Ap. : Daya Kishan,; D.C. Mathur,; Y. Dayal and;

Judgement :

V.D. Misra, J.

(1) This revision is directed against the order of Additional Sessions Judge upholding the conviction of the petitioner under Section 7/16 of the Prevention of Food Adulteration Act (hereinafter called the Act) and the sentence of 6 months rigorous imprisonment and a fine of Rs, 1,000.00 in default of which to undergo further rigorous imprisonment for 3 months. B.R. Kochhar, Food Inspector. on 8th January, 1969 purchased 600 grams of Kaiu tukras as sample for analysis from the petitioner on payment of its price. The Food Inspector prepared the inventory

and various other documents in respect of the sample taken by him. He divided the sample into three equal parts and put them in three dry bottles which were duly sealed. One of these bottles was sent to the Public analyst who reported that the sample was adulterated due to its being insect infested. On receipt of this report a complaint was filed against the petitioner. The trial Court found the petitioner guilty and convicted and sentenced him as aforesaid. His appeal to the Court of Session was dismissed by the additional Sessions Judge, Delhi.

(2) The main contention of the learned counsel for the petitioner is that the report of the Public Analyst is vague and does not show that the petitioner is guilty of any offence. The report of the Public Analyst is Exhibit P-E and is as follows : 'Date of analysis : 10.1.1969 Insect infested pieces of kaius : 21.9% and I am of the opinion that the same is adulterated due to insect infested pieces of kajus to the extent of 21.9%'. According to the learned counsel for the petitioner this report does not show the presence of and living insects and so the article could not be termed 'insect infested'

(3) According to the learned counsel for the State it is not necessary that living insects should be present before the article could become 'insect-iniested' He submits that 'insect-infested' is the result of insect-infestation' and in other words means insect damaged.

(4) Section 2(i)(f) is in the following terms :

'2,In this Act unless the context otherwise requires- (i) 'adulterated'-an article of food shall be deemed to be adulterated (f) if that article consists wholly or in part of any filthy, putrid, disgusting, rotten, decomposed or diseased animal or vegetable substance or is insect-infested or is otherwise unfit for human consumption;

(5) The learned counsel for the respondent submits that in order to interpret the meaning of the words 'insect-infested' definition and standard of quality of some articles laid down in Appendix 'B' to the Prevention of Food Adulteration Rules, 1955 should be taken into consideration. In item A..05.01 it is laid down that 'The chilli powder shall be dryfree from..... insect infestation.....,' Item A, lays down that 'insect damaged seeds shall not exceed 8,0 percent by weight

Item 8.05.16 lays down 'the proportion of extraneous matter and infestation shall not exceed 3.0 percent by weight.' A. 05.21. lays down 'the powder shall be free from insect infestation' A 07. 01. 01 and A. 7.06 lay down that 'it shall be free from insect fragments.' A. 67.09 lays down '... free from ... insects.' A 10 06 lays down 'it shall be free from ... insects and insect fragments or fungus infestations. A 18.01 lays down 'it shall be free from insect infestation ...' It is thus contended that the legislature used various words in order to mean different things. At some places the words 'insect infestation' has been used whereas at other places, 'insect damaged' has been used. Still at another place it is required that the article shall be free from insects. He thus contends that the words 'insects infested' used in Section 2(i)(f) of the Act do not mean that living insects must be present before an article can be said to be 'insect-infested, '

(6) WEBSTER'S New International Dictionary, Vol. 1, at page '1274' gives the meaning of the word 'infest' as 'to trouble greatly by numbers or by frequency of presence; to assail or annoy persistently and in numbers to frequent and molest or harass; as fleas infest dogs and cats.' The intention of the legislature by using this word in S. 2(i)(f) in the sentence 'if the articleis insect infested' clearly is that at the time of analysis infestation by insects should be present. In other words, the sample should be infested with insects. If the legislature wanted to convey the idea of 'insect damage' then they could have very easily used the words 'insect damaged'. Since that has been used at various places while laying the standards of articles of food mentioned above. It is true that the word 'infestation' has been used with respect to some of the above-mentioned standards, but the formation of those sentences shows that only the word 'infestation' could be used and the word 'infested' could not be used. Simply because the word 'infestation' has been used by the legislature it does not mean that the use of the word 'infested' means something different. The use of these two different words is the result of the grammatical formation of the sentences and not because of the different intention of the legislature. I had asked the learned counsel to show me how he would use the word 'insect infested' in the sentence 'it shall be free from insect infestation'. He had to admit that the word 'infested' could not be used and to use that word the grammatical formation of the sentence will have to be a different one. In Criminal Revision No. 279 of 1969 in Wazir Chand v. State decided by me on 7th

December. 1970. I referred to the statement of Shri Prem Parkash Bhatnagar, Public Analyst. He stated that insect-infestation takes place first and thereafter the food grains are damaged by the insects. He had further stated that in case no living insect was found present but the food grain was found to be damaged, then his report would be to the effect that the food-grains were 'insect damaged' In case the living insects were present as well as the food grains were found to be damaged, his report would show the article as 'insect-infested,' This also shows that the presence of living insects is necessary before an article could be called 'insect infested. In my opinion therefore, the contention of the learned counsel for the State cannot be up-held that no living insects need be present before an article can come under the mis-chief of 'insect infested'.

(7) Admittedly the report of the Public Analyst does not show the presence of any living insects. It cannot thus be said that the kaju tukras were insect infested.

(8) The result is that the Revision is accepted and the conviction and the sentence of the petitioner are set aside and he is acquitted.