

Radhey Sham Vs. the State and anr.

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Court : Delhi

Decided On : Dec-22-1976

Reported in : 13(1977)DLT115

Judge : V.D. Misra, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 7; Prevention of Food Adulteration Rules, 1955 - Rule 44

Appeal No. : Criminal Revision Appeal No. 4 of 1976

Appellant : Radhey Sham

Respondent : The State and anr.

Advocate for Pet/Ap. : C.L. Prem,; D.R. Sethi and; B.T. Singh, Advs

Judgement :

V.D. Misra, J.

(1) This revision is directed against the judgment of Mr. K.B. Andley, Additional Sessions Judge, Delhi upholding the conviction of the petitioner under section 7/16 of the prevention of Food Adulteration Act and the sentence of rigorous imprisonment for six months and to pay a fine of Rs. 1000.00 only.

(2) The relevant facts for the purpose of this revision may now be noted. On 25-7-73, a sample of refined groundnut oil taken for analysis by Food Inspector R.D. Sharma from the petitioner The Public Analyst declared it adulterated due to positive presence of 5.0% of cotton seed oil. The defense of the petitioner was that the sample was taken from a tin of Postman Brand Oil and someone had left the tin at his shop. During the proceedings the petitioner requested the court to send the sample to the Director of Central Food Laboratory, Calcutta for analysis. The court accepted the petitioner's request. The Director of the Central Food Laboratory found that the test for cotton seed oil is Spositive. He also found the saponification value as 196.8. The petitioner was, therefore, convicted and sentenced as stated above.

(3) Mr. C.L Prem, learned counsel for the petitioner, submits that the Director of Central Food Laboratory failed to give the percentage of the cotton seed oil which was found in the sample and therefore it cannot be held to be adulterated. He also contends that rule 44(e) of the Prevention of Food Adulteration Rules, which prohibits the sale of mixture of edible oils, does not cover the present case because the mere presence of another oil cannot be termed as mixture. Moreover, he submits, no charge for contravening rule 44(e) was framed by the trial court. He refers to various authorities in support of his contentions which I will presently discuss.

(4) The charge framed by the trial court may first be noted. The relevant part of the charge runs thus :

'I, R.C. Chopra, J.M.I.C., Delhi, do hereby charge you Radhey Sham.....
.....that on 25-7-73 at about 3.45 p.m. at your shop No. 2089, Shanti Nagar, Tri Nagar, Delhi, you were selling refined groundnut oil edible and sample of which was sold by you to Shri R.D. Sharma, F.I., for analysis which was found adulterated and thereby committed an offence punishable under section 7/16 of the Prevention of Food Adulteration Act, 1955 and within my cognizance.'

(5) It may be noticed that under the rules a copy of the report of Public Analyst is to be supplied to the vendor soon after that report is received. It is not denied that the petitioner was in possession of copy of the report of Public Analyst when the

charge was framed. Now, the charge clearly gives full particulars of the time and the sale as well as the article of food sold by the petitioner to the Food Inspector for analysis. He was also in possession of the report of the Public Analyst. He thus knew all the relevant material facts on the basis of which he was being prosecuted. The failure to mention the rule or section which had been contravened by the petitioner was not thus material. It is not denied that punishment for contravention of provision of rule 44 has to be under section 7/16 of the Act. therefore, it is not correct to say that the charge was misleading or that any prejudice has been caused to the petitioner. Mr. Prem refers to Santosh Kumar Dutta v. Chairman, Sapatgram Small Town Committee and another, in support of his contention that the charge was not properly framed. This judgment does not tell us the charge which was framed by the trial court against the vendor. The only thing specifically mentioned is that 'the petitioner was not prosecuted under Section 16(1)(a)(ii) read with Section 7(v) of the Act for sale of admixture of two edible oils in violation of Rule 44.' Perhaps the charge referred to other clause of sub-section (1) of Section 16 and Section 7 and for that reason the learned Judge come to the Con- 1. Cr. Rev. No. 41 of 1973, decided on 6-8-1974 (Gauhati High Court). elusion that he was not prosecuted under a particular clause and subclause of the said Sections which are mentioned in the judgment. Mr. Prem also refers to a Division Bench judgment of this Court reported in Municipal Corporation of Delhi v. Rujinder Singh', and Municipal Corporation of Delhi v. Om Parkash.' These were appeals against acquittals. This Court upheld the acquittal of vendor of the charge of selling adulterated articles of food. It seems that the Complainant-Corporation put forward a contention that the vendor could and should be convicted for infringing rule 48 (A) since the labels used by the vendor were not in accordance with the rules. The court came to the conclusion that contravention of rule 48-A was indictable but, for reasons which were mentioned in the judgment, it was decided not to send back the case for trial. These judgments do not help the petitioner in any manner.

(6) As regards the question of the Public Analyst's duty to give percentage of cotton seed oil, no rule requires him to do so. The definition and the standard is laid down in the Appendix to Rules at item A, 17.03. It specifically provides inter alia, that the oil should be free from other foreign matter and thereafter the

standard is laid down. Rule 44 (e) prohibits the sale of mixture of two or more edible oils as an edible oil. In these circumstances it is not necessary to determine the extent of the foreign matter or the other edible oil which may be found present in a given edible oil. The Public Analyst was, therefore, correct in not giving the percentage.

(7) Mr. Prem relies on Santosh Kumar's case (supra) and submits that the mere presence of other edible oil will not result in the contravention of or infringement of rule 44 (e). That case relates to a sample of mustard oil which) on analysis, was found to contain sesame oil. The learned Judge after referring to the relevant standard of mustard oil refers to the standard of mustard seed which permits the presence of oil seeds of other varieties to the extent of 7.0 percent of weight. He therefore concluded that the presence of foreign oil up to the extent of 7 percent in the sample of mustard oil was not actionable. In these circumstances the failure of the Public Analyst to give the percentage of sesame oil in the sample of mustard oil was held not to contravene rule 44(e). With respect to the learned Judge, I do not agree with the reasoning as well as the conclusion arrived at. Rule 44(e) is clear and unambiguous. It does not allow mixture of two edible oils to sold as one edible oils. If the intention of the legislature was to permit the presence of foreign material or other edible oil it could have said so specifically. It may be noticed that wherever the legislature's intention was to allow the presence of foreign matter, it has stated specifically in the standards prescribed under the Rules. That apart, no standard is prescribed for groundnut seed and even applying the groundnut oil can be allowed under rule 44 (e).

(8) In my opinion, therefore, both the courts below are correct in holding that the petitioner is liable to be punished under section 7 read with section 16 of the Food Adulteration Act.

(9) Mr. Prem submits that though the Director of Central Food Laboratory was not given the extent of the presence of cotton seed oil, the Public Analyst has given the extent at 50%. He further submits that the presence of such a minor percentage should not be viewed seriously and a lighter punishment should be awarded to the petitioner. He refers to a judgment reported in *Harish Chandra v.*

State of Uttar Pradesh In that case a learned single Judge of Allahabad High Court reduced the sentence on the ground that the vendor was a petty shopkeeper and there was nothing to show that he had any previous conviction to his credit. This judgment was given as far back as 22nd February, 1973. Since then the Supreme Court had lot to say on the question of sentence in excess of food adulteration. Being a petty shopkeeper and not having a previous conviction to one's credit are not good reasons to award a hither sentence.

(10) In the instant case the petitioner has examined the Public Analyst Mr. P.P. Bhatnagar as D.W. 2. He deposed that he had analysed two samples of Agmark Refined Government Oil Postman Brand purchased by the Food Inspector from Ahmed Mills, Bombay and both these samples were found to be adulterated due to presence of 3% cotton seed oil. He placed on record the copies of the report. These are Ex. D.W. 2/A and Ex. D.W. 2/B.

(11) The petitioner in cross-examination of P. W. 2, R. D. Sharma who had lifted the sample, suggested to him that the sample was taken from a tin which contained the label of postman Brand. Of course the Food Inspector denied the suggestion though he admitted that it was taken out of a tin. But he was not in a position to mention the brand which was mentioned on the tin. In this state of affairs it can be presumed that the petitioner was selling groundnut oil out of a tin containing Postmen Brand Oil. It may be noticed that the tin was open and the petitioners defense that it was left there by someone was rejected. However, the similarity of the analysis between the samples of oil taken from the petitioner, and two samples of oil taken from the manufacturer (referred to by the Public Analyst, D.W. 2) cannot be overlooked.

(12) In the circumstances discussed above, the ends of justice would be fully met if the sentence of imprisonment awarded to the petitioner is reduced to one already undergone and the rest is converted into a fine. The petition is, therefore, partly accepted. While the conviction is maintained, the sentence is reduced to one already undergone with a fine of Rs. 2000.00 . In default of payment of fine the petitioner is directed to undergo rigorous imprisonment for 4 months. The petitioner is allowed to deposit the fine till 10th January, 1977.

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