

Balbir Singh Vs. State

Balbir Singh Vs. State

SooperKanoon Citation : sooperkanoon.com/684197

Court : Delhi

Decided On : Jun-07-1974

Reported in : 1974RLR563

Judge : Yogeshwar Dayal, J.

Acts : Prevention of Food Adulteration Act - Sections 7

Appeal No. : Criminal Revision Appeal No. 167 of 1974

Appellant : Balbir Singh

Respondent : State

Advocate for Pet/Ap. : O.P. Soni and; D.C. Mathur, Advs

Judgement :

Yogeshwar Dayal, J.

(1) Appellant is running a 'dhaba' at Gandhi Nagar. A sample of 'Haldi' was taken from him which on analysis was found to be adulterated. After trial he was convicted which was maintained by the Sessions Court and the filed revision in the High Court. Para 7 onwards the judgment is :

(2) The submission of Mr. Soni, learned counsel for the petitioner is that the standard of Haldi powder is in two parts. The first part relates to the purity of

standard and the second part relates to the quality of standard and thus the offence, if any, is covered by section 2(i)(1). This submission is fallacious for more than one reason. Firstly, as will be noticed, the heading of Appendix B shows that what has been prescribed is not only the standard of quality but also the definition of the article. The first part of the standard is the definition part and the second part is explicitly the standard of the powder. Secondly, the case cannot possibly fall under clause (1). It relates to the standard being violated either by the short or excess of the prescribed limits. The violation under clause (1) in case of prohibition is not covered at all. In the definition part of the standard of Haldi powder it has to be free from artificial coloring matter and, again, under rule 29 Haldi powder is prohibited from having any coal tar dye, even the permitted coal tar dyes. It is thus clear that clause (1) of section 2(i) cannot cover the present case. Again, under Rule 44 (h) turmeric is prohibited from containing any foreign substance. The report of the Public Analyst quoted above shows that the Haldi Powder was found to be adulterated not only for excess in total ash present but also due to the presence of 20% foreign matter of rice starch besides artificial coal tar dye. The starch permissible in the Haldi powder is the natural starch in the Haldi and not of any foreign matter. thereforee, the present case ceases to be the case of either quality or purity being less or in excess of the prescribed standard. In view of the definition part as well as Rule 44 (h) the sample of Haldi powder is adulterated due to the presence of the two aforesaid extraneous substances which are prohibited and thereforee clause (1) of section 2(i) will have no application whatsoever. Clause (1) of section 2(i), as is clear from the wording of it, applies only where it is found that the prescribed constituents are either less or in excess of the prescribed standard. I will thereforee reject the submission of the learned counsel that the case is covered by section 2(i)(1) of the Act,

(3) Mr. Soni next urged that since it is a case of violation of the rules it is covered by the penal provisions of section 16(i)(ii) This argument is based on ignoring the first part of sub-clause (ii) of section 16(1) where only those cases are covered which are not covered by clause (i) of section 16(1)(a). Since the report shows that the article is adulterated clause (ii) of section 16(1)(a) would not be applicable.

(4) Mr. Soni then submitted that the foreign substance found by way of coal tar dye or starches is not harmful to the health and therefore the benefit may be given of a lesser punishment or under Probation of Offender's Act. In a case where the inclusion of any foreign substances or coal tar dye is completely prohibited it does not necessarily follow on the report of the Public Analyst that the coal tar dye was permitted one, where the report of the Public Analyst is silent. In fact where particular article like the coal tar dye is prohibited, it was not necessary turn the Public Analyst to mention whether the coal tar dye was premised or not. It is also submitted by the learned counsel for the petitioner that since the petitioner is not a regular dealer in Haldi powder but only sells prepared food in his 'dhaba' this court should take a lenient view. I am afraid I cannot accept this argument of hardship. In a country where consumerism as a movement has not developed, the common man is at the mercy of the vicious dealer, and when the primary necessities of life are sold with spurious admixtures for making profit, his only protection is the Prevention of Food Adulteration Act and the Court. If offenders can get away with it by payment then its enforcement would be a mockery. The Court must realise that the offenders under the Prevention of Food Adulteration Act are the worst class of anti-social elements and an immediate and prolonged confinement is the best assurance of society's physical protection. One can imagine the harm that this class of offenders had already perpetrated on our society and it is only in this country that they have acquired social status by making huge profits whereas in any other democratic country they would be boycotted and not even permitted to carry out their trade besides much heavy punishment. The Legislature has been forced to provide certain powers due to vagaries of some offenders. The function of our courts is to respect this change as the previous law of dealing with the offenders leniently did not serve the necessary purpose of eradicating the evil of adulteration. In fact, it had no effect and the adulteration continued to be rampant. As observed by Krishna Iyer J. in the case of *Pyarali K. Tejani v. Mahadeo Rimchandra Dange and others* 1974 Fac 74 "no chances can be taken by society with a man whose anti-social operation, disguised as a respectable trade, imperils numerous innocents. He is security risk. Secondly, these economic offences committed by white collar criminals are unlikely to be dissuaded by the gentle probationary process. Neither casual provocation nor notice against particular

persons but planned profit-making numbers of consumers furnishes the incentive.' For such offences means read is out of the question. Nothing more than the actus reus is needed where regulation of private activity in vulnerable areas like public health is intended. Section 7 casts an absolute obligation regardless of any bad means rea. If you have sold any article of food contrary to any sub-section of section 7 you are guilty. There is no more argument about it.

(5) It was submitted by the learned counsel that the petitioner is a poor 'Dhabe Wala' and therefore this Court should take a lenient view. I am afraid I cannot accept this sentimental arguments. In a similar case of Halwai where the offence was found to be covered under section 2(1)(J) and section 16 of the Act, the Supreme Court in the case of Jai Narain V. Municipal Corporation of Delhi 1972 Fac 600 declined to give the benefit of section 4 of the Probation of Offenders' Act on the ground that the activity of the petitioner was distinctly anti-social; Petition dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com