

QutubuddIn Vs. the State and ors.

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Court : Delhi

Decided On : Dec-24-1976

Reported in : 13(1977)DLT72

Judge : V.D. Misra, J.

Acts : Prevention of Food Adulteration Rules, 1955 - Rule 22

Appeal No. : Criminal Revision Appeal No. 294 of 1974

Appellant : Qutubuddin

Respondent : The State and ors.

Advocate for Pet/Ap. : D.R. Sethi,; R.N. Mittal and; B.T. Singh, Advs

Judgement :

V.D. Misra, J.

(1) This revision is directed against the judgment of Mr. G.R. Luthra, Additional Sessions Judge, upholding the conviction of the petitioner under section 7/16 of the Prevention of Food Adulteration Act but reducing the sentence from nine months rigorous imprisonment and a fine of Rs. 2,000.00 to six months rigorous imprisonment and a fine of Rs. 1,000.00 .

(2) The petitioner runs a Dhaba. On 14-12-1973 Food Inspector Mohan Lal went to the petitioner's Dhaba and purchased 450 Grams of chillies powder for analysis. The Public Analyst found the sample to be adulterated because of the presence of artificial coal-tar dye and 10.0% foreign matter of starches.

(3) The defense of the petitioner was that the chillies powder in question was not for preparation of food at the Dhaba but was meant for private consumption of the petitioner. He, however, admitted that Food Inspector had taken sample of the chillies powder.

(4) Mr. D.R. Sethi, learned counsel for the petitioner, contends that only 150 Grams of chillies powder was sent to the Public Analyst instead of 200 Grams and thus there was a breach of Rule 22 of the Prevention of Food Adulteration Rules. Admittedly, only 150 Grams of Chillies powder was sent to the Public Analyst. Under rule 22, the quantity of sample of food to be sent to the Public Analyst is prescribed. At Seriall No. 17, 'Spices' are mentioned and the approximate quantity to be supplied is laid down as 150 Grams. Seriall No. 23 relates to 'Foods (not specified)' and the quantity mentioned is 200 Grams.

(5) The standard for chillies powder is laid down in Appendix B to the Prevention of Food Adulteration Rules at item No. A.05.05.01. It may be noted that the item A.05 has the heading 'Spices and condiments'. If the chilly powder is held to be a spice, then the approximate quantity required to sent to the Public Analyst under rule 22 shall be 150 Grams but in case it is not a spice then it will fall under 'Foods (not specified)' mentioned at Seriall No. 23 of rule 22 and the quantity required to be sent to the Public Analyst will be 200 Grams.

(6) By my judgment reported in Hans Raj v. State I have held that chilly powder is not a spice but is a condiment. I need not repeat the exhaustive reasoning given in that judgment. Suffice it to say that I have referred to the Webster's New Third International Dictionary as well as to the history of the amendment of the Prevention of Food Adulteration Rules and two judgments of the Bombay High Court reported in Jayantilal Kumarji and Kunvarji Kanji v. State of Afaharashtra' and Vithal Kallappa Shetty v. State of Maharashtra.

(7) In view of the judgment of the Supreme Court reported in Rajaldas G. Pamnani v. State of Maharashtra, the failure of the Food Inspector to send the requisite quantity of the sample in terms of rule 22 results not only in an infraction of the rules but also in injustice.

(8) The revision is, therefore, accepted and the conviction of the petitioner is hereby quashed and set aside. The fine, if paid, is directed to be refunded to the petitioner.

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