

Madan Lal Vs. State

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Court : Delhi

Decided On : Feb-05-1986

Reported in : 30(1986)DLT83; 1986(10)DRJ282

Judge : Charanjit Talwar, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 7

Appeal No. : Criminal Revision Appeal No. 201 of 1984

Appellant : Madan Lal

Respondent : State

Advocate for Pet/Ap. : D.C. Mathur,; Gulshan Rai and; B.T. Singh, Advs

Judgement :

Charanjit Talwar, J.

(1) By this petition the legality of the judgment passed on 24th November, 1984, by an Additional Sessions Judge, New Delhi, dismissing the appeal of the present petitioner against his conviction and sentence for the offence punishable under section 7/16 of the Prevention of Food Adulteration Act, is being challenged. To appreciate the contentions of Mr. Mathur, learned counsel for the petitioner, it is useful to notice the salient facts of the case.

(2) The petitioner is carrying on the business under the name and style of Rajdhani Masala Company. This concern was registered with the Directorate of Agricultural Marketing for gradation of ground spices and curry powder. Thus it was a dealer of Agmark products. The petitioner was carrying on his business as proprietor of that concern in premises bearing No. 4298, Tri Nagar, Delhi.

(3) On 23rd April, 1981, at about 4.30 p.m. Food Inspector M.K. Gupta (Public Witness 2) accompanied by another Food Inspector S K. Sharma (Public Witness 5) visited the said premises. After disclosing his identity Mr. Gupta purchased a sample of red chilly powder on payment of Rs. 7.20 paise. That powder was divided into three parts and put in three dry and clean bottles which, according to the prosecution were marked and sealed. The sample on being sent to the Public Analyst was found to be adulterated as it did not conform to the prescribed standard.

(4) The prosecution in support of its case, apart from producing the said two Inspectors, also produced Shri P.K. Sen (Public Witness 1), a Junior Chemist in the Directorate of Agricultural Marketing who has deposed regarding the procedure prescribed for labelling of Agmark products. In examination-in-chief he has affirmed that Rajdhani Masala Company was registered with the Directorate. In cross-examination he has stated 'The system of providing agmark labels is that at the time of preparation of a particular consignment samples are drawn by our Inspectors and the whole consignment remains sealed. After the result is received, Ag-mark labels are given only after the sample is found conforming to the specifications and the packing up to the last gram is also done in the presence of our Inspectors.'

(5) I have quoted the cross-examination of Public Witness 1 as the case of the petitioner throughout has been that the red chilly powder out of which the sample was drawn, was not meant for sale but had been stored for grading by the Inspectors of the Directorate of Agricultural Marketing, Delhi. The plea is that the powder was lying in a gunny bag and was to be put in polythene packets with Agmark labels after gradation and certification by the authority concerned.

(6) Mr. Mathur submits that the appellate Court as well as the trial Court have presumed that the chilly powder in question was sealed in polythene bags and had been stored for sale. He says that the petitioner has no separate premises as a store. In the premises in question articles are stored for gradation as well as for sale.

(7) The learned appellate Court while noticing the prosecution case on this aspect has said 'he after disclosing his identity purchases sample of red chilly powder which was in sealed polythene packets from the appellant'. While upholding the conviction it found in paragraph 10 of its judgment, "The very fact that the articles were lying in sealed polythene packets shows that these were kept for sale in the shop. These goods were not lying in the godown in open condition or in the condition ready for test by the agmark authorities for giving the certification by these authorities".

(8) Again, in paragraph 11 it has been held that 'since the packets from which the samples were taken were already sealed and closed the question of getting them examined from Agmark authorities did not arise."

(9) Mr. Mathur has assailed these findings. He says that the prosecution has not been able to establish that the said powder was taken out of sealed packets. The said findings, according to him, are based on conjectures.

(10) At the outset I may notice that in examination-in-chief Public Witness 2 M.K.. Gupta, the Food Inspector, who had purchased the sample, does not aver that the powder was taken out of a sealed packet. It was only in cross examination that he said that the sample had been taken out of 'closed polythene packets'. This witness admitted that the place from where the sample was taken was used for packing as well as sale of 'Masalas'. He also admitted that Rajdhani Masala Company was registered with the Directorate of Agricultural Marketing. He further stated 'I do not know that the procedure for packing Ag-mark material is that a sample is drawn from the bulk by the Ag-mark Inspector and after it is found conforming to standards only then the bulk is packed into packets in the presence of the Ag-mark Inspector and only then Ag-mark seals are issued and pasted on such packets'. It was thereafter that he had deposed that he had taken the

samples from out of closed polythene packets which were not printed and did not bear any label of Rajdhani Masala Company. He further admitted that 'I did not preserve the empty polythene packet'. He denied the suggestion that the sample was taken out of a gunny bag and that the petitioner had objected to the sample being taken from 'loose spices'.

(11) The other Food Inspector SK. Sharma (Public Witness 5) in examination-in-chief did not say that the chilly powder was taken out of a sealed polythene packet. He admitted that the room from where the sample was taken was 10 to 12 feet. According to him, the powder was in polythene packers 'which did not contain any label of Rajdhani Masala Company'. He further stated that the particulars of the container from which the sample was taken were not noted down on any of the documents.

(12) Mr. Mathur is right when he points out that the prosecution witnesses have not stated that the packets of packet from which the sample was taken were sealed. As noticed earlier. Food Inspector Gupta in big cross examination while denying the suggestion that it was taken from a gunny bag, says that the polythene packet was 'closed'. The other witness merely says that the powder was taken out of a polythene packet. The findings of the appellate Court, as noticed above, are that the packet was sealed. The prosecution in the facts and circumstances of the present case where it is admitted that in that very room articles are stored for gradation by the Inspector of Ag-mark authorities, and also for sale after certification, were expected to bring out in the examination-in-chief of the Food Inspectors that the packet from which the sample was taken was not only of a particular weight but was sealed. The allegation that it was 'closed' can be taken to mean that it was tied by a string. That fact brought out in cross-examination cannot be made the basis of the finding that the bag was sealed. This has resulted in mis-carriage of justice.

(13) The further finding of the appellate Court that 'the plea of the appellant that he is a dealer in those articles that are having Agmark certificate is a ruse and a camouflage for selling adulterated articles under the cover of Agmark Registration,' is certainly not borne out from the record. The Food Inspectors have not said so.

The prosecution has nowhere alleged so.

(14) Normally, this Court is reluctant to interfere in a revision petition with the findings of facts but the above reasoning of the learned appellate Court, cannot be upheld, in the peculiar circumstances of that case. The prosecution has failed to establish that the polythene packet or packets from which the sample was taken were sealed. It was uncharitable for the appellate Court, without there being any basis, to have said that the petitioner is using the Agmark certificates as camouflage for selling adulterated articles.

(15) The result is that the defense to the extent that the articles in question had been stored for gradation by the Inspectors of Directorate of Agricultural Marketing, has to be Upheld. Before parting I may note that the learned counsel for the State did not bring to my notice any Rules laying down as to how and where the goods, before they are graded and certified by the said Directorate, are to be stored. In my view, Rules ought to prescribe that those goods before certification and sealing be stored in a separate godown or store and not at the same premises which are meant for storing goods for sale. If there are no such Rules, I recommend that steps be taken to frame them.

(16) The petition is thus allowed. The conviction and sentence imposed upon the petitioner are set aside. The bail bond is discharged.