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Subhash Chander Vs. State (Delhi Administration)

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Court : Delhi

Decided On : Jul-29-1982

Reported in : 1982(3)DRJ696; 1982RLR696

Judge : A.B. Rohtagi, J.

Acts : Prevention of Food Adulteration Act, 1954 - Sections 7

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 129 of 1982

Appellant : Subhash Chander

Respondent : State (Delhi Administration)

Advocate for Pet/Ap. : D.C. Mathur and; D.R. Sethi, Advs

Judgement :

Avadh Behari, J.

(1) This petition under section 482, Criminal Procedure Code . is directed against the order of the Metropolitan Magistrate dated March 5, 1982

(2) These are the facts. The respondent Delhi Administration, tiled acomplaint under section 7/16 of Prevention of Food Adulteration Act (the Act). In the complaint it was alleged that the chocolate ice cream which the petitioner Subash Chander was vending was adulterated as well as misbranded as founded by the

public analyst in his report dated 29th May, 1981. he accused Subhash Chander was summoned. He exercised his right under section 13(2) of the Act to have the sample sent to the Director of Central Food Laboratory for analysis. The court received a certificate of the C.F.L. dated 16-1-1982. The certificate went in favor of the accused.

(3) The public analyst had found that the ice cream was adulterated. He gave this opinion. 'The ice cream layer of the sample contains milk fat 9% 'against the minimum prescribed standard of 10.0%. It also contains starch without any declaration as required under rule 43 (2) of P.F.A Rules 1955'. The certificate of the Central-Food Laboratory was to the contrary. The Director certified that the sample was not adulterated. He gave his opinion on solids, milk fat and protein. He did not say without on starch.

(4) The question arose before the Magistrate whether after the receipt of the Director's certificate the prosecution against the accused could go on.The magistrate held that it could. He thought that the certificate issued by the Director was final and conclusive only on the facts stated therein. He took the view that the public analyst report is not superseded in its entirety, nor completely effaced. He said this :

'INthe instant case the Director C.F.L. has analysed the sample only with regard to the charge regarding adulteration. He has not expressed any opinion if the sample was misbranded or not.'

(5) He, thereforee, came to the conclusion that the accused could be tried, for misbianding the article as the starch was found present by the public analyst without any declaration. This part of the report he held was not superseded by the certificate of CFL.

(6) In my opinion . the reasoning of the learned Magistrate is fallacious. Under section 13(2) of the Act the sample is sent to the Director of the Central Food Laboratory. Sub-section (3) says :

'THEcertificate issued by the Director of the Central Food Laboratory under sub-section 2(b) shall supersede the report given by the public analyst under sub-section (1)'.

(7) It has repeatedly been held by the supreme court that the certificate of the Director supersedes the report of the public analyst and is to be treated as conclusive evidence of its contents. The Director is a greater expert and thereforee the statute, says that his certificate shall be.accepted by the court as conclusive evidence. For all purposes the report of the public analyst is replaced by the certificate of the Director (See Municipal Corporation of Delhi v. Ghisa Ram, : 1967 CriLJ939 , Chetumal v. State of M.P. : 1981 CriLJ1009 and Jagdish Prasad v. State of Delhi, : 1982 CriLJ197 . Superseded is a strong Word. It means obliterate, set aside) annul, replace, make void, inefficacious or useless, repeal. The Director's certificate supersedes the report given.by the public analyst. Once superseded it does not survive for any purpose. It will be anamolous to hold that for some purpose it survives and for other purposes.it is superseded'.

(8) If the report of the public analyst is superseded for all purposes it is difficult to agree with the learned magistrate that for purposes of misbranding it survives and is not superseded by the certificate of the Director.

(9) This is denying the conclusive character of the certificate. Law attaches conclusiveness.to the Director's analysis. The certificate if in favor of the accused is his defensive armour. It is a valuable right of the accused. With a cetificate in his favor he deals a decisive blow to the prosecution case.

'9.In item A, II.01.08 of Appendix B to the Prevention of Food Adulteration Rules the standard of ice cream is prescribed. So far as starch is concerned it says :

'STARCHmay be added to a maximum extent of 5.0 per cent under a declaration on a label as specified in sub-rule (2) of Rule 43.'

(10) Whether starch is present or not can be found only by analysis. The public analyst found it present. The Director has not. Now the Director's analysis will prevail over the public analyst's report. The Director is a superious analyst. His

voice, his certificate overruleg the public analyst.

(11) According to the standard, ice cream can contain starch up to 5% under a declaration. The public analyst found that the article was misbranded because it contained starch wilhout the requisite declaration. The Director has not found any starch. The report of the public anayst is superseded for all purposes. It cannot be used by the prosecution for any purpose. It has been rendered void for all purpose It has been annulled, get aside, and repealed as a statute is repealed. It must thereforee be held that the article is neither adulterated nor misbranded. The prosecution cannot thereforee go on. It must come to a stop. The certificate of the Director is conclusive. The article has been found not to be adulterated. That is the end of the matter.

(12) For these reasons I set aside the order of the learned Magistrate dated 5th March) 1982 and quash the proceedings.

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