

State Vs. Dev Raj Singh and anr.

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Court : Delhi

Decided On : Dec-16-1982

Reported in : 24(1983)DLT156

Judge : M.L. Jain, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 13(2E)

Appeal No. : Criminal Revision No. 269 of 1982

Appellant : State

Respondent : Dev Raj Singh and anr.

Advocate for Def. : Mrs. Usha Kumar

Advocate for Pet/Ap. : S.T. Singh and; Usha Kumari, Advs

Judgement :

M.L. Jain, J.

(1) This is a revision petition against the order of discharge made by the Metropolitan Magistrate dated 22-7-1982.

(2) A sample of laddus was purchased from the respondent accused on 22-8-1980. One part of the sample was sent to the Public Analyst, Chandigarh, who reported on 17-9-1980 that the sample is coloured with unpermitted orange coal

tar dye. It appears that the accused made a representation to the Lt. Governor challenging the veracity of the said report as a result of which the local health authority acting under Section 13(2E) of the [Prevention of Food Adulteration Act, 1954](#) (herein the Act) sent the sample to the Public Analyst, Lucknow, who reported on 16-10-1981 that the sample was genuine, and no adulteration was detected. In his letter dated 18-11-1981 the Public Analyst, Lucknow stated, 'Appearance-faint yellow coloured sample. No added colour present in the sample'. Yet the Administration decided to prosecute the respondent and consent for prosecution was issued by the Secretary (Medical), Delhi Administration, to file a complaint. The order of consent does not bear any date. However, a complaint was filed on 19-2-1982. The learned Magistrate after examining the prosecution witnesses observed that there was no reason for the prosecution firstly to solicit the second opinion under Section 13(2E) of the Act and then to reject the same and again to act upon the former which they themselves earlier considered erroneous. This cast a shadow of doubt on the prosecution case that either the samples sent to the two Public Analysts were not of representative character or there is something wrong somewhere which is unexplained on the record. The learned Magistrate observed that if there are two views possible, one favorable to the accused must be relied upon. The learned Magistrate was also of the view that in the given circumstances, the consent given by the local health authority was not valid as it showed non-application of mind on its part.

(3) While disputing the above approach adopted by the learned Metropolitan Magistrate, the learned Public Prosecutor urged that the second report does not supersede the first report. It is only the report of the Central Food Laboratory which can supersede the report of the Public Analyst. May be so, but when two contradictory reports are available, then the courts will lean towards the one which is favorable to the accused and it is not correct to submit that there was no occasion or justification for inviting the second report and that it should be ignored. However, I asked the learned Public Prosecutor to place before me the concerned file. He did so. It appears from an examination of the concerned file that the order for inviting the second opinion was made after due consideration and the consent was also given after due deliberation. But all the same the benefit of doubt which has accrued to the accused cannot be denied to him.

(4) That apart, Mrs. Usha Kumar appearing for the respondent submitted that even upon the report of the Chandigarh Public Analyst, no case is made out against the accused. She invited my attention to Rule 28 of the Prevention of Food Adulteration Rules, 1955 and a book 'Chemical Analysis of Food and Food Products,' 1958 Ed. by Morris B. Jacobs. It appears that all permitted coal-tar dyes are acid dyes. Though orange hue is not one of the permitted colours under the Rules, yet the permitted colour, namely. Sunset Yellow Fgf and Tartazine are both orange powders and their mixture which the rule permits will also produce an orange appearance. If the article in question carried orange colour, it does not mean that the accused had mixed an unpermitted dye in it. That is why, she maintained, the Lucknow analyst found the sample unadulterated and the Chandigarh analyst did not state the exact category of the orange dye, if any, found by him in the food stuff. Viewed in that light, the decision to call for second opinion was fully justified. If this were not done, the accused would have suffered an irreparable damage. What prompted the Administration to accept the representation of the accused, was nothing but proper but if anything has been done which should not have been done as is now being suggested by the learned Public Prosecutor, the concerned officers and not the accused can be punished for that because the result has gone in his favor. She also objected vehemently to the manner in which the State was raising such an objection without leading any evidence in the lower court and even without saying anything about it in its revision petition. I find that there is considerable force in these submissions.

(5) I, therefore, see no reason to interfere with the order of discharge recorded by the learned Magistrate. The petition is, therefore, rejected.