

**Hans Raj Vs. the State**

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**Court :** Delhi

**Decided On :** Apr-19-1976

**Reported in :** 1977CriLJ92

**Judge :** Vyas Dev Misra, J.

**Appellant :** Hans Raj

**Respondent :** The State

**Advocate for Pet/Ap. :** Mr. D.C. Mathur

**Judgement :**

ORDER

**Vyas Dev Misra, J.**

1. This revision is directed against the judgment of an Additional Sessions Judge, Delhi upholding the conviction of the petitioner under Section 7/16 of the Prevention of Food Adulteration Act (hereinafter referred to as the Act) while reducing the sentence of six years rigorous imprisonment and a fine of Rs. 20,000/- to two years rigorous imprisonment and a fine of Rs. 5,000/-.

2. The prosecution case, briefly stated, is that on September 23, 1972 Food Inspector J.S. Chadha went to shop No. B-1242, Shastri Nagar, Delhi. This shop is owned by one Chaman Lal who sells spices in sealed packets. The Food

Inspector, after disclosing his identity, bought 450 grams each of turmeric (haldi) and chillies powder, and divided them into three equal parts according to the rules. Separate memos in respect of both the articles of food were prepared. When the samples were sent to the Public Analyst both were found adulterated. The report of the Public Analyst shows that turmeric was found to be adulterated 'due to 1.95 excess in total ash per cent by weight and due to the presence of 40.0% foreign matter.' Chillies powder was found to be adulterated 'due to 0.62 excess in ash insoluble in dil. HCl per cent and to the presence of artificial coal tar dye.'

3. The Food Inspector had taken into possession the packets from which the samples were taken. On each packet of haldi and chillies powder the words 'Hans Masala Co.' were found printed. Chaman Lal produced cash memo Exhibit PW2/A dated August 5, 1972 issued by Hans Masala Co. and told the Food Inspector that he had bought the spices from the petitioner. This cash memo contains a warranty : 'We hereby certify that foods mentioned in this invoice are warranted to be same in nature, substance and quality as that demanded by the vendor.' Food Inspector Chadha therefore, went to the residence of the petitioner. He found that masala was lying loaded in packets in a cycle-rickshaw for being sent to the market. He questioned the petitioner who admitted issuing the cash memo Exhibit PW2/A and selling masalas mentioned therein in sealed packets. The Food Inspector found similar packets of haldi and chillies powder Exhibits P1 to P14 lying there and took them into possession.

4. Chaman Lal was prosecuted as the vendor and the petitioner as the manufacturer. Chaman Lal proved the warranty and was acquitted while the petitioner was convicted and sentenced.

5. Mr. D.C. Mathur, learned Counsel for the petitioner, contends that chillies powder is not a spice but is a condiment and so the Food Inspector, according to Rule 22, should have sent 200 grams of the same to the Public Analyst. He thus submits that the petitioner is entitled to acquittal on that ground alone. He refers to an unreported judgment of Bombay High Court in Jayantilal Kunvarji v. The State of Maharashtra, Criminal Appeal No, 325 of 1974, decided on November 18, 1975 by Sapre, J. The learned Judge, after referring to two previous judgments of that

Court in Criminal Revision Application No. 673 of 1974, decided on March 18/19, 1975, by Apte, J., and in Criminal Appeals Nos. 1032 and 1033 of 1973 decided on March 17/20, 1976 by Padhye J., held that chillies powder is a condiment and not a spice. Mr. B.T. Singh, learned Counsel for the Municipal Corporation, contends that chillies powder should be held as a spice and not a condiment because it was shown as a spice in item No. A. 05 of Appendix 'B' to the Prevention of Food Adulteration Rules before its amendment in 1938.

6. In order to appreciate the contentions of the parties, it is necessary to refer briefly to the history of the relevant rules. Before its amendment in 1968, item No. A. 05 of Appendix 'B' of the Food Adulteration Rules had the heading 'Spices'. It laid down that 'the standard specified for the various spices given in this clause shall apply to spices in whatever form whether whole or partly ground or in powder form.' Under this heading various articles of food were mentioned. Chillies were mentioned as item No. A. 05.10. It is Rule 22 which lays down the quantity of sample of food which is required to be sent to the Public Analyst for analysis in respect of various articles of food. Entry No. 17 of this rule deals with 'spices' and approximately 150 grams of it are required to be supplied to the Public Analyst. Entry No. 23 talks of 'Foods (not specified)' and requires approximately 200 grams of such food to be supplied to the Public Analyst. In 1968 item No. A. 05 of Appendix 'B' was amended and the heading was changed from 'Spices' to 'Spices and Condiments.' Four more items, i.e. A. 05.15 (Mustard), A. 05.18 (Poppy), A. 05.19 (Saffron) and A. 05.21 (curry powder) were added to the list of articles of food under this heading. It may be noticed that the standard of quality of 'curry powder' and 'saffron' had been specified in the Appendix before this amendment but these two items of food were now brought under the heading 'Spices and Condiments,' However, no indication was given as to which of the items shown under 'Spices and Condiments' were spices and which were condiments. It may also be noticed that in spite of the change having been brought in item No. A. 05, Rule 22 was not changed. The result is that condiments would fall under the residuary entry No. 23 'Foods (not specified)' and not under 'Spices'. Another change was brought in Rule 22 in 1974 by adding as many as 14 entries of articles of food and also specifying their quantities to be supplied to the Public Analyst. However, even now condiments were not specifically mentioned and thus they still

continue to fall under the residuary entry.

7. Mr. B.T. Singh's contention is that all articles of food which were shown under item No. A. 05 before its amendment in 1968 have to be treated as 'spices' and only those articles of food which were added to this item after the amendment could be held either as spices or condiments. It has no force. I called upon Mr. Singh to specify the article which, according to him, could be considered as condiment and he was not in a position to specify any such article. It is apparent that the rule making authority decided to sub-divide spices into 'spices and condiments'. It was conscious of the fact that only 150 grams of spices were required to be supplied to the Public Analyst under Rule 22, but it must have decided that 200 grams were needed for condiments, I cannot treat the absence of 'condiments' from Rule 22 as a mere omission, because as late as 1974 Rule 22 was amended and still 'condiments' were not specifically mentioned. In case there was no intention to create any distinction between the two for the purposes of Rule 22, then item 17 of Rule 22 would have been amended by adding the words 'and condiments' after the word 'spices' The omission seems to me to be deliberate and not accidental. In these circumstances it is not correct to say that all the articles, which had been mentioned earlier under item A. 05 of Appendix 'B', should be treated as spices only.

8. Webster's New Third International Dictionary defines 'condiment' as 'an appetising and usually pungent substance of natural origin (as pepper, vinegar or mustard) : any of various complex compositions having similar qualities (as curry or chilly powder, pickles, or catsup),' It is obvious that chilly powder has always been treated as a condiment and not as a spice. Mr, Singh refers to the ' Customs Tariff Bill, 1975 in which on page 12 chillies are shown under the heading 'Spices (including mixed spices).' Admittedly nothing is shown as condiment and no distinction between spices and condiments is made. Moreover, it is open to the legislature to put any article under a specific heading for the purposes of an Act and so the Customs Tariff Bill can be no indication of the true nature of chilly powder. It is worth recalling that to begin with item A. 05 of the Rules decided to treat chillies powder as a spice only. As long as the heading was not changed from 'spices' to 'Spices and Condiments', chillies powder had to be accepted as a spice

for the purpose of Rule 22 However, as already discussed, the position materially changed after the item A. 05 was amended.

9. Mr. Singh then refers to 'The Chemical Analysis of Foods' by David Pearson (1970 Edition). Chapter 9 of this book deals with 'Herbs and Spices'. Under this Chapter chillies are also discussed. From this Mr. Singh would like me to conclude that chillies are spices and not condiments. I am afraid I cannot accept this contention. Admittedly the book does not deal with condiments at all. In other words, distinction between condiments and spices is not drawn by the learned author. This distinction may not have been necessary for the purposes of that book. Moreover, it does not necessarily follow that either there is no such thing known as condiment or that chillies are not condiment but are necessarily spice. Mr. Singh also refers to 'Food Inspection And Analysis' by Albeit E. Leach, 4th Edition, 1920. In this book Chapter XII deals with spices. The opening sentence of this Chapter is 'These aromatic vegetable substances are classed as condiments, and depend for their use on the pungency which they possess in giving flavour or relish to food.' Chilly is discussed in this Chapter. I am afraid the opening sentence itself classifies various vegetable substances as condiments and from that point of view chilly would be a condiment and not a spice. This again is of no help to the respondent Corporation and, if at all, it supports the petitioner as well as the definition given in the Webster's Dictionary.

10. Mr. Singh also refers to Dr. Raghuvira's Dictionary wherein the word 'spice' as well as the word 'condiment' has been 'described in Hindi as 'Vyanjan'. This again cannot be of any help because apparently Sanskrit does not have words to distinguish between spices and condiments.

11. Mr, B.T. Singh refers to Section 11(2) of the Act which provides that where the vendor refuses to accept a sample the Food Inspector is required to inform the Public Analyst of such refusal and the Public Analyst is required to divide the sample sent to him into two parts and keep one of these parts under seal. It is thus submitted as long as the Public Analyst is in a position to analyze the article of food sent to him, the difference in the quantity of sample sent to him and the quantity required by him under Rule 22 should not be held as material leading to

injustice. It is also submitted that Rule 22 was framed keeping in view the provisions of Sub-section (2) of Section 11. In other words, the quantity specified under Rule 22 is double than that required by the Public Analyst. First of all the situation envisaged in subsection (2) of Section 11 of the Act can be created only by the conduct of a vendor and he cannot be allowed to take advantage of his misconduct. Moreover, the question whether the quantity received by the Public Analyst is sufficient for analysis or not is not relevant in view of the ruling of the Supreme Court in *Rajaklas G. Pamnani v. State of Maharashtra* : 1975 CriLJ254 , In that case also there was no report by the Public Analyst that the quantity received by him was not sufficient for analysis. In fact the Public Analyst had analysed the article of food and in spite of that the Supreme Court ruled that the failure of the Food Inspector to send the requisite quantity of sample of food in terms of Rule 22 amounts not only to an infraction of the provisions but also injustice. It was also observed that 'the quantities mentioned are required for correct analysis. Shortage in quantity for analysis is not permitted by the statute.'

12. I am, therefore, in complete agreement with the decision of the Bombay High Court in the case of *Jayantilal Kunvarji* 1976 1 FAC 137 (supra) holding that chilly powder is a condiment and not a spice. The question whether 150 grams of chilly powder can be said to be approximately 200 grams as required under the residuary item in Rule 22, was also decided by the Bombay High Court following the Supreme Court decision in *Rajaldas G. Pamnani's case* : 1975 CriLJ254 (supra). In the case before the Bombay High Court only 150 grams of chillies instead of 200 grams were sent to the Public Analyst and it was held that a difference of 50 grams in 200 grams cannot be said to be a minor one which could be covered under the word 'approximate'. Apparently the difference is of 25% which is a material difference, A Division Bench of this Court in the case of *M.C.D. v. Attar Singh* (1975) 2 F.A.C. 20 took a similar view. In this case the Food Inspector weighed only 320 grains of food instead of 500 grams as required by Rule 22 and it was held following the Supreme Court judgment that due to non-compliance of the Rule there was not only an infraction of the provisions of the statute but it could also result in injustice. In these circumstances the petitioner is entitled to acquittal in respect of chilly powder.

13. Mr. D.C. Mathur then contends that the Food Inspector and Chaman Lal had conspired together to involve the petitioner falsely in this case after the Public Analyst declared the samples adulterated. He submits that the inventory Exhibit PC/1 is a forged document and was not prepared at the spot. He also contends that the prosecution has failed to prove that the haldi purchased by the Food Inspector was sold to Chaman Lal by the petitioner because the Food Inspector took into possession only four covers of packets containing 400 grams of haldi and not the 5th packet out of which 50 grams of haldi was purchased by him. Lastly it is contended that the petitioner was charged in respect of a false warranty and not for selling adulterated haldi to Chaman Lal and that Chaman Lal failed to prove the Warranty in terms of Section 19(2) of the Act.

14. The record shows that the Food Inspector was cross-examined on April 10, April 18 and November 24, 1973.. Chaman Lal, co-accused with the petitioner, appeared as D.W. 2 on September 13, 1973. However, none of these witnesses was suggested that the inventory Exhibit PC/1 was forged or was prepared after the Public Analyst declared the sample of haldi adulterated. Again none of the witnesses was suggested that the 5th packet out of which 50 grams of haldi was taken by the Food Inspector was a packet not similar to the one out of which 400 grams of haldi were taken. These contentions were not even made the grounds of appeal filed by the petitioner lie fore the lower Appellate Court.

15. Mr. B.T. Singh, learned Counsel for the Corporation i admitted that the Corporation is prosecuting persons selling spices without a license. In other words, Mr. Singh could not deny that the Corporation does issue licenses to the sellers and manufacturers of spices. Admittedly no such license had been issued to the petitioner. Under Section 19(2) (a) (i) the vendor Chaman Lal could be acquitted only if he could prove that he had bought the haldi 'from a duly licensed manufacturer, distributor or dealer". But the vendor evidently could not prove it. It seems that the trial court took into consideration Sub-clause (ii) of Clause (a) of Sub-section (2) of Section 19 under which a vendor can be acquitted if he proves that he buys from any manufacturer, distributor or dealer where a license is not prescribed for the sale of the article in question, Since there is no appeal against the acquittal of vendor Chaman Lal, I need not go into the matter further.

16. However, Mr. Mathnr contends that since the vendor Chaman Lal should have been convicted because he had failed to prove the warranty in terms of Section 19(2), the petitioner is entitled to acquittal. I do not see any force in this contention. The acquittal or conviction of a vendor in a case where a defense under Section 19(2) is raised does not ipso facto mean that the manufacturer is liable to conviction or acquittal. The case of each accused has to be decided on its own merits.

17. Now the charge framed against the petitioner may be reproduced with advantage. The relevant portion of the charge reads thus:

That on 5-8-72 you supplied haldi and chillies to M/s, Mange Ram Chaman Lal, Shastri Nagar with a warranty out of which samples were taken on 23-9-72 by Sh. J.S. Chadha F.I. from co-accused Chaman Lal, partner of the said firm in sealed packets for analysis and which on analysis were found to be adulterated and the warranty issued by you was thus found to be false, and thereby committed an offence punishable under Section 7 read with Section 16 of the Prevention of Food Adulteration Act, 1954.

Mr. Mathur contends that this charge shows that the only contravention alleged against the petitioner is of Section 16(1) (f) which prohibits a person from giving to the vendor a false warranty in writing in respect of any article of food sold by him, and not of the sale as contemplated under Section 7 of the Act. The record shows that the petitioner was specifically questioned under Section 342, Criminal Procedure Code, about the sale of haldi to Chaman Lal vendor. The petitioner of course denied any such sale. But the question and the charge read together and the evidence on record show that the petitioner was being charged not only with giving a false warranty in terms of Section 16(1)(f) but also for selling haldi to Chaman Lal vendor. The word 'supplied' used in the charge has to be read in the context in which it has been used and it cannot be given its restricted dictionary meaning of furnishing or providing a thing needed irrespective of the question whether price is paid or not. Though it is true that in the complaint filed by the Corporation there is no allegation of the petitioner having sold adulterated haldi to Chaman Lal vendor, yet it does not affect the case.

18. In *Bhagwan Das Jagdish Chander v. Delhi Administration* : 1975 CriLJ1091 , the appellant, a distributor, had sold ghee to one Laxmi Narain, the vendor, from whom the Food Inspector bought a sample for analysis. The Public Analyst found the ghee adulterated and the appellant along with Laxmi Narain was prosecuted under Section 7/16 of the Prevention of Food Adulteration Act. In the course of the trial Laxmi Narain filed an application praying that the warrantor (appellant) may be discharged or acquitted so that Laxmi Narain may examine him as a defense witness to prove the warranty. The Magistrate allowed the application and acquitted the appellant who thereafter appeared as a defense witness. The Magistrate then acquitted Laxmi Narain also. The Municipal Corporation filed an appeal against the acquittal of the appellant, and a Full Bench of this Court in *Municipal Corporation of Delhi v. Laxmi Narain* : 8(1972)DLT1 , accepted the appeal and set aside the acquittal of the warrantor (appellant). The High Court, however, certified the case as fit for appeal to the Supreme Court under Article 134(1)(c) of the Constitution. The main question before the Supreme Court was whether there could be a joint trial of manufacturer, distributor and retail seller. It was held that 'a joint trial of such accused persons is not ab initio illegal,' and can take place in suitable cases. It was also observed that it is not correct to say that a distributor can only be prosecuted for selling without warranty to a vendor which is a separate offence under Section 14 of the Act which shows that a manufacturer as well as a distributor can sell. It was further observed that the definition of 'sale' given in Section 2 Sub-section (xiii) of the Act is wide enough to include every kind of . seller which includes a manufacturer, a distributor and a vendor, On facts *M.H. Beg, J.*, speaking for himself and for *N.L. Untwalia, J.*, observed thus:

In the case before us, all that the complaint states is that the appellant firm had sold the offending ghee to the vendor Laxmi Narain a day earlier. The assertion that it was in an adulterated state at that time was wanting in the complaint. Although, the charge framed, set out above, states that the sample of ghee sold by Laxmi Narain, to whom it was sold by the appellant, was found in an adulterated state, yet, it is not stated there that it was in that very state when the appellant had sold it to Laxmi Narain. It is true that Laxmi Narain successfully pleaded a warranty under which he obtained the ghee from the appellant firm. It is left to be inferred from these facts that the appellant also sold the ghee while it was in an adulterated

state. It could be urged that this would follow from the successful defense of Laxmi Narain. The defects in the charge would not invalidate the trial. But, we think that a continuation of such an old prosecution is likely to handicap the accused Jagdish Chander in his defense. Even if we were to assume that the charge, as framed, implies the allegation that the ghee was adulterated also when the distributor sold it to the vendor, an enquiry in 1975 into the actual state of the ghee sold by the distributor to the vendor in 1967 would be obviously difficult. The appellant, content with the initial acquittal, had probably rested on his oars and not taken the trouble to challenge the correctness of the analyst's report. and, even if that report was quite correct, it may not establish the state in which the small quantity of ghee analysed was when it was sold by the distributor. It would impose undue hardship on the distributor to prove, at this distance of time, the actual state of the small quantity of ghee analysed which must have been a part of the consignment supplied by the distributor who is perhaps also relying on the manufacturer's warranty. Although we hold, in agreement with the Delhi High Court, that the joint trial of the appellant with Laxmi Narain was not illegal, we think that, on the special facts of this case, the interests of justice will be better served by quashing such a stale charge because the appellant's defense will suffer if he is called upon to answer it now.

These observations show that the charge against the appellant was quashed not on the ground that it was defective but in the special circumstances of that case the interests of justice required the quashing of 'such a stale charge.

19. In the instant case, as already stated by me, it was brought home to the petitioner that (1) he had sold haldi to the vendor Chaman Lal which had been found to be adulterated, and (2) a false warranty had been given by him. Thus the petitioner was being prosecuted for both the offences. The question of warranty, as already discussed, does not arise since the petitioner was manufacturing and distributing haldi without a proper license from the Municipal Corporation and so he cannot be convicted and punished for that. However, the offence of selling adulterated haldi still remains. In my opinion, he has been rightly convicted of that offence.

20. As regards the sentence I find that as much as 40% foreign matter was present in the haldi. It is a serious adulteration. Though the case falls under the proviso to Section 16 of the Act, no case for taking a lenient view has been made out. I would, therefore, award a sentence of rigorous imprisonment of one year and a fine of Rupees 2,000/- In default of payment of fine the petitioner is directed to undergo rigorous imprisonment for a period of four months.

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