

State (Delhi Admn.) Vs. Dayal Dass

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Court : Delhi

Decided On : Feb-25-2005

Reported in : 119(2005)DLT590; 2005(81)DRJ211

Judge : R.S. Sodhi, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 7 and 16

Appeal No. : Crl. A. 41/1985

Appellant : State (Delhi Admn.)

Respondent : Dayal Dass

Advocate for Def. : Neelam Nistandra, Adv.

Advocate for Pet/Ap. : Sunil K. Kapoor, Addl. P.P

Disposition : Appeal dismissed

Judgement :

R.S. Sodhi, J.

1. This appeal is directed against the judgment dated 24th August, 1984, of the Additional Sessions Judge, New Delhi, whereby the learned Judge has acquitted the respondent herein in Crl. A. 238/1983, which appeal was directed against the judgment and order dated 12.9.1983 and 14.9.1983 of the Metropolitan

Magistrate, New Delhi, whereby the learned Magistrate has convicted the respondent herein under Section 7/16 of the [Prevention of Food Adulteration Act, 1954](#) and has sentenced him to undergo SI for six months and to pay a fine of Rs. 1000/- and in default of payment of fine, to undergo further SI for 1-1/2 months.

2. The brief facts of the case, as has been noted by the learned Additional Sessions Judge, are as under :

'that a sample of Dhania powder was taken for analysis by FI P.C. Tewari from the appellant at his shop situated at 8 Nangloi, Delhi on 5.8.81 at about 2 p.m. The sample was analysed by the Public Analyst and later on the counterpart of the sample was sent for the analysis to the Director, Food Laboratory and same was found to be adulterated on account of total ash and ash insoluble being excessive from the permissible limits as laid down in the standard of Dhania powder at item NO. A.05.08.01.'

3. With the assistance of learned counsel for the parties, I have gone through the material on record. It is contended by counsel for the respondent that the reports of the Public Analyst and the Director, Central Food Laboratory vary in their findings to such an extent that it is not possible to arrive at a conclusion that the sample drawn was as per the requirements of the rules under the Food Adulteration Act or that the results arrived at could be taken to be correct. Counsel for the State/appellant on the other hand contends that in both the tests the ash contents in dhania powder were found more than admissible and therefore, even if there be other discrepancies in the sample, the order of the Magistrate ought not to have been disturbed by the First Appellate Court.

4. On a perusal of the report of the Director, Central Food Laboratory, it appears that turmeric was present in the sample which was tested and the ash contents were found to be higher than permissible whereas as per report of the public analyst three living weevils and six living meal worms were found present in the sample apart from the rice starch and rice husk, which indicates that the sample drawn was not mixed and also not properly sealed. Even the extent of ash varies drastically. As per the report of the Public Analyst it was 8.38 per cent whereas as per the report of the Director, Central Food Laboratory, it was 8.18 per cent. The

First Appellate Court relying upon a judgment of the Punjab and Haryana High Court State of Haryana v. Asha Ram 1984 (1) FAC 169 has held that if the sample is not properly taken, the benefit of doubt must be given to the accused. In the present case, where on the face of it the sample does not appear to be correctly taken, I see no grounds to interfere in the judgment of the First Appellate Court. Further, it may be pointed out that DW-1 P.P. Bhatnagar, Ex Public Analyst, was examined by the respondent who has clearly indicated that the three samples should be representative of the lot through which the sample was drawn and secondly, inter se each counterpart should be the representative of the other. He has also stated that from the reports of the Public Analyst and the Director, Central Food Laboratory it appears that the samples taken were not the representatives of their counterparts. This statement was not challenged by the counsel for the State. therefore, for the aforesaid reasons, I find no grounds to interfere in the judgment under challenge. Crl. A. 41/1985 is accordingly dismissed.

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