

Rajimal Vs. State

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Court : Delhi

Decided On : Nov-30-1992

Reported in : 1993CriLJ1985; 49(1993)DLT163; 1993(25)DRJ124

Judge : Usha Mehra, J.

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

Appeal No. : Criminal Revision Appeal No. 60 of 1981

Appellant : Rajimal

Respondent : State

Advocate for Pet/Ap. : Randhir Jain and; R.D. Jolly, Advs

Judgement :

Usha Mehra, J.

(1) Rajimal, appellant herein, was convicted and sentenced to undergo R.I. for a period of one year and a fine of Rs. 3,000.00 vide order dated 12th May, 1986 by the Metropolitan Magistrate. Against this order of sentence and conviction appellant filed an appeal which was beard and disposed of by the Add). Sessions Judge, Delhi, vide his order dated 21.2.81 reducing the sentence from one year to six months R.I. and fine from Rs. 3,000.00 to Rs. 1,000.00 and in default to undergo R.I. for two months more. With these observations the appeal was

disposed of.

(2) It is against these impugned orders that the present Revision has been filed inter alias on the grounds that the trial court as well as the first appellate court have completely ignored the fact that the sample which was taken was not Khoa but was Dhap. In the rules under [Prevention of Food Adulteration Act, 1954](#), the percentage of fat in Dhap has not been prescribed. The Dhap being not Khoa the Public Analysis Report could not have been used against the petitioner. Moreover, the right of the appellant to get the sample analysed from the nearby food laboratory was deprived as the sample in the meantime had de-composed on account of non putting of formalin and other preservatives.

(3) In order to appreciate the contention raised at the Bar, the brief facts of the case are that, on 9.2.79, Food Inspector found the appellant selling Dhap. This according to the prosecution, appellant was carrying for sale. He Was apprehended near Physical Education Centre of M.C.D. opposite Railway Station. The total quantity appellant was carrying weigh 25 Kgs. The Food Inspector after disclosing his identity purchased 750 gms. of Dhap for the purpose of analysis. All the formalities were completed after adding 20 drops of formalin to each bottle. Notice in Form Vi was served Upon the appellant. Panchnama was prepared. Counter part of the sample Along with Memorandum issued in Form-VII was sealed. Sample was sent to the Public Analyst. On analysis it was found to be adulterated being deficit by 6.86% in milk fat. Sanction for prosecuting appellant was obtained and thereafter case was filed.

(4) Mr. Jain, appearing for the appellant contended that the sanction- accorded by the Secretary (Medical) Delhi Administration vide Ex. Public Witness - 1/B, pursuance to which the complaint was filed against the appellant, clearly shows that the sample was of Dhap and not of Khoa. The sanction for prosecution of the appellant was for carrying and selling Dhap. The statutory notice in Form-VI under Rule Xii was served on the appellant at spot which is Ex. PB. This also indicates that the sample which was taken from the appellant was Dhap. Receipt of purchase of 750 gms Dhap was also issued which is Ex. PC. In this also the word 'Dhap' is used and not Khoa. Similarly in the memorandum issued in Form-VII

under Rule Xvii, to Public Analyst, Ex. Pd, the nature of article submitted for analysis is shown to be Dhap and not Khoa. Public Analyst's report Ex. Pe, dated 21.2.79 shows that the sample which was received by the Public Analyst was Dhap. The Public Analyst, Mr. P.P. Bhatnagar, however, while giving his opinion stated that Khoa has been wrongly declared as Dhap. So far as Dhap is concerned, it is an admitted fact on record, that there is no Rule prescribing the percentage of fat in Dhap. thereforee, the Public Analyst wrongly stated it be Khoa in order to declare it adulterated.

(5) Indian Standard Specification for Khoa was issued in January, 1969 and thereafter in January, 1981, it was revised. The Indian Standard Specification for Khoa gives the scope and terminology of Khoa. The I.S. prescribes the standard and method of testing the sample of Khoa. But when the scope was revised in 1981, it now defines the types of Khoa as under:-

3.TYPES 3.1 The Khoa as presently being marketed is designated as given in 3.1.1., 3.1.2., 3.1.3. 3.1.1 PINDI-It is characterized as a circular ball of a hemispherical pat with smooth and homogeneous body and texture. The product shall be free from burnt particles as well as from any browning defects. The product should possess characteristic cooked flavour and also should be free from objectionable odour and sour (acidic) taste. . 3:1.2 DANEDAR-It is characterized by its granular texture and uneven body. The size of grains depends upon the amount of coagulant added and the quality of milk used. Citric acid when added would not exceed O.I. percent' of the product. This type of Khoa is used as a base for the preparation of Kalakand, cakes and pastries where granulation is valued-to, a great extent. 3,1,3, Dhap (KATCHA MAWA)- It is characterized by loose and sticky body and smooth texture. It contains less than 60 percent by mass of total solids and- higher moisture content than Pindi and Danedar types. Dhap is preferred for the preparation of Gulabjaman as it forms uniform balls with desired theological qualities after frying and soaking in sugar syrup.'

(6) Mr. Jain contended that since the rules framed under the [Prevention of Food Adulteration Act, 1954](#), did not define Dhap it only defines Khoa, thereforee, reference could be had to the Indian Standard Specification for finding out the

definition of Dhap. This is different than Khoa in the sense that this is preferred for the preparation of Gulabjaman. Dhap is a Katcha Mawa. It has higher moisture contents. Dhap is not pure Khoa. It is a process in between milk and drying of milk content and converting it into Khoa. In Khoa total moisture contents are taken out but that is not the case in Dhap. In Dhap moisture has to be left to make it uniform and smooth. Therefore, when the Public Analyst analysed the sample he was analysing the Dhap and not Khoa, therefore, the moisture contents being there milk fat percentage results were bound to be deficient. That is the reason the Rules under the Prevention of Food Adulteration Act, did not prescribe any milk fat percentage for Dhap. Mr. Jain further contended that Public Analyst had no right to convert Dhap into Khoa or to opine that the word Dhap has been misdescribed or wrongly declared. The Food Inspector knew what he was buying from the appellant and that is the reason after the purchase of the sample in the receipt which is issued the word Dhap has been used. In the notice, which is issued to the appellant the word Dhap had been used. Even at the time of obtaining sanction from the competent authority for the prosecution of the appellant, the sanction was against the sale of Dhap by the appellant. therefore, by no stretch of imagination Dhap can be converted into Khoa In order to prosecute 'the appellant.

(7) Version of the prosecution on the other hand is that the guidelines laid down in Indian Standard Specification for Khoa cannot be of any help to the appellant nor any support can be drawn from the same. There cannot be any quarrel with this argument. But what we have to see is that when the rules are silent regarding percentage of any article, then Courts cannot read any rules into that article in order to prosecute a person nor could public Analyst in order to give opinion convert an article in order to cover it under the Act and rules made therein.

(8) In order to understand what is Dhap, we can look into the definition of Dhap given in Indian Standard Specification for Khoa. Rule A 11.01 of the [Prevention of Food Adulteration Act, 1954](#), defines milk and milk products. Rule A-11.02 describes percentage of milk fat required in Khoa. But no rule prescribes' any percentage of fat for Dhap. From going through the type and kind of Khoa as defines under the Indian Standard Specification, it is clear that the Dhap is not the same thing as Khoa. Though it forms part of the same family as. Khoa, but it is

different in the sense that its moisture contents remains. Because of moisture contents being higher the deficiency of milk fat can be there in order to make its texture smooth. It contains higher moisture contents than Pindi Khoa and Danedar Khoa. It has less than 60% of the total solid. Mr. P.N. Khatri, Food Inspector, appearing as Public Witness -4, in his cross examination admitted that the appellant had declared this to be a Dhap. He stated that 'From my experience I can say that Dhap is a form of Khoa. Physically there is a difference between Khoa Dhap and Khoa and I can differentiate these two.' This shows that the article which the appellant was possessing for the sale was not Khoa but was Dhap, which has been admitted by Public Witness -4. This is in the category or family of Khoa, but it is not Khoa and since it is not Khoa, therefore, the Public Analyst was, wrong in saying that this has been wrongly declared to be Dhap. To my mind if Dhap is Khoa then Public Analyst need not have opined that Khoa has been wrongly declared as Dhap. This shows that even Expert believed that Dhap is not Khoa. Rule A 11.02, defines milk products in which Khoa is covered but not Dhap. Rule A-11.02.17 defines Khoa. As already observed since there is no percentage of milk fat prescribed for Dhap. which though falls in the category of Khoa, but being different, I see no reason why arguments of the appellant be not accepted. To my mind, it has force, because if it had been Khoa, at the time of issuing the notice or receipt or obtaining the sanction for prosecution, the Food Inspector ought to have used the word Khoa instead of Dhap. The Food Inspector, appearing as Public Witness -4, has admitted that Dhap is different from Khoa. If that be so, then all the more a reason the Public Analyst could not have changed the Dhap into Khoa and then give the report.

(9) For the above reasons I accept the appeal and set aside the impugned order of sentence and conviction. The appellant is on bail. Bond be discharged.