

State Vs. Ram Chander

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Court : Delhi

Decided On : Feb-07-1995

Reported in : 1995IAD(Delhi)899; 57(1995)DLT745; 1995(32)DRJ462

Judge : P.K. Bahri and; S.D. Pandit, JJ.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 7 and 10(2)

Appeal No. : Criminal Appeal No. 166 of 1987

Appellant : State

Respondent : Ram Chander

Advocate for Pet/Ap. : B.T. Singh,; D.C. Mathur,; M.C. Sanghi and;

Judgement :

P.K. Bahri, J.

(1) This appeal is directed against the judgment dated February 28, 1987 of an Additional Sessions Judge, New Delhi by which he had allowed the appeal against judgment and order dated November 19, 1985 and 20th December 1985 of the Metropolitan Magistrate by which he had convicted the respondent of an offence punishable under Section 7 read with Section 16 of the Prevention of Food Adulteration Act and had sentenced him to rigorous imprisonment for six months and to pay a fine of Rs.2,500.00 and in default to undergo simple imprisonment for

three month. The learned Additional Sessions Judge had acquitted the respondent of the said offence.

(2) The undisputed facts of the case, in brief, are that on 21st October 1982 at about 1 P.M, PW1 Sh.V. P.S. Chaudhary, Food Inspector, accompanied by Sh. Naresh Kumar, Local Health Authority and PW4 Sh. Siya Ram, Field Assistant had come to the sweetmeat shop of the respondent which was being run under the name & style of M/s. Nanda Sweets at E-11, J.J. Colony, Budh Nagar, Delhi and respondent Ram Chander was found present attending to the business of the shop. A sample of Lal Mirch kutti (red chilli powder) - was lifted from a container. It has come out in evidence that the said container containing red chilli powder was brought from the first floor of the premises and the sample was taken by the Food Inspector. However, the respondent declined to accept any price for selling the sample on the plea that the said food article was not for sale as such.

(3) PW1/A, a vendor's receipt, was prepared by the Food Inspector which was signed by the Food Inspector, the respondent/accused as well as PW4. It came in testimony of PW1 that Sh. Naresh Kumar, Local Health Authority, had brought the said container containing the red chilli powder from the first floor of the shop. In his testimony in Court, PW1, Food Inspector did not say that the said chilli powder was being kept stored on the first floor of the shop for being used in preparation of any food article being sold in the said shop located at the ground floor. There appears an endorsement in Ex. PW1/A which says that the respondent had stated that the said red chilli powder was not meant to be sold as such but was being kept for use in preparing samosas.

(4) Unfortunately for the prosecution, PW1 has not cared to prove the aforesaid endorsement appearing on document Ex. PW1/A and he had also not made any reference to any statement of the respondent made at the spot that he had kept the said chilli powder for use in preparing samosas.

(5) PW4, on the other hand, had deposed that at the time the sample was being taken from the said container, the respondent had stated that the same was not meant to be sold as such and was being kept for preparing samosas. However, he also did not make any reference to the endorsement appearing on Ex. PW1/A

which purports to be the alleged statement of the respondent made at the time of taking of sample. So, the endorsement which is 'A' to 'A' appearing on Ex.PWI/A has not been sought to be proved from the statement of either Pwi, Food Inspector, or from the statement of PW4, who accompanied the Food Inspector and had witnessed the proceedings regarding taking of sample.

(6) It is to be emphasised at this stage that PW4 was examined much after the statement of Pwi had been recorded. It is evident that PW4 made a statement after he must have perused the documents of this case and still he had not made any categorical statement that the endorsement 'A' to 'A' appearing on Ex.PWI/A, purporting to be the statement of respondent had been recorded by the respondent or had been recorded by some other person. The Food Inspector, Pwi was the best person to depose with regard to this particular endorsement, appearing on Ex.PWI/A. He had remained silent on this aspect of the case. As a matter of fact, the said material endorsement appearing on Ex.PWI/A, purporting to be the statement of respondent/accused made at the time of lifting of the sample, remained unproved. So, the learned Metropolitan Magistrate was not right in giving a finding that the said endorsement stands proved from the testimony of PW4.

(7) One could have understood this finding if PW4 had stated on oath that the endorsement 'A' to 'A' on the said document was written by someone in his presence at the time the said document was executed but he is completely silent on this aspect of the case. The most important witness was the Food Inspector himself who also, for reasons best known to him, had . not imputed any such statement to the respondent that respondent had kept the said chilli powder for use in preparing the samosas.

(8) In the documents, which were prepared at the spot by the Food Inspector, Ex.PW1/A to Ex.PW1/E, there is no mention as to from what exact place the sample was lifted. It is not mentioned in any of these documents that the first floor of the said premises was being used for storing any food articles meant to be used for manufacturing any other food article. It is also not indicated in the said documents that the container having the said red chilli powder was brought from

the first floor and then sample was taken out of the said container. It is only when PW1 appeared in the witness box that he, in cross-examination, admitted that Sh.Naresh Kumar, Local Health Authority, had gone upstairs and had brought the container from which he directed the sample to be taken. Pwi does not say that the first floor of shop was being used for storing the food articles which were meant to be used for manufacture of any food articles for being sold in the shop.

(9) Section 10 of the Act gives the power to the Food Inspector to take sample of any article of food from (i) any person selling such article; (ii) any person who is in the course of conveying, delivering or preparing to deliver such article to a purchaser or a consignee; (iii) a consignee after delivery of any such article to him. The present case does not fall in any of the above examples.

(10) Section 10(2) again entitles the Food Inspector to enter any place where any food article is manufactured, or stored for sale, or stored for the manufacture of any other article of food for sale, or exposed or exhibited for sale or where any adulterant is manufactured or kept and take samples of such articles of food or adulterant for analysis. At the most, the present case could come within the provisions of Section 10(2) of the Act if the Food Inspector had mentioned either in the documents prepared at the spot that the said container containing red chilli powder was being stored in the first floor of the shop for the manufacture of any other article of food for sale or he might have given such version in his sworn testimony in Court but the Food Inspector himself has not said anything of the sort either in the documents or in his testimony in Court.

(11) PW4, of course, has stated that in the first floor of the shop, food articles were being prepared and this container containing the red chilli powder was lifted from the first floor. But this part of the statement of PW4 does not find any corroboration from the main witness i.e. the Food Inspector himself or from the contents of the documents brought into existence contemporaneously the lifting of the sample.

(12) Mr. Naresh Kumar, who had headed the said raiding team, was not cited as a witness by the complainant but was brought as a defense witness. However, his memory obviously had not been so rich so that he could recollect the events which happened three years prior to his coming into the witness box, hence he could not

enlighten the Court as to what was the state of affairs at the spot at the time the sample was lifted.

(13) In defense, the respondent examined his brother who proved his ration card to show that he had been residing in the first floor of the said shop. As a matter of fact, suggestion given to PW1 that in fact the first floor was being used as residential premises was not controverted by PW1 and he had only expressed ignorance. So, mere bald statement of PW4 that the first floor was being used for preparation of food articles in such state of the facts cannot be given credence.

(14) The learned Metropolitan Magistrate had brought home the offence to the respondent solely on the ground that the container containing the red chilli powder had been kept by the respondent for use in preparing the samosas which were meant to be sold at his shop. But his finding is not, in our view, based on any legal evidence, as discussed above.

(15) The learned Additional Sessions Judge had rendered the acquittal of the respondent again on not correctly understanding the legal position. He has held that even if it is assumed that the said red chilli powder was being kept by the respondent for use in manufacturing samosas, which were meant to be sold, even then no offence under the Act would be made out though the said red chilli powder is found to be adulterated.

(16) Learned Additional Sessions Judge has relied on a judgment of the Punjab & Haryana High Court in case of Joginder Singh v. State of Haryana, 1985 (1) F.A.C. 261. The facts of the said case, in brief, were that the accused was having a canteen and a sample of chilli powder was lifted which was found to be adulterated. The plea of the accused was that he had not kept that chilli powder for sale or for manufacturing any food article meant to be sold but was kept for domestic use of his servants. It was contended before the High Court that unless it is proved that the chilli powder is kept in store for sale as such, the offence under Section 16 read with Section 7 of the Act could not be made out and reliance was placed on judgment of the Supreme Court in M.C.D. v. Laxmi Narain Tandon, 1975 2 F.A.C. 444. However, this judgment of the Supreme Court was not applicable because in 1976, Section 10(2) of the Act has been amended and it had been

made clear that. if a food article is kept in store for use in manufacture of any other food article, then sample of the same can be lifted.

(17) So, in case of Joginder Singh, (supra), the Punjab & Haryana High Court, following the said judgment of the Supreme Court, held that it is not proved that the chilli powder was being kept by the accused in that case for sale. It is true that the High Court was much swayed with the fact that perhaps the said chilli powder was not being kept for sale and was meant for the domestic use of the servants of the accused. So, this judgment is distinguishable on facts.

(18) But if this judgment is considered to have laid down the law that even if a particular food article is stored for being used for manufacturing any other food article, even then the same cannot be deemed to be meant for sale, then this proposition of law would not be in consonance with law, particularly the statutory provision of Section 10(2) of the Act, as enumerated above.

(19) So, the learned Additional Sessions Judge was not right in acquitting the respondent on this ground that even if the said red chilli powder was being kept for use in manufacturing samosas, even then the offence would not be made out if the sample of the said chilli powder is found to be adulterated.

(20) However, we have to maintain the acquittal of the respondent on the ground that it is not proved by the prosecution beyond reasonable doubt that in fact the chilli powder in question was being stored by the respondent for being used for manufacturing any other food article meant to be sold. Once, we hold that the endorsement appearing on Ex.PW1/A has not been proved, we must give the benefit of doubt to the respondent that respondent had not made any such admission that he had kept the said red chilli powder for use in manufacture of samosas.

(21) In view of the above discussion, we maintain the judgment of acquittal and dismiss this appeal.