

**Daryai Lal and Another Vs. State and Another**

**Daryai Lal and Another Vs. State and Another**

**SooperKanoon Citation :** [sooperkanoon.com/716631](http://sooperkanoon.com/716631)

**Court :** Delhi

**Decided On :** May-28-1981

**Reported in :** 1982CriLJ70

**Judge :** D.R. Khanna, J.

**Acts :** Prevention of Food Adulteration Act - Sections 2, 7, 13(2) and 16; [Code of Criminal Procedure \(CrPC\)](#) , 1973 - Sections 313

**Appeal No. :** Criminal Revn. No. 192 of 1977 (From order of K.B. Andley, Addl. Sessions J., Delhi, D/- 11-8-1977)

**Appellant :** Daryai Lal and Another

**Respondent :** State and Another

**Judgement :**

ORDER

1. This Criminal Revision is directed against the sustenance by Shri K. B. Andley, Additional Sessions Judge, Delhi, of the conviction of M/s. Jagan Nath Daryai Lal and Daryai Lal by Shri J. D. Kapoor, Metropolitan Magistrate, Delhi under sections 7/16 of the Prevention of Food Adulteration Act (hereinafter referred to as the Act). Daryai Lal was sentenced to rigorous imprisonment for nine months and a fine of Rs. 1000/- or in default to rigorous imprisonment for three months. The firm was required to pay a fine of Rs. 1000/-.

2. The third co-accused Jagan Nath was acquitted by the trial court.

3. Briefly stated the case against the petitioner was that a sample of Haldi whole was taken into possession by M. M. Gupta, Food inspector, from the business premises of the petitioners at Shop No. 6, Khaiber Pass, Delhi, on 13-7-1974. It was divided in three parts and sealed separately. One of them was sent for analysts to Public Analyst, which revealed that it was 30.48% insect damaged Ehizomes.

4. The petitioners later exercised their right under S. 13(2) of the Act and got the sealed sample lying with the Inspector analysed by the Director of Central Food Laboratory. The same, however, revealed that the insect damaged matter was 35.9 per cent and the physical examination showed 'highly insect infested with innumerable dead insets'. The sample was, therefore, opined as adulterated under S. 2(ia)(f).

5. So far as the conviction of M/s Jagan Nath Daryai Lal is concerned the same cannot be sustained as it was not a partnership concern. Daryai Lal in his statement under S. 313 of the Criminal P.C. clearly stated that It was his sole proprietary business. PW 4, Pritam Lal license Clerk of the Municipal Corporation of Delhi, also deposed that Daryai Lal had applied as owner for grant of license of Karyana shop in this business name. therefore, there cannot be a separate conviction and sentence on the business name, Jagan Nath Daryai Lal. They are set aside.

6. Adverting to the conviction of Daryai Lal, it may be stated at the outset that though the sample in the present case was taken on 26-7-1974, the complaint was filed on 16-5-1975. therefore, the sample was sent to the Director, Central Food Laboratory on 16-10-1976 and his report bore the date, 15-11-1976. The sum and substance of Daryai Lal's case is that when the Public Analyst had not found the presence of any insect, alive or dead while analysing the sample sent to him, their presence noticed by the Director, Central Food Laboratory, shows that the sample had not been properly sealed and thus insects managed to creep in subsequently. On this score, the report of the Director, Central Food Laboratory is claimed to be vitiated. No recourse to the report of the Public Analyst is also permissible as the

same has already stood superseded by the report of the Director Reference has also been made to the evidence of P.W. 3, M. N. Gupta, Food Inspector, where he admitted in cross-examination that he did not see insects creeping inside the holes of Haldi or on its body when he took the sample from the shop of Daryai Lal. He further stated that on inspection he had found the Haldi to be insect infested.

7. Reliance has been placed upon two Division Bench decisions of this Court in the cases : M.C.D. v. Lala Ram (1980) 2 FAC 147 and M.C.D. v. Ram Kumar (1980) 1 FAC 287. It was held there that though the certificate of the Director, Central Food Laboratory supersedes the report of the Public Analyst, where the reports of these two experts appear to be absolutely divergent and different from each other the report of the Public Analyst can be looked into and benefit of doubt given to the accused on the possibility of mishandling of the sample either in transit or at the Director's end. In the first of these cases, the article seized was 'Zeera' and the Public Analyst had found the same free from insect infestation. It was, however, found adulterated due to the presence of rodent excreta. No other extraneous element was found. The Director, however, on analysis found that the sample contained excessive amount of foreign seeds and a few dead and living insects. In the other case the sample was of red chillies and the Public Analyst held the same adulterated because of the fungus infestation of pods to the extent of 67.07%. The sample was declared unfit for human consumption. The Director, however, found on analysis that the sample was insect infested and most of the pods were broken.

8. Thus, in both these cases the reports of the Public Analyst and of the Director were entirely divergent and the adulteration found by one was not noticed by the other and that found by the latter had no nexus or close proximity to the former. It was in these circumstances that it was felt that the possibility of the sample sent to the Director being mishandled in transit or otherwise could not be ruled out and the possibility of the insects later creeping ill because of mishandling existed.

9. In the present case, however, there was no such complete divergence of the reports of the two experts. Rather, they were of close proximity and there was no basic inconsistency between them. One had found the sample as insect damaged.

The other too had noticed the same insect damaged up to 35.9% and also high insect infestation with innumerable dead insects. It need hardly be said that insect infestation can take place only if there have been insects earlier there. Such insects do not essentially continue infesting the entire stock of the food stuff. They having infested one piece can move on to the other and their presence in the holes created by them may not be discernible to the open eye. If, therefore, in one sample the presence of insects was not noticed their existence in the other cannot be entirely ruled of. The basic closeness of the two reports that they were insect infested clearly existed. Thus, in the case of *Wazir Chand Wadhwa v. State* (1971) 7 DLT 197 V. D. Misra J, (as his Lordship) then was) took note that insect infestation has the implication of the presence of insects earlier in the food article. Insect damage, it was observed, results from the damage done to the food grains by the insects.

10. I am further of the opinion that Haldi Sabat, as seized in the present case was not an article of food stuff of the nature as was likely to deteriorate or become adulterated because of passage of time. No emphasis need therefore, be laid on the delayed filing of the complaint. The Director had clearly mentioned in his report that the seals of the sample sent to him were intact. Rather, the petitioner, too, waited for the exercise of the right under S. 13(2) of the Act till after the close of the prosecution evidence.

11. The result, therefore, is that I find no force in this revision and reject the same. Daryai Lal, petitioner, should be taken into custody so that he may serve the sentence awarded on him.