

Raj Traders Vs. State of H.P.

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Court : Himachal Pradesh

Decided On : Jan-07-1994

Reported in : 1995CriLJ1990

Judge : D.P. Sood, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Section 16(1)(A); ;Prevention of Food Adulteration Rules, 1955 - Rules 23 and 28; ;Code of Criminal Procedure (CrPC) , 1974 - Section 482; ;[Constitution of India](#) - Article 227

Appeal No. : Cr. M.P. (M) No. 709 of 1993

Appellant : Raj Traders

Respondent : State of H.P.

Advocate for Def. : R.M. Bisht, Law Officer

Advocate for Pet/Ap. : Anjali Mahesh, Adv.

Disposition : Petition allowed

Judgement :

ORDER

D.P. Sood, J.

1. In this petition under Section 482 the Code of Criminal Procedure read with Article 227 of the [Constitution of India](#), the petitioner seeks quashing of the complaint and other resultant proceedings ensuing therefrom, presently pending in the Court of Chief Judicial Magistrate, Shimla, under Section 16(1)(A)(i) of the [Prevention of Food Adulteration Act, 1954](#) (shortly hereinafter referred to as the 'Act').

2. On May 30, 1992 at about 11.15 A.M., Shri B. L. Justa, Food Inspector, visited the shop of M/s. Diwan Chand Surinder Kumar located at Totu. He disclosed his identity and then purchased six packets of mirch kutti each weighing about 100 grams against cash payment of Rs. 30/- as a sample for analysis out of 2 kgs packet having 20 small packets, each weighing 100 grams. Shri Diwan Chand of the aforesaid firm was conducting the business at the material time. The aforesaid commodity was kept in the shop for sale to the general public. After purchasing the article and observing the codal formalities, the aforesaid sample packets were put into three neat, clean and dry packets, labelled, wrapped into a thick paper and a paper slip bearing Code and Serial Number of Local Health Authority, Shimla-S-1/2861 was affixed with gum from bottom to top of each packet and then duly signed by the Local Health, Shimla. The signatures of the accused were taken in such a manner that it not only covered the paper slip but also its wrapper. The packets were fastened with strong thread and sealed with sealing wax and four seal impressions were put on each packet and all the knots thereof were covered with seal in the presence of S/Sh. Gopal Singh and Hem Raj (Peon). Panchanama with respect to the purchase and seizure memo etc. were prepared at the spot in the presence of the said witnesses.

3. On further inquiry, Diwan Chand aforesaid discloses to have purchased the above said articles from the petitioner vide bill No. 1588 dated 20-12-1991. Resultantly, a notice was also sent to the petitioner's firm by the Food Inspector. One part of the sample was analysed by Public Analyst, Punjab at Chandigarh by sending the same after observing codal formalities as per rule. The Public Analyst vide his report dated July 2, 1992 found the contents of the sample containing a non permitted oil soluble coaltar dye of red shade as an admixture whereas chillies powder should be free from added colouring matter. Thus, contents of the sample

were found to be adulterated. Accordingly, the three accused, namely, Diwan Chand, his firm M/s. Diwan Chand Surinder Kumar and the petitioners were prosecuted through the complaint in question filed by the Food Inspector on 30th October, 1992.

4. The petitioners alone have assailed their prosecution in the instant case by praying for quashing of the complaint and other resultant proceedings ensuing therefrom.

5. Admittedly, firm M/s. Diwan Chand Surinder Kumar had displayed for sale packets of 'Mirch Kutti' each weighing 100 grams which contained a colouring agent. The sample purchased from him by the Food Inspector is sent to the Public Analyst-brought about the following analysis:

'I further certify that I have caused to be analysed the aforementioned sample and declare the result of the analysis to be as follows:-

Description : The contents of the sample received in the sealed packets each printed as MIRCH KUTI RAM SPICES LOT No. 13 DATE OF PACKING 13-12-91 DATE OF EXPIRY 12-6-92 Max. Retail Price Rs. 6-00 including of all taxes. Net weight 100 gms when packed Raj Traders 1002 Industrial Area Chandigarh.

Macro and Micro analysis = No insect detected No mould growth. No iron filing detected. Chillies structure seen.

Moisture = 9.10% by weight

Total ash = 6.78% by weight

Ash Insoluble in dilute HCl = 0.70% by weight

Crude-Fibre - 21.04% by weight

Non volatile Ether Extract = 14.3% by weight

Added colour = A red oil soluble coaltear dye detected by wool dyeing, silk dyeing & by paper chromatography.,

and am of the opinion that : Contents of the sample contain a non-permitted oil soluble coaltar dye of red shade as an admixture whereas Chillies powder should be free from added colouring matter. Contents of the sample are, therefore, adulterated.'

The aforesaid report of the Public Analyst is the basis of the complaint against the petitioners as also other co-accused, namely, Diwan Chand and firm M/s. Diwan Chand Surinder Kumar.

6. The main point for consideration in this petition is whether the aforesaid report satisfies the conscience of the Court that 'coal-tar dye' (food colouring) was a non-permitted one. If not, can it form the basis for prosecuting the offenders'.

7. A close examination of the Analyst report shows that no data has been given by him from which it can be inferred as to what are the contents which are unfit for human consumption and which make the commodity in question to be an adulterated one. Part VI of the Prevention of Food Adulteration Rules, 1955 covers the subject 'colouring matter'. Rule 23 specifically prohibits the addition of colouring matter to any article of food as permitted by these Rules. Rule 28 provides that coal tars (food colours) are permitted to be used which are provided in the columns in the table, which is part of the rule. So far as the red dye is concerned, there are five classes being Ponceau 4R, Carmoisine, Fast Red E, maranth, Erythrosine, and each of them has been assigned colouring index as also chemical classification. In the instant case, the Public Analyst has opined that article contains a non-permitted oil soluble coal-tar of red shade. His opinion is based on paper Chromatography test, wool dyeing, silk dyeing tests. As regards the first test the same could not bring forward whether the coal-tar dye used was permissible or non-permissible. The ordinary dictionary meaning of chromatography is that it is a method of separating substances in a mixture which depend on selective absorption, partition between non-mixing solvents, etc., and which present the substances as a chromatogram, such as a series of visible bands in a verticle tube. And the word 'Chromatic' is meant to pertain to, or consisting of colours. Thus, paper chromatography would reveal that there is present food colouring on coal tar dye. But on that test to conclude that it was

permitted or non-permitted is rather begging the question. (See (1987) 2 FAC 320 (Punjab of Haryana); Maya Ram v. State of Punjab, Cr. Rev. No. 705/1981 decided on 15th July, 1983).

8. The other two tests do not give any data nor it has been shown by these tests, whether the result was negative or positive and if so, whether the article in question was unfit for human consumption. In fact, the analysis, in his opinion, should have excluded the possibility of all the permitted colouring matter of red-shade. No such effort appears to have been made in this behalf and, thus, the report of the Public Analyst cannot be taken as gospel truth, if considering the article of food in question to be an adulterated one and outweigh normal judicial balancing. In fact, the report of the Analyst must normally be clear and unambiguous so that it is understandable, if not to all, at least to sizeable section of the people who are non-experts.

9. In view of the above-said discussion, the edifice forming the foundation of the structure of the main case falls through and thus, it entitles the petitioners to the reliefs, sought for by them in the instant petition. In this view of the matter, the petition is accepted. Consequently, the complaint filed by the Food Inspector in Criminal Case No. 6-3 of 1993 against the petitioners and their co-accused, is hereby quashed on this short ground alone.

The petition stands disposed of in terms of the above.

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