

Rajnarayan Rathi Vs. State

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Court : Rajasthan Jodhpur

Decided On : May-30-2012

Appellant : Rajnarayan Rathi

Respondent : State

Judgement :

SB Criminal Misc. Petition No.754/2009 Raj Narayan Rathi. Vs. State of Rajasthan. (1) IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR. ::: JUDGMENT ::: S.B. Criminal Misc. Petition No.754/2009 Raj Narayan Rathi. vs. State of Rajasthan. Date of Judgment ::

30. May, 2012. HON'BLE MR. JUSTICE SANDEEP MEHTA Mr.SN Vyas, for the petitioner. Mr.AR Nikub, PP, for the respondent State. ... BY THE COURT : Heard learned counsel for the parties. The instant misc. petition has been preferred by the petitioner challenging the order dated 29.1.2009 passed by the learned Additional Sessions Judge, Parbatsar rejecting the revision petition filed by him against the order dated 2.9.2008 passed by learned Additional Chief Judicial Magistrate, Parbatsar in Criminal Case No.10/1996 whereby charge was framed against the petitioner for the offence under Section 7/16 of the Prevention of Food Adulteration Act, 1954 (for short the Act of 1954). Succinctly stated the facts necessary for the disposal SB Criminal Misc. Petition No.754/2009 Raj Narayan Rathi. Vs. State of Rajasthan. (2) of the instant misc. petition are that the Food Inspector, District Nagaur is alleged to have collected samples of chilly powder from the shop of a trader named Ajeet Raj Kothari, proprietor of M/s.Kothari

General Stores, Village Jawla, Tehsil Parbatsar on 9.7.1993. The spot memo prepared at the time of drawal of the sample recited that the chilly powder was lying in a receptacle of 5 kgs. and therefrom two samples were drawn and were sealed after making the payment of the cost to the vendor. The spot memo also discloses that the vendor at the time when the samples were drawn, informed the Food Inspector that the chilly powder in question had been purchased by him from the petitioner who manufactures chilly powder under the name and style of M/s.Shah Group, E-2, Mandore Industrial Area, Mahamandir, Bhadwasia Road, Jodhpur. A purchase bill dated 8.6.1993 was also submitted to the Food Inspector. The sample of chilly powder on analysis by public analyst was found to be adulterated. Thereafter, the Food Inspector proceeded to file a complaint in the Court of A.C.J.M., Parbatsar against the petitioner and the vendor for the offence under Section 7/16 of the Act of 1954. The vendor made a request for having the second sample analysed by the Central Food Laboratory. A report upon such analysis has been received to the effect that the chilly SB Criminal Misc. Petition No.754/2009 Raj Narayan Rathi. Vs. State of Rajasthan. (3) powder was adulterated because the sample gave positive test for presence of oil soluble colours. All other parameters for the chilly powder were found to be in conformity with the standards mentioned in the Appendix. Pre-charge evidence was led at the trial and the petitioner's plea before the trial court was that the sample which was taken by the Food Inspector was from a packing of 5 kgs. whereas the bill which was produced by the vendor was revealing the fact that the chilly powder which had been sold by the petitioner to the vendor was in a packing of 20 kgs. It was thus claimed that there was no material on the record of the case to prove that the chilly powder of which the sample was taken from the vendor was the part and parcel of the same packing of chilly powder which was sold by the petitioner to the vendor. The learned trial judge by order dated 2.9.2008 proceeded to frame charge against the petitioner as well as the vendor for the offence under Section 7/16 of the Act of 1954. The petitioner challenged the order framing charge by filing a revision and the revisional court has also by its order dated 29.1.2009 affirmed the order of the trial court as stated above. Hence, the instant misc. petition has been preferred by the petitioner challenging the impugned orders and seeking discharge from the offence under Section 7/16 SB Criminal Misc. Petition

No.754/2009 Raj Narayan Rathi. Vs. State of Rajasthan. (4) of the Act of 1954. Assailing the order framing charge as well as the proceedings of the court below, learned counsel for the petitioner submitted that in this case the learned trial court has committed a grave error in coming to the conclusion that the sample which was taken from the vendor was of the same chilly powder which was sold by the petitioner to him. Learned counsel for the petitioner referring to the statement of the Food Inspector recorded at the pre-charge stage submitted that the Food Inspector has admitted in his cross examination that the sample which he took was from an open bag of 5 kgs. whereas the bill which was produced by the vendor was reciting the fact that the chilly powder was sold to him in a bag of 20 kgs. Thus, the learned counsel for the petitioner contended that the petitioner is being prosecuted in this case without any justification and that the trial court has committed a grave error in framing the charge against the petitioner in this case. It is also submitted that the Food Inspector was not authorised to take the sample when the sample was drawn and the authorisation which has been issued bears cuttings. Therefore, all the proceedings of the complaint are vitiated. Per contra, learned PP has opposed the arguments advanced on behalf of the petitioner and has submitted that SB Criminal Misc. Petition No.754/2009 Raj Narayan Rathi. Vs. State of Rajasthan. (5) all these arguments can be better appreciated by the trial court when the matter is examined by the Court at the stage of final decision. Thus, he submitted that the order framing charge does not call for any interference by this Court in the exercise of its revisional jurisdiction. On consideration of the arguments advanced at bar and upon going through the material available on the record, this Court feels that the instant misc. petition can be decided on the first question as to whether the sample of chilly powder which was taken in this case was from the very same packing which was sold by the petitioner. It goes without saying that the assumption of innocence is in favour of the accused. The bill which has been relied upon by the vendor in this case mentions that the chilly powder weighing 20 kgs. was sold by the petitioner's concern. The bill does not recite that the chilly powder was in four packings of 5 kgs. each. The sample was taken from an open bag. Undisputedly, by virtue of Section 19(2) of the Act of 1954, the burden of proving that the article of food remained in the self same condition in which it was purchased, is on the vendor. The sanctity of the packing is breached

once the same is opened. If at all, the chilly powder had been sold by the petitioner in packings of 5 kgs. to the vendor and the Food Inspector SB Criminal Misc. Petition No.754/2009 Raj Narayan Rathi. Vs. State of Rajasthan. (6) was desirous of prosecuting the petitioner of the offence under Section 7/16 of the Act of 1954, then the endeavor of the Food Inspector should have been to take the sample of the entire sealed packet of chilly powder and then to forward the same for analysis to the public analyst. As has been observed above, the Food Inspector in his cross examination has admitted that the chilly powder was taken from an open bag. Therefore, the petitioner definitely has a right to raise an issue that the sample was not taken from the packet of chilly powder which was sold by the petitioner. A most material fact which is disclosed upon reading the report submitted by the Central Food Laboratory is that the chilly powder upon analysis was found conforming as regards all the parameters/standards except for the presence of oil soluble colour. Thus, the importance of the argument that the packaging of the chilly powder should have been taken as a whole gains significance. The Hon'ble Apex Court in the case of Municipal Corporation, Delhi vs. Tek Chand Bhatia reported in AIR 198.SC 360.whilst dealing with a similar situation regarding the availability of defence of warranty to a vendor in a case where there was a lack of proof about the fact regarding the samples having been taken from the manufacturer's sealed packaging held as below :- SB Criminal Misc. Petition No.754/2009 Raj Narayan Rathi. Vs. State of Rajasthan. (7) That, in our opinion, really concludes the matter. In the instant case, there is no proof that the samples were taken from tins bearing the manufacturer's label guaranteeing purity of goods, nor is there any such warranty in the invoice Ext. DW 3/A. It is, however, urged that the tins bore the imprint "Good". There is nothing to substantiate this fact, and even if it were so, it is of little consequence. The word 'Good' on which great emphasis is placed merely contains a description of the goods. At the most it amounts to 'puffing of goods'. The word 'Good' is not a warranty as to quality. The respondent is, therefore, not protected under Section 19 (2) of the Prevention of Food Adulteration Act, 1954 read with Rule 12A of the rules framed under the Act. In view of the aforesaid facts, this Court is of the opinion that the prosecution of the petitioner in this case for the offence under the Act of 1954 cannot be said to be justified. The prosecution has not led any

convincing evidence at the pre-charge stage to show that the sample of chilly powder was drawn from the same packing which was allegedly sold by the petitioner to the vendor. Resultantly, the present misc. petition succeeds and the orders dated 2.9.2008 and 29.1.2009 passed by the learned Additional Chief Judicial Magistrate, Parbatsar and the learned Additional Sessions Judge, Parbatsar SB Criminal Misc. Petition No.754/2009 Raj Narayan Rathi. Vs. State of Rajasthan. (8) respectively and all proceedings in Criminal Case No.10/1996 pending in the Court of A.C.J.M., Parbatsar qua the petitioner are hereby quashed. Stay petition also stands disposed of. (SANDEEP MEHTA), J.

S.Phophaliya

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