

(2009) 06 OHC CK 0016

In the Orissa High Court

Annapurna Agency and S. Narendra Kumar and Co.

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 30-06-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Evidence Act, 1872 — Section 13

Prevention of Food Adulteration Act, 1954 — Section 16, 2

Citation : (2009) 2 OLR 251

Hon'ble Judges : B.K. Patel, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.K. Patel, J.—In both the applications u/s 482 of the Criminal Procedure Code, 1973 (for short "the Cr.P.C) the petitioners have made prayer to quash the order dated 13.6.2002 passed by the learned S.D.J.M., Bhawanipatna taking cognizance of offence punishable u/s 16(1)(a)(i) Prevention of Food Adulteration Act, 1954 (for short, "the Act") as well as the criminal proceeding in 2(c) C.C. No. 18 of 2002 now pending in the file of learned J.M.F.C. Bhawanipatna.

2. The criminal proceeding was initiated against the petitioners and nother upon receipt of prosecution report submitted by the Food Inspector, Kalahandi. It appears that the Food Inspector inspected the Wholesale Agency of co-accused Prakash Jain who figures as accused No.1. On verification the Food Inspector suspected Everest brand Turmeric Powder", "Chilly Powder", and "Sabji Masala" manufactured by the petitioner in CRLMC No. 796 of 2004 who figures as accused No. 3 and supplied to the accused No. 1 by the petitioner in CRLMC No. 255 of 2004 who figures as accused No. 2 to be adulterated. He made statutory purchase of packages of each of the items in packed condition and sent sample package of each of the items to the Public Analyst for analysis. In the report of the Public Analyst it was stated that Everest "Sabaji Masala" was adulterer as its quality fell below the prescribed standard inasmuch as edible common salt found

therein was 8.7% by weight on dry basis. After observing the procedure prescribed under the Act and the Rules framed thereunder the Food Inspector submitted prosecution report upon which cognizance of offence as stated supra was taken.

3. Though several contentions have been raised in the applications u/s 482 Cr.P.C. to assail the order of taking cognizance as well as the criminal proceeding, in course of hearing learned Counsel appearing for the petitioners confined his argument to the contention that as no standard has been prescribed under Appendix-B of the Prevention of Food Adulteration Rules, 1955 (for short "the Rules") for "Sabji Masala", there was no basis for the Public Analyst to report that "Sabji Masala" purchased from the shop of accused No.1 was adulterated by arbitrarily treating "Sabji Masala" as "Curry Powder". It was submitted that the petitioners as well as accused No.1 never intended "Sabji Masala" purchased by the Food Inspector to be treated as "Curry Powder". On the other hand, there is conspicuous declaration on the packages of "Sabji Masala" to the effect that it was "Not A Curry Powder". In support of his contention, learned Counsel for the petitioners relied upon decisions in *Hindustan Lever Ltd. v. Food Inspector and Anr.* 2006 (1) FAC 237; *M.V. Krihna Nambissan v. State of Kerala* 1979 (I) FAC 72; *Bipln Mohanty and Anr. v. State of Orissa and Anr.* 2006 (2) FAC 44 and *Municipal Corporation of Delhi Vs. Kacheroo Mal*, .

In reply, learned Counsel for the State submitted that cognizance of offence having been taken on the basis of report of the Public Analyst to the effect that Everest brand "Sabji Masala" manufactured by accused No. 3, supplied by accused No.2 and sold by accused No. 1 was adulterated, being not in conformity with the prescribed specifications under Appendix-B of the Rules for "Curry Powder" as it contained 8.7% of edible common salt as against specification to the effect that Curry Powder should not contain more than 5.0% of common salt, there is no scope to interfere with the criminal proceeding.

4. The contention raised in the present applications goes to the very root of the criminal proceeding. In essence, it is contended that materials on record do not indicate commission of the any offence by any of the accused person as alleged in selling the Everest brand "Sabji Masala" for which no standard has been prescribed under the Act and the Rules framed thereunder. In other words, it is contended that the allegations in the prosecution report even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged to have been committed by the accused persons.

5. The term "adulterated" has been defined u/s 2(ia) of the Act. It provides that an article of food shall be deemed to be adulterated -

(a) if the article sold by a vendor is not of the nature, substance or quality demanded by the purchaser and is to his prejudice, or is not of the nature, substance or quality which it purports or is represented to be;

(b) if the article contains any other substance which affects, or if the article is so

processed as to affect, injuriously the nature, substance or quality thereof;

(c) if any inferior or cheaper substance has been substituted wholly or in part for the article so as to affect injuriously the nature, substance or quality thereof;

(d) if any constituent of the article has been wholly or in part abstracted so as to affect injuriously the nature, substance or quality thereof.

(e) if the article had been prepared, packed or kept under insanitary conditions whereby it has become contaminated or injurious to health;

(f) if the article consists wholly or in part of any filthy, putrid, rotten, decomposed or diseased animal or vegetable substance or is insect infected or is otherwise unfit for human consumption;

(g) if the article is obtained from a diseased animal;

(h) if the article contains any poisonous or other ingredient which renders it injurious to health;

(i) if the container of the article is composed, whether wholly or in part, of any poisonous or deleterious substance which renders it's contents injurious to health;

(j) if any colouring matter other than that prescribed in respect thereof is present in the article, or if the amounts of the prescribed colouring matter which is present in the article are not within the prescribed limits of variability;

(k) if the article contains any prohibited preservative or permitted preservative in excess of the prescribed limits;

(l) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability but which renders it injurious to health;

(m) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability but which does not render it injurious to health;

Provided that, where the quality or purity of the article, being primary food, has fallen below the prescribed standards or its constituents are present in quantities not within the prescribed lists of variability, in either case, solely due to natural causes and beyond the control of human agency, then, such article shall not be deemed to be adulterated within the meaning of this subclause."

6. In the present case, allegation is that it is "Sabji masala" which was sent for analysis by the Public Analyst. In the report of the Public Analyst also it has been specifically mentioned that sample of "Everest Sabji Masala" was received for analysis. However, in the report the Public Analyst has mentioned that appearance of "Sabji Masala" was that of "Curry Powder" in which the content of edible common salt was 8.7% by weight on dry basis. In view of per centage of

edible common salt found in "Sabji Masala" it has been reported that the article was adulterated as its quality fell below the prescribed standard.

7. Definition of "adulteration" u/s 2(ia) of the Act takes into account different circumstances under which an article of food shall be deemed to be adulterated. In respect of certain articles of food, standards have been prescribed under Rule-5 read with Appendix-B of the Rules specifying the standards of its constituents also and in respect of certain articles of food, the Rules do not prescribe any standard. For example, it is for the Public Analyst to opine in respect of certain articles of food under Sub-clauses (b), (c), (d), (e) and (f) of Clause (i-a) of Section 2 of the Act that articles were injurious or unfit for human consumption. As has been held in *Municipal Corporation of Delhi (supra)*, the report of Public Analyst, including his opinion, is per se evidence by virtue of Section 13 of the Evidence Act. But it does not mean that his ipse dixit would be conclusive and binding on the Court. To treat it so should be to leave the determination of the guilt of the accused to the whims and fancies of the Public Analyst. The Act would not countenance such abdication of its judicial function by the Court, leaving the case as it were-to be tried by the analyst. It is for the Court to weigh his opinion and reach its own finding.

8. In the present case, specific opinion of the Public Analyst is to the effect that the quality of "Sabji Masala" analyzed in the Laboratory fell below the prescribed standard as indicated in the result No. 7 of the Public Analyst report. Result No. 7 in the Public Analyst report reads: "Edible common salt 8.7% by weight on dry basis". However, it is not at all disputed that "Sabji Masala" has not been included under Appendix-B to the Rules as an article of food for which any standard of quality has been prescribed. In the report of the Public Analyst, appearance of "Sabji Masala" has been indicated to be that of "Curry Powder" and, on such premises, it was subjected to analysis upon reference to the standard prescribed for "Curry Masala". In Appendix B, it has been prescribed at A.05.21 that "Curry Powder" should not contain more than 5.0% of edible common salt by weight on dry basis. Therefore, as "Sabji Masala" analyzed in the Laboratory contained 8.7% of edible common salt by weight on dry basis it was reported to be adulterated. The Public Analyst treated "Sabji Masala" as "Curry Powder" in spite of specific declaration exhibited in the package to the effect that it was "Not A Curry Masala".

9. In *M.V. Krihna Nambissan (supra)* in absence of fixation of any standard in respect of butter-milk under the Rules, the Hon"ble Supreme Court held that there is no scope to read something by inference in the definition of butter-milk and apply the standard prescribed for "curd".

In *Bipin Mohanty and Anr. (supra)*, referring to the case of *Hindustan Lever Ltd. (supra)* it has been held by this Court that standard of skimmed milk powder cannot be applied to MILKANA. In *Hindustan Lever Ltd. (supra)*, it has been held that any prosecution in regard to an article for which no standards have been laid, applying the standards for other articles would not be sustainable.

10. In the present case, none of the accused persons appear to have exhibited any intention intended to sell "Sabji Masala" as "Curry Powder". Rather, the packages of "Sabji Masala" contain declarations to the contrary. There is nothing on record to indicate that while purchasing "Sabji Masala" consumers treated the same as "Curry Powder". In such circumstances, it was rightly contended that there was no basis for the Public Analyst to apply the standards of quality of "Curry Powder" or its constituents to "Sabji Masala". Both the applications are, therefore, accepted.

11. In view of the above, both the CRLMCs are allowed. The impugned order and the proceeding in 2(c) C.C. No.18 of 2002 now pending in the file of learned J.M.F.C., Bhawanipatna are quashed.