

(1982) 03 AHC CK 0010

In the Allahabad High Court

Case No : Criminal Misc. Petition No. 3753 of 1981

Chandra Shekhar and Another

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 02-03-1982

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16, 2, 7
Prevention of Food Adulteration Rules, 1955 — Rule 28, 29, 30

Citation : (1982) 6 ACR 209

Hon'ble Judges : N.N. Sharma, J

Bench : Single Bench

Advocate : Man Mohan Srivastava, for the Appellant;

Judgement

N.N. Sharma, J.—These proceedings have been initiated on the petition of applicant residents of Moongra Badshahpur, District Janupur.

2. It appears that Petitioners are selling agents of Prakash Zarda Factory situated in the said town. Prakash Zarda Factory are manufacturers of Zarda. Food Inspector concerned inspected market Raja Bazar on 11-12-1980 at 11.00 A. M. and found Misri Lal, son of Bala Din exposing for sale Shiromani Zafrani Patti Zarda, manufactured and packed by M/s. Prakash Zarda Factory, Jaunpur alongwith other articles in his shop.

3. He purchased three packed tins of 20 gms. each of the said Zafrani for sample No. MAH/52/80 for a sum of Rs. 44.10p and in accordance with rules labelled and sealed up three packs while sampling the same. One sample was sent to Public Analyst, U. P. Lucknow along with memo MWP/12/80 dated 12-12-1980 through registered parcel from Civil Court Post Office No. 568 dated 12-12-1980. Public Analyst gave the result as detailed in annexure A.

Wiwran: Workdar Halke Bhoore Narangi Rang Tambacco Koltar Ranjak ka parikshan; Nishchayatmak Koltar Ranjak Upasthit Sunset yellow FCF Menthal Ka parikshan; Nishchayatmak wark main Chandi ka Parikshan; Nishchayatmak Wark

main almunium ka parikshan; Nasyatmak and as of the opinion that Namoon main sunset yellow FCF namak ek khadya koltar ranjak ka prayog kiya gaya hai parantu tobacco main kisi bhi koltar ranjak ka prayog mana hai.

4. On receipt of the aforesaid report, proceedings were initiated in the court of Sri P.D. Srivastava, learned Judicial Magistrate, Jaunpur in case No. 191 of 81 against Misri Lal and two others u/s 7/16 of Prevention of Food Adulteration Act.

5. On behalf of Petitioners, petition was moved on the ground that aforesaid proceedings are liable to be quashed as tobacco was not "food" within the definition of "food" as laid in Section 2(v) of Prevention of Food Adulteration Act. It was further averred that even in the Division Bench case reported in 1972 AWR 658 it was held that tobacco alone was not food unless it was taken with betel when alone it became food. Petitioners are being unnecessarily harassed on the basis of illegal report of the Public Analyst who had no jurisdiction to give and analyse the sample.

6. Thus, there was a prayer to quash aforesaid proceedings.

7. I have heard learned Counsel for parties and perused the record.

8. Sri M.M. Srivastava, learned Advocate for Petitioners frankly conceded before me at the time of arguments that tobacco or Zarda was "food" as held by Division Bench of this Court reported in State of V.P. v. Sri Ram Gupta 1972 AWR 658.

9. He further conceded that Public Analyst, Lucknow had jurisdiction to carry out analysis. However, his contention was that perusal of Rule 28 or Rule 29 which inhibits mixing of coaltar dye with such tobacco or zarda provides exception as laid in Rule 29(m) which provides such mixture in case of flavouring agent subject to maximum limit of permitted colours as pointed out in Rule 30. The maximum limit of permitted colours was not to exceed 0.2 gms per kilogram. Report of public analyst aforesaid does not disclose maximum limit of coaltar dye mixed in the sample nor he was cited as a witness in the complaint, copy of which has been annexed to this petition.

10. I have carefully considered over the matter.

11. It appears that guidelines for invoking inherent powers of this Court were pointed out as laid below by Supreme Court in R.P. Kapur Vs. The State of Punjab, ;

(i) Where it manifestly appears that there is a legal bar against the institution of continuance of the criminal proceedings in respect of the offence alleged. Absence of the requisite sanction may for instance furnish ceases under this category.

(ii) Where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged in such cases no question of appreciating evidence arises ; it

is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not.

(iii) Where the allegations made against the accused do constitute an offence alleged but there is either no legal evidence adduced in support of the case or that evidence adduced clearly or manifestly fails to prove the charge.

In dealing with the last class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction u/s 482 the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not.

12. Ordinarily this Court does not interfere at the inter-locutory stage in criminal proceedings in subordinate courts. It shall interfere only when there is abuse of process of law or where proceedings are without jurisdiction or where there is glaring defect on the face of the proceedings which renders prosecution untenable or where there is no reasonable chance of the accused being convicted. As I apply aforesaid tests to the facts of this case I do not find any patent illegality in the proceedings nor it is possible to hold at this stage that there is some legal impediment in these proceedings or it is not open to prosecution to adduce the evidence about the limit of coaltar dye which was found mixed in the aforesaid tobacco. It is correct that public analyst in his report "should have given that percentage also but at this stage it is not possible for me to speculate the extent of that admixture which he detected in the said sample which is a question of fact to be established by prospective evidence in the trial. For the aforesaid reasons, I find it inexpedient to interfere at this stage and so the petition fails. Stay order is dissolved. Send the copy of order to the court below for quick despatch. Inform parties accordingly.