

(1970) 12 P&H CK 0027
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 93-M of 1969

Chint Ram and Another

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 10-12-1970

Acts Referred:

Essential Commodities Act, 1955 — Section 6
Prevention of Food Adulteration Act, 1954 — Section 16(1)

Citation : AIR 1971 P&H 310 : (1971) CriLJ 971 : (1971) 1 ILR (P&H) 628

Hon'ble Judges : Harbans Sing, C.J;P.C. Jain, J;D. Kmahajan, J

Bench : Full Bench

Advocate : Balbir Singh Bindra and Surjit Bindra, for the Appellant; S.S. Kang, Dy. A.G., for the Respondent

Judgement

D.K. Mahajan, J.—The present petition is u/s 561-A of the Code of Criminal Procedure. The petitioners pray for quashing of the charge framed u/s 16(1)(a) (i) of the Prevention of Food Adulteration Act. When this application was placed before Jindra Lal, J., the learned Judge, in view of his order of reference in Criminal Writ No. 6 of 1968, M/s. J. B. Fruit Products (Registered) v. Municipal Committee, Jullundur, ordered that this case be also heard by a Full Bench. By order of my Lord the Chief Justice this case has now been placed for hearing before a Full Bench. The necessity of placing this case before a Full Bench arose because the correctness of the decision in Criminal Appeal No. 996 of 1961 (Punj), State v. Raj Kumar, fell for consideration.

2. Petitioner No. 1, Chint Ram, is the proprietor of Messrs High Land Fyne Fruit and Food Stuffs, Chowk Bharat Nagar, Model Town Road, Ludhiana. He is carrying on the business of manufacturing fruit products under a licence obtained from the Government of India under the Fruit Products Order, 1955. This Order was issued by the Central Government in exercise of its powers u/s 3 of the Essential Commodities Act, 1955 (Act No. 10 of 1955). Petitioner No. 2 is an employee and agent of petitioner No. 1 Food Inspector, Jullundur, took samples of table sauce

manufactured by the petitioner and called for a report from the Public Analyst. The report was that the table sauce was found to be coloured with coal-tar dye. The Food Inspector on that basis filed a complaint against the petitioners u/s 16(1)(a)(i) of the Prevention of Food Adulteration Act in the Court of the Judicial Magistrate, Ludhiana. At the hearing the petitioners objected that they could not be prosecuted under the said provision in view of the Division Bench decision of this Court in Criminal Appeal No. 996 of 1961, D/-29-10-62 (Punj). They prayed that they be discharged. The learned Magistrate, by his order dated 16th of October, 1969, held that "there was not enough ground to discharge the accused altogether", and thereafter proceeded to frame the charge. With regard to the decision of this Court in Raj Kumar's case, Criminal appeal No. 996 of 1961, D/-29-10-1962 (Punj) the learned Magistrate made the following observations:-

"Mr. Sharma, the Food Inspector, has contended that the sauce has been specifically mentioned to be an article of food in para A.16.12 of Appendix (B) Definitions and Standards of quality, laid down under Rule 5 of the Prevention of Food Adulteration Rules and amendment has been made in this behalf by notification No. 1533 published on July 8, 1968, which shows that this fact was alive to the mind of the Legislature who wanted the vendors to conform to both standard laid down in Fruit Products Order and these Rules. Moreover, according to Mr. Sharma, the Fruit Products Order only bars a prosecution under that Act and not under the Prevention of Food Adulteration Act. The point has some substance in Mr. Sharma's contention. The judgment of the High Court of course is to the contrary but the copy produced before me is only an uncertified copy. The matter requires more thorough investigation."

3. To say the least, the Magistrate was not all justified in ignoring the High Court judgment and proceeding to frame charge against the accused, when, the High Court judgment in unmistakable terms in similar circumstances held that no charge can be framed for violation of the Prevention of Food Adulteration Act in case the product was in conformity with the specifications laid down in the Fruit Products Order.

4. Before proceeding to deal with the various provisions of the Act and the Fruit Products Order, it will be proper to set down the relevant part of the decision of the Division Bench, to which my Lord the Chief Justice was a party, in Criminal Appeal No. 996 of 1961, D/- 29-10-1962 (Punj):-

"The learned Assistant Advocate General who appeared on behalf of the State, urged that tomato ketchup was covered by the provisions of the Pure Food Act and that the schedule laid down the standards to which it must conform and, therefore, the respondent could be proceeded against under the Pure Food Act notwithstanding the fact that he was also, as a manufacturer, covered by the provisions of the Fruit Products Order, 1955, as amended upto 1958. According to sub-clause (d) (vii) of Rule 2 of the Fruit Products Order (hereinafter referred to as the Order), tomato products, ketchup and sauces are included in the definition of "fruit product". For the manufacture of any of these fruit products, a

manufacturer has to obtain a licence from the Central Government and the products so manufactured have to conform to the specification laid down in part II of the Second Schedule of the Order. It was conceded on behalf of the State that two of the specifications are similar to those given in the Pure Food Act, while the third is different. This Order lays down a special procedure for controlling the manufacture of the fruit products and, consequently, these special provisions would certainly override the general provisions of the Pure Food Act, and there is no force in the argument of the learned counsel that he would be liable to be prosecuted under the Pure Food Act, and there is no force in the argument of the learned counsel that he would be liable to be prosecuted under the Pure Food Act. A manufacturer may be supplying his products to a large number of retailers in different parts of this State as well as outside it and if he is going to be prosecuted at all these places where his products are being sold that would cause untold harassment. Furthermore, if he has conformed to the specifications laid down in the Schedule, he is doing all that is required of him under the terms of the licence and it would be unfair to hold him liable under the general provisions of the Pure Food Act. It is apparently for that reason that a manufacturer of fruit products cannot be proceeded against unless and until sanction is given in this respect by the Licensing Officer."

5. The contention of the petitioners is that no charge can be framed against them without the sanction of the authority prescribed under the Fruit Products Order, and that the said order overrides the provisions of the Act.

6. Clause (2) (d) of the Order defines "fruit products" and the product of the petitioners falls under Item (vii): Clause 4 provides that:-

"No person shall carry on the business of a manufacturer except under an in accordance with the terms of an effective licence granted to him under this Order in Form "B"."

Clause 7 provides that:-

"Every manufacturer shall manufacture fruit products in conformity with the sanitary requirements and the appropriate standard of quality and composition specified in the Second Schedule to this Order. Every other fruit and vegetable product not so specified shall be manufactured in accordance with the standard of quality and composition laid down in this behalf by the Licensing Officer."

Clause 10 provides that:-

"No person shall sell, or expose for sale, or despatch or deliver to any agent or broker for the purpose of sale, any fruit products which do not conform to the standards of quality and composition specified in the Second Schedule"

7. In Second Schedule the sanitary requirements of a factory manufacturing fruit products are specified in Part 1 (A). Parts XII and XIII deal with tomato puree and paste and tomato ketchup and sauces. It is with these parts that we are

concerned in the present proceedings. In the column of "general characteristics" of these Parts it is provided that permitted colours can be added to the manufactured product. Clause (2) of Part XXII permits the use of the following coal tar dyes or a mixture thereof:-

Colour Common Name Colour Index Chemical Class

1. Red Ponceau 4 R 185 Azo

Carmosine 179 Azo

Red 6 B 57 Azo

Red FB 225 Azo

Acid Magenta II 692 Triphenylmethane

Fast Red E 182 Azo

Amarnath 184 Azo

Arythrosine 773 Xanthene

2. Yello Tartrazine 640 Pyrazolone

Sunset Yellow PCF * Azo

3. Blue Balue VRS 672 Triphenylmethane

Indigo Carmine 1180 Indigold

4. Black Brilliant Black BN Bisazo

* F. D. & C. Index No. 6

Clause (3) specifies the maximum limit of any permitted coal tar colours or mixture of permitted coal tar colours that can be added to any fruit product. Such colours cannot exceed 0.46 grams, per kilogram of the final fruit product for consumption.

8. Now adverting to the Prevention of Food Adulteration Act, 1954, it is interesting to note that the Rules framed thereunder permit the use of certain coal tar dyes. In this connection, reference may be made to rule 28 which is exactly the same as clause (2) of part XXII of Fruit Products Order. Rule 29 prohibits the use of coal tar dyes in or upon any food other than those enumerated thereunder and "fruit products" is under item (f). Rule 30 provides the maximum limit of permitted colours. It provides that any permitted coal tar colours or mixture of coal tar shall not exceed 1.5 grains per pound of the final food or beverage for consumption. The only difference between the provisions of the Fruit Products Order and the Prevention of Food Adulteration Act is in the quantum of the coal tar dye that can be used in a fruit product and that difference too is very nominal. It may be mentioned at this stage that in the present case it is not contended that the coal tar dye in the table sauce is more

than the quantum permitted either by the Fruit Products Order or by the Prevention of Food Adulteration Act. What is contended is that the use of coal tar dyes is totally prohibited, a contention which cannot be sustained either under the one or the other provisions and in this situation it is obvious that no charge could have been framed against the petitioners u/s 16(1)(a)(i) of the Prevention of Food Adulteration Act.

9. The position taken by the learned Magistrate is rather anomalous and the only way to satisfactorily resolve it is to hold that the Fruit Products Order must displace the provisions of the Prevention of Food Adulteration Act wherever they are in conflict. No person can manufacture a fruit product unless he obtains a licence under the Fruit Products Order and there can be no violation of that order if its provisions are fully complied with. It is difficult to see that if a citizen complies with the provisions of the law he can be held guilty of violating the provisions of another law. Such a situation is unthinkable. Moreover, provisions of Section 6 of the Essential Commodities Act, 1955, which are in the following terms, make it abundantly clear that any order u/s 3 of the said Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act:-

"Any order made u/s 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act." The Fruit Products Order being u/s 3, will certainly have an overriding effect so far as the Prevention of Food Adulteration Act is concerned.

10. After giving the matter my careful consideration, I have come to the conclusion that the decision in Raj Kumar's case, Criminal Appeal No. 996 of 1961, D/- 29-10-1962 (Punjab) is correct and is not open to question either on principle or authority. The learned counsel for the State did not urge any cogent argument which could in any way make me take the view that the provisions of the Fruit Products Order have to yield to those of the Prevention of Food Adulteration Act. In fact, there is no inconsistency between these two provisions so far as the use of coal tar dyes is concerned. As already indicated, the only difference is the quantum of the coal tar dye and not its use.

11. For the reasons recorded above, the petition is allowed and the charge against the petitioners u/s 16(1)(a)(i) of the Prevention of Food Adulteration Act is quashed.

Harbans Singh, C.J.

12. I agree.

P.C. Jain, J.

13. I agree.

14. Petitioner allowed.