

(1977) 07 CAL CK 0048
In the Calcutta High Court

Corporation of Calcutta

APPELLANT

Vs

Algu Shaw and Others

RESPONDENT

Date of Decision : 29-07-1977

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 245, 323, 482
Prevention of Food Adulteration Act, 1954 — Section 16, 7

Citation : (1978) CriLJ 220

Hon'ble Judges : R.K. Sharma, J

Bench : Single Bench

Judgement

R.K. Sharma, J.—This Rule arises at the instance of the Corporation of Calcutta against the order passed by the Senior Municipal Magistrate and Metropolitan Magistrate and Judicial Magistrate 1st Class, Calcutta, discharging three accused persons u/s 245 of the Cr.PC and releasing the seized stock of Kalojira in favour of the accused persons.

2. On the 23rd July, 1975, Food Inspector Sri S. N. Ghosh who is an employee of the Corporation, visited the spices shop of the opposite parties situate at 233/1 Maharshi Devendra Road, Calcutta. He demanded inspection and after inspection seized the stock of Kalojira amounting to 10 Kg which had been kept in the grocery shop of opposite parties for sale for human consumption. Sample was duly taken by the Inspector and the same was sent to the public analyst for examination. The report of the public analyst showed that on the basis of his physical examination, the extraneous matter found amounted to 3.20 per cent, inorganic extraneous matter amounted to 2.58 per cent and edible seeds other than black cumin, that is, Kalojira was found 0.88 per cent. On the basis of that finding, a complaint was filed before the Magistrate and a case was started against the present opposite parties. In the petition of complaint that was filed it was stated that the complaint was u/s 16(1)(a)(i) of the Prevention of Food Adulteration Act (Amendment Act 1964 ?Act 49 of 1964? August/64) read with Section 7 of the said Act.

3. Before the learned Magistrate one witness was examined following the warrant procedure. After considering the evidence of the witness the learned Magistrate was of opinion that no prima facie case was made out against the accused persons before him for prosecution u/s 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954, and he discharged the accused persons.

4. Being aggrieved, the present Rule has been obtained by the Corporation of Calcutta.

5. The first point taken by Mr. Durga Pada Dutta, Advocate on behalf of the Corporation, is that there was enough ground to presume that offence had been committed by the accused persons. In order to convince me on that score my attention has been drawn to the Prevention of Food Adulteration Rules, 1955. In appendix "B" the standard given for cumin black (Kalojira) runs thus:

A. 05.10? Cumin Black (Kalonji) whole means the dried seeds of *Nigella sativa* (L). The proportion of extraneous matter including dust, dirt, stones, lumps of earth, chaff, stem or straw shall not exceed 7.0 per cent, by weight. The proportion of edible seeds other than cumin black shall not exceed 5 per cent by weight.

6. According to the interpretation given by Mr. Dutta, a dealer in Kalojira is not liable for prosecution under the Prevention of Food Adulteration Act if the proportion of extraneous matter including dust, dirt, stones and so on mentioned in the Rule, does not exceed 7 per cent by weight. He submits that the proportion of edible seeds other than cumin black shall not exceed five per cent by weight within the aforesaid 7 per cent. He contends that the analyst found that extraneous matter was 3-20 per cent, inorganic extraneous matter was 2.58 per cent and edible seeds other than black cumin was 0.88 per cent. He further submits that because of the extraneous matter and inorganic extraneous matter was found to be 5.78 per cent, the opposite parties were liable under the Act. He submits that out of 7 per cent permissible 5 per cent is reserved for edible seeds other than black cumin and other extraneous matters cannot exceed the limit of 2 per cent. With this interpretation of the Rule, the learned Magistrate did not agree. Mr. Sunil Bose, Advocate appearing for the opposite parties does not also agree with this interpretation. On a consideration of the rule I also find it difficult to agree with the view propounded by Mr, Dutta. Nowhere in the Rule it is said that extraneous matters not falling in the class of edible seeds other than black cumin should only consist of 2 per cent. Reading the rule as it stands, I find that out of 7 per cent, the proportion of edible seeds other than cumin black cannot be allowed to exceed 5 per cent by weight; but if the share of the proportion of edible oil seeds other than cumin black is low, still the total permissible amount of extraneous matter such as dust, dirt, stems, stones, chaff etc. can reach as high as 7 per cent. Five per cent limit fixed in the rule as proportion of edible seeds other than cumin black is the maximum limit fixed for such seeds and not for total extraneous matter. In this case, the extraneous matter amounted to 5.78 per cent and edible seeds other than black cumin amounted to 0.88 per

cent, that is to say, the total extraneous matter including edible seeds other than black cumin amounted to 6.66 per cent only. In the circumstances I agree with the interpretation given by the learned court below that it has not been established that the opposite parties came within the mischief of the Prevention of Food Adulteration Act, read with the Prevention of Food Adulteration Rules as they stand.

7. Mr. Dutta contends that in view of the West Bengal Act XLII of 1973, which amended the Prevention of Food Adulteration Act, 1954, the learned Magistrate should have dealt with the case u/s 323 Cr.PC. He submits that under the West Bengal Act XLII of 1973, the accused persons were liable to suffer imprisonment for life on being convicted. Therefore, the learned Magistrate should have dealt with the case u/s 323 Cr.PC. That is a point which was not taken before the learned Magistrate. As this point was not taken before the learned Magistrate, the learned Magistrate did not deal with the matter in that light. It is not possible for this Court to find fault with the order passed by the learned Magistrate on the ground which was not urged before him. However Mr. Dutta contends, it being a point of Law he should be permitted to agitate it before this Court. On the other hand, Mr Basu appearing on behalf of the opposite parties submits that this ground is a surprise to him. No ground should be allowed to be raised which springs a surprise upon the opposite parties especially when such a ground was not pleaded or was not taken in the petition before this Court. If this point of Mr. Dutta succeeds, the only result will be to send back the case to the Magistrate for dealing u/s 323 and sending the accused to the court of sessions. The question now before me is whether such a step is justified in the facts and circumstances of the case. If such a step is not justified in the facts and circumstances of the case, it would be sheer abuse of the process of law (,o do so. It would be, go to say, adding insult to injury because I have already found that prima facie the opposite parties are not liable under the Act. The prosecution case in the court below was based on the report of the public analyst. If the report given by the public analyst did not disclose to the satisfaction of the court that an offence was committed, it would be still waste of time, energy as well as abuse of process of law to send back the case to the magisterial court -and from there to the court of session simply to be dealt with u/s 227 Cr.PC. This is indeed a fit case where this Court should invoke its inherent powers as well u/s 482 of the Cr. P, C, if the aid of that section is at all needed.

8. Therefore, taking into account different aspects of the case and the question involved, I find no sufficient reason to interfere with the order passed by the learned Magistrate which he could undoubtedly pass u/s 245 Cr.PC. The Rule is therefore, discharged.