
(1986) 11 DEL CK 0004

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 1175 of 1984

Diamond Products

APPELLANT

Vs

Delhi Administration

RESPONDENT

Date of Decision : 17-11-1986

Acts Referred:

Citation : (1987) 31 DLT 46 : (1987) 12 DRJ 213 : (1986) 1 ILR Delhi 224

Hon'ble Judges : M.K. Chawla, J

Bench : Single Bench

Advocate : D.C. Mathur and S.T. Singh, for the Appellant;

Judgement

M.K. Chawla, J.

(1) In the peculiar circumstances of the present case, instituted on a complaint under Sections 7/16 of the Prevention of Food Adulteration Act, this Court is left with a wide discretion to adopt any of the four courses open to it :

(A)to follow the case set up by the complainant-M.C.D. ;

(B)to adhere to the report of the Public Analyst ;

(C)to confirm the findings of the learned lower court ; or

(D)to accede to the request of the accused/petitioner for the quashing of the proceedings altogether.

(2) In order to solve this tangle, .one has only to go Along with the admitted facts. On 19/4/79, Shri A.P. Singh, Food Inspector, in the company of Shri R.K. Ahuja, Food Inspector, after disclosing their identity, expressed their intention to purchase, and in fact purchased "gold fingers" which was exhibited for sale Along with other food articles at the shop of the accused, No. 96, Baird Road, New Delhi, as sample for analysis. The Food Inspector purchased six bags of gold fingers weighing 250 grams each and thereafter completed the necessary formalities of the issuing of receipt, the cash memo, the prescribed

(3) This very sample was sent to the Public Analyst vide Ex.Public Witness 2/G for analysis. In Form Vii also, the nature of article sent for analysis was described as "gold finger-contains edible ingredients and permitted food colors .To this extent, the Food Inspector played his part well.

(4) Shri Prem Parkash Bhatnagar is the Public Analyst. His report is Ex. Public Witness 2/A dated 30/4/1979. In his opinion, though the gold fingers contained edible ingredients and permitted food colours conforming to Indian Prevention of Food Adulteration Rules, golden wafers, but the same is adulterated due to the presence of added colour according" to the standards prescribed for Macaroni Products. At this stage, it will be relevant to note that even according to the evidence of Shri Bhatnagar, the sample was tested in the light of the standards of Macaroni Product, because the product looked like Macaroni Product. While under cross-examination in pre-charge evidence he also admitted that his report, is silent as to whether the sample article contained Suji or Maida which is a necessary ingredient in a Macaroni Product and that he had not carried out a test for starch to come to a definite conclusion as to whether Suji or Maida had been used. His report thus completed the second stage of the proceedings.

(5) On the basis of the Report of the Public Analyst, the Assistant Municipal Prosecutor, M.C.D. filed the complaint for the summoning of the accused, their trial and for awarding the punishment according to law. In the pre-charge evidence, the prosecution examined Public Witness-1 Shri R.N. Gujral, Food Inspector, the complainant, Public Witness-2 Shri S.P. Singh, responsible for taking of sample of gold finger ; Public Witness-3 Jagmal Singh, an official of the P.F.A. Department, to prove the dispatch of the Public Analyst Report to the vendor; Public Witness-4 an official of the Sales-tax Department certifying that accused No. 5 is a partner of the firm of accused No. 4; Public Witness-5 another officer of the Sales-tax Department, certifying that the firm accused No. 2 had three partners, including the vendor., Shri P.P. Bhatnagar was also examined as CW-1 to throw light on his Report. So far so good.

(6) The learned Lower Court on consideration of the entire material on record, came to the conclusion that the Memo Ex. Public Witness 2/G in form Vii which was sent to the Public Analyst Along with the sample article, he was clearly told the nature of the article was of gold fingers containing edible ingredients and permitted food colours. It was nowhere stated by the Food Inspector nor was it so held out by the vendor, that the sample article offered for sale was a Macaroni product. In such circumstances, it was clearly beyond the purview of the function of the Public Analyst to have applied the standard, of Macaroni product to the article in question. As Public Analyst. he had no business to characterise the article from its look as Macaroni Product. Therefore, the application of the standard of Macaroni Product by the Public Analyst to the sample article was not at all justified. Thus, a charge of sale of adulterated article is not made out.

(7) However, the learned Lower Court went a step further in observing that in this case the consent to prosecute Ex.Public Witness-1/B is in respect of the

contraventions of the provisions of P.F.A. Act, qua the samples, of gold fingers lifted on 19/4/1979 and as such the Court is not barred from proceedings against the accused persons for the contraventions of Rules 37-A. On the basis of this observation, the accused was directed to be charged for the sale of misbranded article within the meaning of Sub-clause (k) of Section 2(ix) read with Rule 37-A of the P.F.A. Rules, inasmuch as it being a case of proprietary food, to which fancy name or trade name has been used, it was obligatory on the part of the accused that on the package, the name of ingredients should have been mentioned in descending order of composition and the labels should also have been got approved by the Central Committee for Food Standards (CCFS). This finalises the third aspect.

(8) Against this order, the petitioner filed a Revision Petition before the Court of Additional Sessions Judge, but the same was dismissed and it has resulted in the filing of the present Petition praying for the quashing of the proceedings which can be termed as the fourth stage.

(9) The contention of the learned Counsel for the petitioner is that it was neither the case of the prosecution nor any pre-charge evidence produced to prove that there was any violation of Rule 37-A of the P.F.A. Rules as is applicable to the present case of the petitioner. The assumption of jurisdiction for the framing of such a charge is absolutely misconceived. The Court below after having come to the conclusion that the sample of food article was not adulterated, ought to have rejected the complaint and discharged the petitioner straightway. It had no jurisdiction to make out a case for the complainant which did not exist.

(10) None of these, submissions are to the liking of the learned Counsel for the complainant/respondent, whose stand is that once the Courts have come to a definite conclusion that there is a violation of P.F.A. Rules, the Court has the jurisdiction to frame the charge. It maybe that in the recharge evidence so far recorded, the violation of Rule 37-A is not made out but the sample of the article, by itself, is enough to conclude the violation. Even otherwise, by virtue of Section 311 of the Code of Criminal Procedure, the Court is competent to summon the material witnesses at any stage of the enquiry or trial. This being the stage for the framing of the charge, this Court should not interfere in the orders of the courts below.

(11) I have given my careful thought to the rival contentions of the parties. There appears to be much substance in the contentions of the learned Counsel for the accused/petitioners.

(12) It is not disputed that to start with, the Food Inspectors have taken the sample of "gold fingers" containing edible ingredients and permitted food colours for analysis. This very article was sent to the Public Analyst for analysis and Report. It was nobody's case that standard of Macaroni Product be applied to it. In the pre-charge evidence, Shri R.N. Gujral, Food Inspector while under cross-examination, frankly admitted that "gold finger" product is a savory product

wherein the permitted colours can be used. He further conceded that in case he had come to know that the article in the instant case was not a Macaroni Product but was a savory he would have withdrawn the prosecution. In spite of that, the Public Analyst analysed the sample keeping in view the standard of Macaroni Product and declared it to be an adulterated one. Even the Public Analyst while under cross-examination failed to satisfy the Court as to why he has not carried out a test for starch before concluding that it was obtained from either Suji or Maida which is one of the necessary ingredients in a Macaroni product.

(13) In view of the case set up by the complainant and keeping in view the Report of the Public Analyst, the learned Lower Court, in my opinion, was justified in concluding that the charge of the sale of adulterated article as submitted in the complaint is not made out. To this finding both the parties agree.

(14) The question that now requires going into is as to whether the learned Lower Court was justified in ordering the framing of a charge of the sale of misbranded article within the meaning of Sub-clause (k) of Section 2(ix) read with Rule 37-A of the P.F.A. Rules. Section 2(ix) of the P.F.A. Act defines "misbranded". Clause (K) reads as under :-

"IF it is not labelled in accordance with the requirements of this Act or Rules made there under."

(15) Rule 37-A, as it existed on the date of passing of the impugned order is as follows :-

"37-A-LABELS for proprietary or fancy trade names-In all types of proprietary foods, where fancy names or trade names are used, the name of the food or category under which it falls in these rules shall also be mentioned on the label. In case it cannot be classified in any of the standards prescribed in Appendix B, then the names of the ingredients used in the products in descending order of composition shall be indicated on the label subject to approval of the Central Committee for Food Standards. Explanation trade name or proprietary name means the no conventional type of food which has not been standardised under the Prevention of Food Adulteration Act, 1954."

(16) Before interpreting the provisions of Rule 37-A, it will be relevant to have a look at the pre-charge evidence "to find out if any foundation has been laid for initiating proceedings against the accused persons for the sale of misbranded articles or not. The complainant has already led the pre-charge evidence which is silent in so far as the violation of Rule 37-A is concerned. The list of the witnesses and the documents filed Along with the complaint reveal that the complainant has neither relied upon any document nor has cited any witness to establish the case of misbranding. Will the complainant be in a position to fill in this lacuna. Learned Counsel for the petitioner has drawn the attention of this Court to the provisions of Section 244 to 247 Cr. P.C. which relate to the production of evidence in the cases instituted otherwise than on Police Report. Sub-section (4) of Section 246 Cr. P.C. is the relevant provision. It reads as

under :-

"IF the accused refused to plead or does not plead or claims to be tried or if the accused is not convicted under Sub-section (3), he shall be required to state, at the commencement of the next hearing of the case or if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith, whether he wishes to cross-examine any, and if so, which of the witnesses for the prosecution whose evidence has been taken."

(17) By virtue of this provision, only the accused person is given the right to recall and cross-examine a witness whose evidence has already been recorded. Under this clause, the prosecution cannot be allowed to re-examine the witnesses. That being the state of affairs, the pre-charge evidence already recorded will not help the complainant to make out a case for the framing of a charge for the sale of misbranded article as is now desired by the learned lower Court. The names of all other witnesses mentioned in the list of witnesses are of formal nature and will not be able to throw light on this aspect. The complainant cannot be allowed to reopen the case by leading altogether new oral as well as documentary evidence.

(18) Learned Counsel for the complainant then urged that by virtue of the provisions of Section 311, the Court can at any stage of the enquiry or trial, summon any person as a witness or , or re-examine any person already examined, if his evidence appears it to be essential to the just decision of the case. By invoking this power, the Court can allow the prosecution to place any document on record or summon any witness in support of the charge. That may be so, but in the circumstances of the present case, whether the Court can invoke the power to fish out the witnesses, summon and examine them to the disadvantage of the accused. The obvious answer is in the negative. Power to examine a witness at any stage of enquiry, trial or proceedings is not meant to be used for the purpose of enabling the prosecution to fill in any lacuna in their evidence or to bring on record a revised version of their case. In order to have the advantage of this provision, the prosecution must first have a sound basis to build a case on it which in this case is missing. As at present advised, the charge as suggested by the Lower Court cannot be allowed to be framed.

(19) This aspect can also be looked into from another angle. Rule 37-A which has been reproduced above, has two parts. If it is a proprietary food and a fancy name trade name is used, then it must find mention on the label. If the article cannot be classified in any of the standards, the ingredients used should be indicated. Admittedly, the article in question is not a proprietary food which is to be described by fancy name or trade name. The product of the petitioners is wafers which is a common and conventional type of food known in day-to-day life. The petitioner admittedly has given the name of the food product on the label of the package and he was not required to complete any other formalities. If it falls in the second category then the accused has mentioned the food article as wafers for which no standard is prescribed, thus complying with the provisions

of Rule 29 of the P.F.A. Rules. In case the label lacks in material particulars or the same has not been approved by the Central Committee for Food Standards as observed by the courts below, then it was the duty of the prosecution to either send the label for Report or at least some semblance of evidence should have been produced to say that the label requires necessary approval. Even this aspect has been overlooked by the prosecuting agency as well as the Courts.

(20) Furthermore, the aforesaid Rule 37-A has since been repealed on account of the fact that the same was found to be impracticable and contradictory in itself. The said Rule has since been substituted by a fresh Rule 37-A vide notification issued by the Ministry of Health and Family Welfare and published in the Extraordinary Gazette on 9/7/1984, in which the difference between conventional and non-conventional types of food has been removed and in respect of the proprietary food. it has been laid down that the name of the food or the category under which it falls shall only be inserted on the label. Where the food products do not fall under any of the standards in Appendix-B, the names of the ingredients in the product in descending order were required to be given on the label. The label of the article of the petitioner fully conforms to the requirements of the amended provisions of Rule 37-A.

(21) No other point has been raised nor any requires going into. As a result of the above discuss, I accept the petition and quash the proceedings pending against the accused in the Court below.