

(1986) 10 DEL CK 0025

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 849 of 1986

Indo Lowenbrau Breweries Ltd.

APPELLANT

Vs

Padam Singh and Others

RESPONDENT

Date of Decision : 31-10-1986

Acts Referred:

Citation : (1987) 31 DLT 111 : (1987) 12 DRJ 101 : (1986) 1 ILR Delhi 541

Hon'ble Judges : Jagdish Chandra, J

Bench : Single Bench

Advocate : Sumit Kachwala and M.S. Yadav, for the Appellant;

Judgement

Jagdish Chandra, J.

(1) The petition u/s 482 of the Code of Criminal Procedure, 1973 (in short the Code) filed by the petitioner Indo Lowenbrau Breweries Ltd. is directed against the order dated 19-3-1986 passed by Shri Padam Singh, Additional Sessions Judge, Delhi whereby the learned Additional Sessions Judge accepting the revision petition of the complainant had directed the learned magistrate who had entertained the complaint, to summon the accused persons including the present petitioner under Sections 7/16 of the Prevention of Food Adulteration Act, 1954 (in short the Act) and to decide the complaint on merits according to law.

(2) M. S. Yadav, Advocate was the complainant and he brought the complaint under Sections 269/273 Indian Penal Code against the present petitioner and the shopkeeper D. N. Joshi of WZ-373, Sri Nagar, Shakurbasti, Delhi. It was on 26-6-1985 that the complainant was at the house of his relation at premises No. WZ-59, Sri Nagar Shakur Basti, Delhi to attend a reception of the marriage of his friend when he purchased six bottles of "Thrill" cold drink from the shopkeeper D.N. Joshi for offering the same at the house of his relation when suddenly one of the friends of the complainant took notice of some gingers/insects in one of those bottles of the cold drink. The aforesaid bottle of the cold drink is alleged to be with the complainant. The petitioner is the manufacturer of the "Thrill" cold

drinks.

(3) Smt. Kanwal Inder Kaur the learned Acmm, Delhi dismissed the complaint observing that there was no evidence regarding means read of the offence under Sections 269/273 Indian Penal Code and this fact was also conceded by the complainant during the course of arguments before the learned A.C.M.M. It was further pointed out in the said order that no copy of the report of the Public Analyst had been produced by the complainant along with the complaint and that being the pre-requisite u/s 20 of the Act cognizance of the complaint could not be taken, and further that even the mandatory requirement of Section 12 of the Act had not been complied with. The aforesaid order further records that it was conceded that in the circumstances the complaint was not maintainable and there were no sufficient grounds for proceeding.

(4) However, a criminal revision was filed by the complainant against the said order of the learned Acmm and Shri Padam Singh the learned Additional Sessions Judge had accepted the revision petition and set aside the order of the learned Acmm and directed the learned Acmm to summon the accused persons including the present petitioner under Sections 7/16 of the Act and to decide the complaint on merits according to law.

(5) The present petitioner challenges the validity of .the impugned order dated 19-3-1986 passed by the learned Additional Sessions Judge on the ground that the necessary procedure has not been complied with by the petitioner in this case. Proviso to Section 20 of the Act mandates that if a prosecution for an offence under the Act is to be instituted by a purchaser referred to in Section 12 of the Act, he must produce in Court a copy of the report of the Public Analyst Along with the complaint. Section 12 of the Act talks to private person other than a Food Inspector and under which provision of law a private purchaser of a food article may have the food article analysed from a Public Analyst. The complainant has not complied with the aforesaid provision of law inasmuch as he did not get the cold drink in question analysed from the Public Analyst and so did not file a copy of such report along with the complaint in the court of the learned ACMM. When this fundamental requirement of law was not complied with by the complainant, cognizance of the complaint could not be taken and in this view of the matter the direction of the learned Additional Sessions Judge to the learned Acmm to summon the accused persons including the revisionist and to decide the complaint on merits according to law, cannot be allowed to stand and has to be quashed.

(6) Furthermore, under the first proviso to Section 12 of the Act it was necessary for the complainant to inform the vendor at the time of purchase of his intention to get such article analysed from the Public Analyst but this was not done. In the absence of the compliance of this fundamental mandate the complainant could not have the cold drink in question analysed from the Public Analyst and, thus, could not file a copy of the report of the Public Analyst Along with the complaint.

(7) Furthermore, the second proviso to Section 12 of the Act mandates that the provision of Section 11 of the Act shall, as far as may be, apply to a purchaser of article of food who intends to have .such article so analysed, as they apply to a Food Inspector who takes a sample of food for analysis. For this purpose we shall have to peruse Section 11. Under Sub-section I(a) of Section 11 the complainant was to give notice in writing there and then of his intention to have the cold drink in question analysed from a Public Analyst to the vendor from whom he had purchased the same and to the person, if any, whose name, address and other particulars are to be disclosed to the complainant u/s 14-A of the Act. Then under Sub-section I(b) of Section 11 it was also necessary for the complainant to have divided the cold drink in question then and there into three parts and mark and seal or fasten up each part in such a manner as its nature permits and to take the signatures or thumb-impression" of the vendor. Even this was not complied with by the complainant when he purchased the cold drink in question. Then under Sub-section I(c) of Section 11 the complainant had to send one of the parts for analysis to the Public Analyst under intimation to the Local (Health) Authority and to send the remaining two parts to the Local (Health) Authority for the purposes of Sub-section (2) of Section 11 and Sub-sections (2-A) and (2-E) of Section 13 of the Act. When all those procedures to be followed by the Food Inspector u/s 11 of the Act made applicable to the private purchaser under the second proviso to Section 12 of the Act have not admittedly been followed by the complainant there was no question of the entertainment of the complaint by the learned ACMM. under Sections 7/16 of the Act and for that reason too the direction given by the learned Additional Sessions Judge in his impugned order to the learned ACMM. to summon the accused persons including the petitioner and to decide the complaint on merits according to law, has to be quashed.

(8) In view of the above discussion the petition succeeds and the impugned order dated 19-3-86 of the learned Additional Sessions Judge is quashed. Lower court records be sent back immediately.