
(1985) 08 DEL CK 0020

In the Delhi High Court

Case No : Criminal Appeal No. 45 of 1980

K.N. Joshi, Ut. Director (Pfa), Delhi Admn. Delhi

APPELLANT

Vs

Dayala Ram

RESPONDENT

Date of Decision : 16-08-1985

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16, 7

Citation : (1986) CriLJ 1828 : (1987) 1 RCR(Criminal) 95

Hon'ble Judges : R.N. Aggarwal, J;M. Sharief-ud-din, J

Bench : Division Bench

Judgement

1. This is an acquittal appeal directed against the order of Addl. Sessions Judge, Delhi, dated 7-4-79 acquitting the respondent of the charge under S. 7/16 of the PFA Act. Earlier, the respondent was convicted and sentenced to rigorous imprisonment for six months and to the payment of fine of Rs. 1000/- by the Metropolitan Magistrate.

2. This case pertains to the sample of mustard oil which Sumiti Kumar Gupta, Food Inspector (PW 2) purchased from the respondent on 12-7-78 from his premises No. A-4/4, Krishan Nagar, Delhi in accordance with the provisions of the Act and the rules made there under. On analysis by the Public Analyst it was found to be adulterated due to excess of 7.4 in specification value and also on account of poly bromide test being positive. The learned Addl. Sessions Judge on facts has recorded no finding. We would Therefore assume that on facts he has expressed his agreement with the conclusion of the learned Metropolitan Magistrate. He has, however, acquitted the respondent for the failure of the Food Inspector to strictly comply with R. 18 by neglecting to send a specimen impression of the seal that was used to seal the packet on a blank paper along with the sample and Form VII. Yet another ground which he made the basis for acquittal is that there is an amendment in Rules regarding Form III according to which after the words "the seal fixed on the container" the words "and the outer cover" have also been inserted and that the Public Analyst has not certified that

there was any outer cover and that the impression of the specimen seal was compared with the seal on the outer cover. In respect of non-compliance with R. 18 reference has been made to the testimony of Food Inspector PW 2 wherein he has admitted that he did not send the impression of specimen seal on a piece of blank paper but appended the impression of seal on Form III. On this simple ground the learned Addl. Sessions Judge felt that the respondent has been prejudiced.

3. This case has been on our board for sometime but none appeared for the respondent. Mr. R. P. Lao appearing for the State, however, has very fairly presented the case before us. We are surprised that the learned Addl. Sessions Judge has dealt with the matter not in the manner as law and justice required of him. The reasoning given by the learned Addl. Sessions Judge for acquittal is not only unsustainable but is unacceptable. It would be noticed that the specimen impression of the seal has been put separately on Form No. III. The only idea of sending the specimen impression of the seal along with sample is to enable the Public Analyst to compare it with the seal on the sample to ensure that the sample has reached him intact. The Public Analyst has certified that he has compared the seal on the sample with the specimen impression of the seal and found the seal intact. It would thus be seen that the object of the rule is fulfilled and no prejudice has been caused to the accused.

4. The learned Addl. Sessions Judge further has made much out of the fact that there was no outer cover as no mention about it has been made in the certificate of the Public Analyst. The learned Addl. Sessions Judge seems to be labouring under the impression that every small irregularity, though patently not causing any prejudice, should automatically result in the acquittal of the accused. This to our mind is not the correct position of law. We want to make it clear that since the Public Analyst has clearly certified that he had received the impression of the seal and compared it with the seal on the container and found it intact the mere fact that he has not certified about the outer cover has made no difference and has caused no prejudice to the respondent. We, Therefore, allow this appeal, reverse the order of acquittal and convict the accused u/s 7/16 of the PFA Act.

5. We are however, not inclined to sentence the respondent to a term of imprisonment after a long period of seven years. Interests of justice would be satisfied by imposing a fine. We as such impose a fine of Rs. 1000/- upon the respondent in default of payment of which he shall undergo simple imprisonment for three months. Fine shall be paid within two months time failing which the respondent shall be taken into custody to serve the sentence in default of payment of fine.

6. Appeal allowed.