(1976) 02 DEL CK 0013

In the Delhi High Court

Case No : Criminal Revision Appeal No. 275 of 1974

Madan Gopal APPELLANT

Vs

State RESPONDENT

Date of Decision : 03-02-1976

Acts Referred:

Citation : (1976) CriLJ 1302 : (1976) 12 DLT 88 : (1976) 1 ILR Delhi 744 : (1976) RLR 475

Hon'ble Judges : V.D. Misra, J

Bench : Single Bench

Advocate : D.R. Dhamija and Charanjit Talwar, for the Appellant;

Judgement

V.D. Misra, J.

(1) This revision is directed against the judgment of an Additional Sessions Judge, Delhi, upholding the conviction of the petitioner u/s 7/16 of the Prevention of Food Adulteration

(2) The petitioner runs a shop at 1/1856 Jot Dharamsala, Jamuna Bazar, Delhi. On July 26, 1973 at 6.30 a.m. Food Inspector Kanwal Krishan found him selling milk without license. The Food Inspector purchased a sample of cow''s milk for analysis. The Public Analyst found the milk adulterated "due to the presence of foreign matter of cane sugar to the extent of 1.71 per cent" (Exhibit P.E.).

(3) The defense of the petitioner was that the sample had been taken out of milk which he had kept for domestic consumption and to which cane sugar had been added as a preservative. He denied receiving any price. He also denied that the milk was taken from a bucket on which there was an indication that it contained cow''s milk.

(4) Both the courts below found that the petitioner had kept the milk for sale in a bucket having indication that it contained cow''s milk. E it was also found that the Food Inspector had duly taken the sample and had paid its requisite price to

the petitioner.

(5) Mr. D. R. Dhamija, learned counsel for the petitioner, contends that the petitioner had used cane sugar as a preservative in terms of rule 43 and so it cannot be held that any foreign substance not permitted by the rules was added to milk. He also contends that section 2(i)(a) of the Act is not attracted and so the proviso to section 16 is applicable. He thus submits that the sentence awarded to the petitioner be reduced to one already undergone.

(6) Sugar falls under the heading Class I Preservatives'' and its addition is not restricted to any food "unless otherwise provided in the rules." (see Rule 53). Thus under rule 44(1), which lays down that no person shall either by himself or by any servant or agent sell "milk or a milk product specified in Appendix B containing a substance not found in milk, except as provided in the rules", sugar, though not a substance found in milk, could be added as a preservative. But rule 43 requires that notice of an addition or admixture to an article of food shall be given to a consumer. It reads thus :

"(1)Every advertisement and every price or trade list or label for an article of food which contains an addition, admixture or deficiency shall describe the food as containing such addition, admixture or deficiency and shall also specify the nature and quantity of such addition, admixture or deficiency. No such advertisement or price or trade list or label attached to the container of the food shall contain any words which might imply, that the food is pure : Provided that for the purpose of this rule the following shall not be deemed as an admixture or an addition, namely (a) Salt in butter or margarine, (b) Vitamins in food. (2) Every package, containing a food which is not pure by reason of any addition, admixture or deficiency shall be labelled with an adhesive label, which shall have the following declaration:''"

It was, Therefore, necessary for the petitioner to disclose on the E container of the milk presence of sugar as well as its percentage. Mr. Dhamija contends that rule 43 does not apply in view of rule 56. Rule 56 provides that "the word ''Pure'' shall not be used on the label of the container of any food which contains preservative." This rule does not in any manner override rule 43 which requires notice of addition, admixture or deficiency in food to be given on the container of an article of food and also prohibits the use of any words which may imply that the food is pure. A plea was raised that rule 43 relates to addition, admixture or deficiency and since sugar is a preservative it is neither an addition nor an admixture. I am afraid I cannot accept this contention. Rule 53, which classifies preservatives itself talks of "addition or Class I Preservatives ". It is thus plain that even when any preservative is added to food, it amounts to an addition or admixture, as the case may be, in terms of rule 43. It is for this reason that an addition or admixture of salt, which is a class I Preservative, in butter or margarine had to be specifically exempted from the operation of this rule. Therefore, simply because the ward "Preservative" has not been used in rule 43, it does not follow that whenever a preservative is added to any article of food rule 43 is not attracted.

(7) The Food Inspector had asked for the milk which was found lying in a bucket containing an indication of cow''s milk and what he received was milk containing sugar. Thus the Petitioner sold milk which was not of the nature, substance or quality, which it purports or is represented to be in terms of section 2(i)(a). I find that similar view was taken by this Court in Municipal Corporation of Delhi v. Ganpat Ram, 1972 F.A.C. 736. (1) His conviction and sentence, Therefore for selling adulterated milk be upheld.

(8) The petitioner has also been convicted and sentenced to six months'' rigorous imprisonment and a fine of Rs. l,000.00 for selling milk without a license with a direction that the substantive sentences of imprisonment shall run concurrently.

(9) Mr. Charanjit Talwar, learned counsel for the State, does not deny that selling an article of food without a license would result in contravention of rule 50 which will fall under sub-clause (ii) of clause (a) of sub-section (1) of section 16 attracting its proviso (ii), I would, in the circumstances of this case. while upholding the conviction of the petitioner for selling milk without a license, reduce the sentence to Rs. 500.00 only. In default of payment of this fine the petitioner is directed to undergo rigorous imprisonment for two months.

