
(1990) 05 DEL CK 0003

In the Delhi High Court

Case No : Criminal Revision Appeal No. 338 of 1980

Mahashian DL Hatti (Pvt.) Ltd.

APPELLANT

Vs

State (Delhi Administration)

RESPONDENT

Date of Decision : 10-05-1990

Acts Referred:

Citation : (1992) CriLJ 1048 : (1990) 1 ILR Delhi 534 : (1992) 2 RCR(Criminal) 237

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : B.S.C. Singh and R. Wasu, for the Appellant;

Judgement

P.K. Bahri, J.

(1) Mahashian Di Hatti Private Limited has filed this criminal revision challenging the order of the Metropolitan Magistrate dated December 3 1,980, by which the Magistrate had declined to discharge the petitioner and others. The petitioner and some other persons are facing trial before the Magistrate for an offence punishable u/s 7 read with Section 16 of the Prevention of Food Adulteration Act.

(2) The short question which arises for consideration is whether the sample which was lifted of "Chane Ka Masala" is mis-branded u/s 2(ix)(g) of the said Act which reads as follows:-

"If the package containing it, or the label on the package bears any statement, design or device regarding the ingredients or the substances contained therein, which is false or misleading in any material particular; or if the package is otherwise deceptive with respect to its contents."

The label on the package from which the sample of "Chane Ka Masala" was taken indicated that it comprises of the ingredients, namely coriander, dry mango, pomegranate seeds, chillies, cumin white, fenureek, cassia, black pepper, dry ginger, mint leaves, cardamom seeds, cloves, nutmeg, mustard, mace, caraway

black and salt white 15%. The Public Analyst had held the sample to be misbranded inasmuch as the common white salt, which was found in the sample, was only to the extent of 11.46% instead of 15% as mentioned on the label.

(3) The second part of the sample was got analysed from the Director Central Food Laboratory, Ghaziabad, at the behest of the accused and he found the presence of common white salt to the extent of 11.8% and he gave the report that the sample was not adulterated. The learned Magistrate has, however, held the sample to be, *prima facie*, misbranded inasmuch as it did not conform with the ingredients mentioned on the label of the package from which the sample was lifted as the label showed presence of 15% white salt in the contents but in fact it was found to be less than 15% when the sample was analysed at first by the Public Analyst and thereafter by the Director. In order to constitute the offence of "misbranded" as enumerated in clause (g) above, the ingredients have to be different in material particulars. Could it be said that deficiency of 3% of so of common salt in the Chane Ka Masala, which comprised of much more valuable ingredients, is misleading in material particulars? I have not been able to bring myself around to agree with the view of the Metropolitan Magistrate that less quantity of salt indicated in the label is harmful to the person purchasing the Chane Ka Masala as he would not relish less salt in such Masala. After all common salt used in the preparation of the particular Chane Ka Masala is the cheapest ingredient used and there could be no intention of the manufacturer to deceive the prospective purchasers of such Chane Ka Masala by using little bit less salt than indicated in the label.

(4) This particular clause (g) has come up for consideration in *M.C.D. v. Ram Sahai*. 1977 (1) F.A.C. Cj 6.(I) In the said case the label indicated the use of particular colour in the sample which was lifted for analysis but it was found on analysis that the colour of particular nature indicated in the label was not used and different colours were , suit it was held that there was no mis-statement made in the label which could lead to indeed any person in any material particular. Similarly in the present case, the common salt has been used in the preparation of the Masala and it is only short by 3% from the quantity expressly mentioned as used on the label and I do not think it amounts to misleading in any material particular regarding the contents used in preparation of the said Chane Ka Masala. In *Municipal Corporation of Delhi v. Thou Ram* 1974 F.A.C. 122, (2) a Division Bench of this Court had observed with regard to the offence of "misbranded" to the effect that from reading of the definition "misbranded" it is clear that an article of food shall be presumed to be misbranded if it resembles in a manner likely to deceive another article of food under the name of which it is sold and is not plainly and conspicuously labelled as to indicate its true character. It was held that no general rule can be laid down as to what is that what is not a colourable variation. In the said case "barfi" was said to have been prepared with "basin", sugar and "khoa" but it was found that "khoa" used in the "barfi" contained very little milk fat but it contained vanaspati. It was held that the declaration of the vendor that it contained "khoa" was clearly false and thus, the

sample of the "baifi" was held to be misbranded. That is not the case here. Here all important and valuable and costly ingredients mentioned in the label have been used in preparation of the Chane Ka Masala and even the common salt has been found to be present in the Masala to the extent of 11.8%. So, it cannot be said that any misleading statement with regard to any material particular has been made in the label so as to condemn this sample as misbranded. The misstatement must be with regard to something very material particulars, only then it could be covered up by the definition of "misbranded" given in clause (g). Hence, I hold that in the present case the sample in question cannot be held to be "misbranded". The order of the Metropolitan Magistrate cannot be sustained.

(5) I allow the revision petition and quash the impugned order and discharge the petitioner. The co-accused,, who have not filed the revision would also be deemed to be discharged.