

(1986) 12 DEL CK 0016

In the Delhi High Court

Case No : Criminal Miscellaneous Appeal No. 1367 of 1985 and Criminal Miscellaneous (Main) Appeal No. 902 of 1985

Markfed Refined Oil and Allied Industries and Others

APPELLANT

Vs

State (Delhi Administration)

RESPONDENT

Date of Decision : 04-12-1986

Acts Referred:

Citation : (1987) 31 DLT 147 : (1987) 12 DRJ 164 : (1987) 1 RCR(Criminal) 629

Hon'ble Judges : N.C. Kochhar, J

Bench : Single Bench

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

Judgement

N.C. Kochhar, J.

(1) This petition u/s 482 of the Code of Criminal Procedure has been filed by M/s. Markfed Refined Oil & Allied Industries, Kapurthala and its Quality Control Manager Sh. J.K. Sharma (Petitioners I and 2 respectively) for quashing the proceedings launched against them and others u/s 7/16 of the Prevention of Food Adulteration Act, 1954 (the Act).

(2) Refined groundnut oil manufactured by petitioner No. I was stored with M/s. Logani Store, Prithvi Raj Market, New Delhi. The tin containing the same was having a label showing that it contained vitamins "A" and "D". At about 2 p.m. on 17th February 1984, Sh. S.N. Nanda, food inspector, purchased a sample of the oil from SatyaNand, partner of M/s. Logani Store. The sample taken was converted into three parts. One part was sent to the public Analyst who vide certificate dated 21/3/1984 reported that the sample was mis-branded in as much as it showed absence of vitamin "A". A complaint u/s 7/16 of the Act was filed by the local health authority. The petitioners challenged the report of the Public Analyst by moving an application u/s 13(2) of the Act within time and accordingly the sample was sent to the Director, Central Food Laboratory, Pune (the Director) who vide certificate dated 18/10/1984 reported that the sample

was not adulterated. Since, however, there was no mention about the presence or absence of vitamin "A" the learned Metropolitan Magistrate sought the clarification from the Director asking him whether any test had been carried out to find out the presence of vitamin "A" in the sample. The report of the Director was in the negative. Shri V.K.Shali, Metropolitan Magistrate before whom the complaint was then pending vide order dated 5/3/1985 held that since the test for vitamin "A" had not been conducted, the report of the Public Analyst did not get superseded in that regard and fixed the case for the complainant's evidence. Thereafter, the petitioners "moved another application for sending the second part of the sample lying with the local health authority to the Director for his opinion and accordingly the second sample was sent to the Director who vide certificate dated 15/5/1985 reported that the test for vitamin "A" was negative but also observed that the examination of vitamin "A" after lapse of the period of 15 months had no significance as it gets deteriorated due to lapse of time and storage. The petitioners' prayer for being discharged was rejected by Shri O.P. Mittal, Metropolitan Magistrate Delhi vide order dated 30/7/1985 observing that the certificate of the Public Analyst did not get superseded. Shri Mittal as well as his predecessor Shri V.K. Sfiالي had relied upon the decision of this court in *Rajinder Chopra v. Delhi Administration*, 1985 (1) F.A.C. 43.

(3) The petitioners have come to this court u/s 482 of the Code of Criminal Procedure. I have heard Shri D.C. Mathur, Advocate for the petitioners, Shri B.T. Singh, Advocate for the State and have also perused the records of the case.

(4) It has been contended on behalf of the petitioners that the reports sent by the Director superseded the report of the Public Analyst and the learned trial court could not proceed by falling back on the report of the Public Analyst. The contention of the learned counsel for the State, on the other hand, is that in view of the fact that no test was carried out by the Director in regard to presence of vitamin "A" it could not be said that the report of the Public Analyst stood superseded in that regard also. Reliance has been placed on behalf of the State on the case of *Rajinder Chopra* (supra).

(5) I have gone through the case relied upon on behalf of the State. In *Rajinder Chopra's* case (supra) the report of the Director was not found to be complete and the learned trial court had passed an order for sending the third part of the sample lying with the local health authority to the Director for analysis and report. The order passed by the learned trial court for getting the second report was challenged on the ground that the certificate already received having superseded the report of the Public Analyst, the prosecution could not continue and the court could not direct that the third sample be sent to the Director. Repelling this contention, it was held that the report of the Director was final in regard to the facts stated therein and the learned metropolitan court was within its Competence to send the third sample for analysis and for report of the Director. It was further observed in the last part of the judgment that if after lapse of time the third sample got decomposed and was not fit for analysis that

would be the end of the matter.

(6) In the present case as noted above, the second part of the sample sent to the Director was not analysed by him to find out the presence of vitamin "A" which, admittedly, is not an essential ingredient of refined groundnut oil and the third part of the sample showed the negative result for presence of vitamin "A" and it has also been mentioned that analysis after a period of fifteen months was of no significance as vitamin "A" gets deteriorated due to lapse of time and storage. It is not disputed before me that non-examination of the second part of the sample by the Director in regard to presence or absence of vitamin "A" or negative test of vitamin "A" as found by the Director in the third sample due to lapse of time is for no fault of the petitioners. The petitioners, thus, cannot be deprived of the benefit u/s 13(2) of the Act and the learned trial court cannot fall back on the report of the Public Analyst which stood superseded in view of Section 13(3) of the Act. If any authority is needed for this purpose, reliance may be made to decision of the Hon'ble Supreme Court in *Chetumal v. State of M.P. and another*, 1981 2 All India Prevention of Food Adulteration cases 280. There is thus no evidence to continue with the proceedings.

(7) In the result I accept the petition and quash the proceedings instituted on the basis of the complaint dated 30/6/1984.