

(1985) 01 DEL CK 0034

In the Delhi High Court

Case No : Criminal Misc. (Main) No. 497 of 1982

M/s Nisha Tea Co. and others

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 11-01-1985

Acts Referred:

Citation : (1985) 8 DRJ 170

Hon'ble Judges : G.R. Luthra, J

Bench : Single Bench

Judgement

1. The present petition is directed against an order dt. May 21, 1982 of Shri M. L. Sahni, Metropolitan Magistrate, Delhi directing the framing of a charge against the petitioners in respect of commission of an offence punishable under S. 7 read with S. 16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the "Act").

2. Petitioners Nos. 2 to 4, Mohan Lal, Surinder Kumar Aggarwal and Ram Partap Aggarwal are carrying on business as partners of a tea company under the name and style of M/s. Nisha Tea Company, petitioner No. 1. On July 21, 1980 at about 2-15 p.m. Prem Nath Khatri, Food Inspector took a sample of tea sold by M/s. Nisha Tea Company. The sample of tea was sold to the said Food Inspector by Mohan Lal, petitioner No. 2. On analysis by the Public Analyst, the said sample was found to be adulterated due to presence of iron filings, out of which one was of the size of 2.4. mm. Therefore, a complaint dated November 1, 1980 was filed before a Metropolitan Magistrate. In obedience of summons, the petitioners appeared. Mohan Lal, petitioner, moved an application under S. 13(2) of the Act for sending one of the samples to Director, Central Food Laboratory. That application was granted and the sample was sent. The Director, Central Food Laboratory gave his report dt. 28th February 1981 to the effect that extraneous iron particles were present in the tea, that the size of two such particles was more than 1 mm. while the size of remaining 9 was less than 1 mm. According to that report also, the tea was adulterated because the same contained extraneous

matters not permitted by Item A.14 of Appendix B of the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as the "Rules"). The result was that the learned Magistrate recorded the prosecution evidence and passed the impugned order.

3. It was contended before the learned Magistrate that complaint against the petitioners should not have been filed in view of the directions of the Central Government contained in some letters which the learned Magistrate has described as notifications. In the first letter (which the learned Magistrate has described as notification dt. June 30, 1976) it was stated that in the process of manufacture of tea powder, some iron filings must remain in the powder on account of the same having been left due to friction of machinery parts and that, Therefore, the prosecution should not be launched if the iron filings happened to be 1 mm. in size and not more than 250 parts per million. Vide letter dt. March 26, 1981 the tolerance limit in respect of presence of the iron filings was raised to the size of 2 mm. The argument advanced before the learned Magistrate was that as the iron filings in the present case were within the tolerance limits prescribed by the letter dt. March 26, 1981, the petitioner could not be prosecuted for alleged adulteration of tea. The learned Magistrate was of the view that it was the letter dt. 30th June 1976 which had application and that the modification made vide letter dt. 26th March 1981 could not be availed of because the alleged offence was committed prior to 26th March 1981. Accordingly, the impugned order directing the framing of the charge was passed.

4. Learned counsel for the petitioners contended that the impugned order could not be passed when the Central Government had enlarged the tolerance limit in respect of presence of iron filings even by way of the letter subsequent to the commission of the alleged offence. He also relied upon the letter dt. 5th April 1984 vide which the tolerance limit had been further increased. That circular letter is addressed to all Health Secretaries of the States and Union Territories. That circular letter reads as under :

"Sub. : Iron filings in tea.

Sir,

With reference to our earlier communication No. P. 15025/3/80-DMS & PFA dated the 24th January 1981 and P. 15013/15/79-PH (F & N) PFA/DMS/PFA dt. the 27th August 1983, I am directed to say that the question of presence of iron filings in tea has been engaging the attention of the Government of India for quite some time. The matter has been examined and re-examined in consultation with the Central Committee for Food Standards. After due consideration this Ministry has come to the conclusion that a detailed study must be undertaken of the various facets of this problem.

2. In partial modification of our letter No. P. 15025/3/80-DMS & PFA, dated 24th January, 1981, pending completion of the study, it is suggested that the maximum limit of 250 PPM of iron particles in tea may be adhered to irrespective

of size of individual iron filings, as they would not be injurious to the human system. It is also requested that specific prosecution may not please be launched within the prescribed limit mentioned above.

3. Suitable instructions may kindly be issued to the enforcement staff in this regard."

5. Such a matter came up for consideration before Charanjit Talwar, J. of this court in State v. Charanjit Singh. The judgment is reported as (1982) 2 FAC 174 1983 Cri LJ 284 It was held that the circular letters did not have any statutory force, that they could not override the rules, that, Therefore, charge could be framed notwithstanding those circular letters but that in order to secure ends of justice, it was necessary that the complaint should be quashed and there should not be any prosecution when the iron filings in the tea were within the tolerance limit, as specified in the circular letters. In that case, a Magistrate had discharged the accused. Charanjit Talwar, J. set aside the order of discharge but at the same time gave relief to the accused by way of quashing the complaint.

6. Not only that I am bound by the aforesaid authority but I also subscribe to the view taken by Charanjit Talwar, J. It is obvious abuse of the process of law that when the Central Government, on the one hand, is of the definite view that the person carrying on the trade of tea cannot be blamed on account of the existence of iron filings to the extent of tolerance limit, as specified in the latest letter dt. 5th April 1984 (reproduced already), yet complaint must be filed against them for punishing them for adulteration of tea. It is with a view to avoid that abuse of process of law that it is necessary that the inherent powers of this Court should be exercised.

7. I, Therefore, in the present case, in exercise of the inherent powers under S. 482 Cr.P.C. quash the prosecution pending against the petitioners before the Metropolitan Magistrate and dismiss the complaint filed against them.

A copy of this judgment shall be sent to Shri V. K. Shali, Metropolitan Magistrate in whose court, as I am told, the present matter is pending, for necessary compliance.

8. Petition allowed.