
(1990) 09 P&H CK 0026

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 591-M of 1990

Mukhandi Lal Amar Nath

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision : 12-09-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Prevention of Food Adulteration Act, 1954 — Section 16

Citation : (1991) 99 PLR 102

Hon'ble Judges : J.S. Sekhon, J

Bench : Single Bench

Advocate : H.S. Sawhney, for the Appellant; G.S. Kharbanda, for the Respondent

Final Decision : Allowed

Judgement

J.S. Sekhon, J.—Through this petition u/s 482 of the Code of Criminal Procedure, 1973 the petitioners seek quashment of proceedings initiated against them vide complaint Annexure P-I for offence u/s 16 of the Prevention of Food Adulteration Act, 1954 as well as the orders of the trial Court Annexures P-3 and P-4 ordering them to face summary trial, mainly on the ground that even if the allegations contained in the complaint are taken to be true, the petitioners are not liable for any offence u/s 16 of the Act as the standard of purity of Garam Masala had not been prescribed by the legislature or the concerned authority in the relevant rules.

2. The brief resume relevant for the disposal of this petition is that on 19-2-1988 six packets of Garam Masala each weighing 100 gms, bearing the trade name as Eagle Garatia Masala were seized by the Food Inspector from the premises of Gopal Krishan located in Partap Bazar, Flishiarpar and sent to the Public Analyst in the same condition. The Public Analyst vide his report Annexure P-2 found that the sample fulfilled all the requirements of standard prescribed for curry powder except that Crude Fibre was more than the required percentage of 15 per cent by 2.76 per cent. The Food Inspector then lodged a complaint against M/s

Amritsaria Gopal Krishan vendor and Proprietor of Sagar Agencies, Jalandhar City, distributor under the manufacturer of this Garam Masala. Thereafter, on request of M/s Sagar Agencies, the present petitioner Mukandi Lal and Amar Nath were also summoned by the trial Court being the manufacturer of this Garam Masala as it was being sold in the same form in which the manufacturer had sold to the distributor who in turn sold the same to the dealer.

3. This petition is resisted by the respondent State mainly on the ground that curry powder and Garam Masala are inter-changeable means of the same commodity and the standard laid down by the legislature under item A 05 21 of Appendix "B" to the Prevention of Food Adulteration Rules, 1955 for curry powder shall also be applicable to Garam Masala.

4. I have heard the learned counsel for the parties besides perusing the record.

5. The term "Garam Masala" has not been defined anywhere under any provisions of the Prevention of Food Adulteration Act or the Rules framed thereunder. According to the Chambers 20th Century Dictionary New Edition, 1981, spice means an aromatic and pungent vegetable substance used as a condiment and for seasoning food-pepper, cayenne, pepper, pimento, nutmeg, mace, vanilla, ginger, cinnamon, cassia, etc. It is further mentioned therein that such substances collectively or generally are called spice. It is mentioned on each of these packets that the date of its manufacture is 10-12-1987 and the date of expiry was eight months thereafter.

6. The ingredients of curry powder figure in Item 0.05.21 of Appendix "B" of the Prevention of Food Adulteration Rules, 1955, which are as under :-

"Curry powder means the powder obtained from grinding clean, dried and sound spices belonging to the group of aromatic herbs and seeds such as black pepper, cinnamon, cloves, coriander, cardamom, chillies, cumin seeds, fenugreek, garlic, ginger, mustard, poppy seeds, turmeric, mace, nutmeg, curry leaves, white pepper, saffron and aniseeds. The material may contain added starch and edible common salt. The proportion of spices used in the preparation of curry powder shall be not less than 85.0 per cent by weight. The powder shall be free from dirt, mould growth and insect infestation. It shall be free from any added colouring matter and preservatives other than edible common salt. The curry powder shall also conform to the following standards :

Moisture.....Not more than 14.0 per cent by weight.

Volatile oil-----Not less than 0.25 per cent (v/w) on dry basis.

Non-volatile ether extract..... Not less than 7.5 per cent by weight on dry basis.

Edible common salt.....Not more than 5.0 per cent by weight on dry basis

Ash insoluble in dilute HCl.....Not more than 2.0 per cent by weight on dry basis.

Crude fibre..... ____Not more than 15.0 per cent by weight on dry basis.

Lead.....Not more than 10.0 p p m. on dry basis.

The names of spices contained in the carry powder shall be given on the label in descending order of composition on wt/wt basis."

Thus, chillies, fenugreek, curry leave, garlic, saffron, white pepper, mustard, poppy seeds, cumin seeds and added starch and edible common salt, as mentioned in the above referred item of Appendix "B" are not usually mixed while preparing Garam Masala. In the case in hand the manufacturer had given specifications of ingredients of Garam Masala. Thus, under these circumstances, there is no scope for holding that Garam Masala and Curry Powder are the same things or different names of the same quality.

7. This Court in *M/s Sardari Lal & Co v. The State of Punjab* (1983) 10 Cri. L. T. 188 while dealing with similar controversy regarding Garam Masala and Curry Powder had quashed the proceedings by observing that Garam Masala is not the same thing as Curry Powder. Reliance in that case was placed on the decision of Allahabad High Court in *Nagar Swasthya Adhikari, Nagar Palika Agra v. Bansi Lal*, 1980 (1) F. A. G. 201. The decision of Delhi High Court in *Kaiteah Chand v. State* 1975 (1) F. A. C. 466 holding to the contrary that Garam Masala is one of the varieties of Curry Powder and is covered by item A. 05.21 of the Rules was distinguished by observing that the ingredients of Curry Powder had not been highlighted before the Judge as no argument seem to have been raised to the effect that Curry Powder contained garlic, ginger, turmeric, starch and edible common salt. Draft Rules regarding Garam Masala under circular were also taken into consideration by this Court in concluding that the ingredients of Garam Masala mentioned therein were also different from the ingredients of Curry Powder.

8. The above referred view of this Court in *M/s Sardari Lal and Co.*'s case (supra) was again endorsed by A S Bains, J. (as he then was) in *Banarsi Lal v. State of Haryana* 1984 (1) F. A. C. 249. The Himachal Pradesh High Court has also taken a similar view in *M/s Amar Masala and Co. v. State of Himachal Pradesh*. 1984 (1) F. A. C. 25. Thus, for the above said reason it cannot be said that Garam Masala and Curry Powder were different names of same commodity and the standard of ingredients prescribed in the above-referred Appendix for Curry Powder shall be applicable to Garam Masala also.

9. Moreover, in the case in hand, the petitioners were ordered to be summoned by the trial Court vide its order dated 15-9-1989. Annexure P-4. Admittedly, by that time the life of Garam Masala had expired because it is specifically written on each of the packets seized by the Food Inspector that the manufacture date was 10-12-1987 and the date of expiry was eight months thereafter from packing. Thus, in a way it can well be said that a valuable right of the petitioners for getting the sample of Garam Masala re-tested is lost due to late institution of proceedings or taking cognizance of the offence against the petitioners.

10. For the reasons recorded above, the complaint as well as the impugned orders of the trial Court are hereby quashed by accepting this petition.