

(1973) 01 DEL CK 0026

In the Delhi High Court

Case No : Criminal Appeal No. 95-D of 1966

Municipal Corporation

APPELLANT

Vs

Mohd. Kareem

RESPONDENT

Date of Decision : 22-01-1973

Acts Referred:

Citation : (1974) CriLJ 572 : (1973) RLR 259

Hon'ble Judges : M.R.A Ansari, J;D.K. Kapur, J

Bench : Division Bench

Advocate : Dayal Kishan and M.P. Bansal, for the Appellant;

Judgement

D.K. Kapur, J.

(1) Food Inspectors, Shanti Lal and L.R.Bhatt, took two samples of, what was alleged to be., Kala Zeera (black Cumin) from Mohd, Kareem at premises NO. 1890 Gali Behram Beg, Andewla Godown, Delhi, on 12th April, 1965 These samples were divided into three parts and one part was sent to the Public Analyst, who gave report dated 20th April, 1965, holding that both samples were adulterated. It is unnecessary to reproduce the reports .The Municipal Corporation of Delhi instituted a complaint against the said Mohd. Kareem. A charge was framed against the accused stating that he had stored Kala Zeera (Black Cumin) for sale from which two samples had been purchased for analysis which were found to be adulterated : which Showed the commission of an offence u/s 7/16 of the Prevention of Food Adulteration Act, 1954.

(2) At the trial, the accused made an application for sending the samples for examination by the Central Food Laboratory, Calcutta. The Laboratory gave a report dated 8th February, 1966, declaring that both the samples were not true Kala Zeera or Black Cumin, but Carum. It was stated: "The sample is a variety of Carum and is not true Kala Zeera or Black Cumin". An opinion, followed, which read : "The sample of Kala Zeera is mis-branded". The Magistrate trying the case only dealt with the question whether the accused had to be acquitted in view of

the difference between the reports-of the Public Analyst, Delhi and the Director, Central Food Laboratory, Calcutta. He held that the certificate of analysis given, by the Director, Central Food Laboratory" supersedes the analysis oo the sample given by the Public Analyst He came to the conclusion that the case that accused had to meet, was essentially different from the one with which he was charged in the complaint. He followed decision of the Punjab High Court, reported as Municipal Corporation of Delhi v. Niranjn Kumar and others 1965 P.L.R. 941. On the basis that the case against the accused was as a result of the report of the Director, Central Food Laboratory was a different one, he decided that Mohd. Kareem should be acquitted. The bags of Kola Zeera which had been seized were ordered to be released The Municipal Corporation has applied against the acquittal.

(3) Mr. Bishamber Dayal, learned counsel for the Corporation relies on the Full Bench decision of this Court in Municipal Corporation of the Delhi Vs. Bishan Sarup and another. Criminal Appeal No. 48. D of 1966, dated 11th March, 1970, in which the view expressed in Municipal Corporation of Delhi Vs. Niranjn KuMar. and others 1965 P.L.R. 941, is Stated to have been differed from. However, the Pull Bench decision does not in fact differ from that decision. What was held by the Full Bench was that a finality was attached to the certificate of the Director of the Central Food Laboratory, and in case prejudice is caused to the accused by reasons of his inability to get that certificate the benefit of the doubt should be given to the accused. It was added:-

" BUT in case no prejudice is caused to the accused he cannot be allowed to escape the consequences under the law for such an antisocial act which the legislature has ordained to be dealt with severely.,

In the case before the Full Bench, there was a prosecution on account of the sale of cow's milk which was found to be below standard. The sample had been sent to the Director, Central Food Laboratory, Calcutta and the accused sought to rely on the Supreme Court decision in Municipal Corporation of Delhi V Ghisa Ram AIR 1967 S.C. 1970. It was held that as a simple had been analysed by the Director. Central Food Laboratory, no prejudice had been caused to the accused. As the sample was found to be adulterated by the Central Food Laboratory, the acquittal was set aside and, the accused was convicted. In the present case, we are dealing. with a case where the charge against the accused was that of storing adulterated kala zeera (Black cumin) for sale, but the report of the Central Food Laboratory has disclosed that the article was not kala zeera (Black Cumin) at all but was Carum. The opinion of the Central Food Laboratory to the effect that the article was mis-branded as Kala-zeera shows that the article was not adulterated at all but was at the most misbranded. It has been held in the aforementioned decision of the Punjab High Court in Municipal Corporation of Delhi v. Niranjn Kumar and others as under :-

" WE would like to clarify that finality and conclusiveness has been attached only to the, fact stated in the report of the Central Food Laboratory. It is not, however,

conclusive as to any other matter and it may still have to be ascertained whether adulteration as disclosed in the report of the Central Food Laboratory was due to certain factors for which accused could not be held responsible. In short, the finality and conclusiveness is only to the extent that the sample as sent to the Central Food Laboratory contained what the report disclosed."

This would mean that we, must accept the fact that the sample contained Carum and not Black Cumin.

(4) Another judgment of the Gujarat High Court reported as Mohanlal Chhaganlal Mithaiwala Vs. Vipanchandra R. Gandhi and Another, , was relied upon by the Full Bench in which it was stated :-

" THE certificate of the Central Food Laboratory under S. 13 contains factual data in respect of the the articles sent for analysis or test. Under the proviso to Section 13(5) of the Act, the finality or conclusiveness is thus attributed to these facts stated in the certificate of the Director. It would be then for the Court to determine, no doubt after considering the facts stated in the certificate, whether the article of food in question is adulterated food or not. In other words, this would be a question of law which is left to be decided by the Court."

Thus, the facts stated in the report and not the opinion of the Director, Central Food Laboratory are binding on the Court.

(5) In the present case, the only fact that is conclusive is that the sample was Carum and not Black Cumin. It is submitted by learned counsel for the Corporation that the accused can also be held guilty of the offence of having sold mis-branded articles of food as that is also offence u/s 7/16 of the Prevention of Food Adulteration Act, 1954. It is alternatively submitted that the article is in any case adulterated according to the report of the Central Food Laboratory because the percentages stated in the report do not correspond with those fixed for Black Cumin. Both these contentions seem to be not well founded. It is, however, necessary to deal with these contentions because of the form in which the argument has been presented before us.

(6) As far as the question that the article had been mis-branded is concerned, it is necessary first to note one convenient way of disposing of this contention is that the accused was not charged with the offence of misbranding any article of food. The Act makes a distinction between adulteration of food and mis-branding of food. Although, both offences are dealt with under the same provision of law, namely, Section 7/16, they constitute different offences requiring proof of different facts, there is nothing on the record to show that the accused ever stated that he was selling Kola zeera. In fact, his case was that he told the Food Inspectors that the substance he was selling was Badkashani Zeera which had been imported from Afghanistan where it was a natural growth. The only evidence showing that the accused was selling kala zeera was the writing on the various documents executed by the Food Inspector on which the accused had placed his thumb mark. "This would not be substantive evidence to show the

nature of the representation made by the accused while selling the article in question.

(7) There is, however, a more important argument presented by Mr. Dayakishan, learned counsel for the respondent. He has stated that at the time the offence took place, there was no standard for Carum in the Prevention of Food Adulteration Rules, 1955. At that time Rule A 05.16 read : "Black Cumin or Kala-zeera shall be the dried seeds of Nigella Sativa Linn." The standard for Carum Bulbocastanum or Black caraway was introduced into the Rules on 30th November, 1965. Thus there was no standard for Carum at the time (the offence took place). He has referred to "The wealth of India" Volume II, published by the Indian Council of Scientific and Industrial Research, in which "Carum" is referred to at page 88 and the Hindi equivalent of "C" bulbocastanum is given as "Kala-zirahi. He has also referred to the fact that there are 37 species of this herb and it is stated thus :

" THERE is a great deal of confusion regarding the identity of the species because of similarity in features and common local names".

Thus, this quotation would show that the accused was not wrong in describing "Carum" as Kala-seera because there is scientific support for the accused calling the substance he was selling, Kala zeera. Further more, Mr. Dayakishan, has referred to the present rules under the Prevention of Food Adulteration Act and, particularly to the definition of " Cumin Black" whose standard is now found as Rule A. 05.10, the substance is now described as "Kalonji" but the description is still means the dried seeds of Nigella sativa L." Thus present rule shows that though the standard is the same as before the real equivalent of Black Cumin is Kalonji and not Kala zeera. Reference to the standard also shows that Black caraway is now mentioned in Rule A 05.02 and described as Shajira. the equivalent of caraway is also Shajira. Thus, it seems that the present rule treats Kala-zeera as being equivalent to Carum whereas the original rule. used to treat Black Cumin as equivalent to Kala-zeera. Learned counsel urges that there was in fact no misbranding of Carum as Kala zeera He has also referred to a Division Bench judgment of this Court reported as Municipal Corporation of Delhi V. Kanshi Ram 19 F.A.C. 41. In that case there was evidence that there were three types of Kala zeera which were called "Badakshani". "Khanabedi" and "Khandari". These had been proved in that case by reference to the Indian Customs Tariff, which mentioned three types of Zeera and also showed that the tariff value of the three types was different. This decision and the other references referred to by Mr. Daya Kishan, clearly show that there was no misbranding by the accused when he was referring to the Carum stored by him as Kala zeera.

(8) The other alternative argument of Mr. Bishambar Dayal is that the article being sold by the accused was adulterated in view of the report of the Central Food Laboratory. In support of this proposition, he has referred" to an unreported decision of this Court in Harbans Lal V. State of Delhi Criminal Revision

No. 156 D of 1965, decided on 23th March. 1966, by H.R.Khanna J. (as he then was). In that case, the facts were more or less similar to the one in this case, because, there also a sample of Kala zeera was sent to the Central Food Laboratory. The report of the Central Food Laboratory was that the article of food was both mis-branded as well as adulterated. It was remarked in this report that the sample did not resemble Black Cumin or Kala zeera, but appeared to belong to some variety of Carum. The argument addressed to us to show that in fact Carum is Kala zeera and not Black Cumin was not addressed, However, in view of the fact that the report was that the article was adulterated, the case seems to have been some what different from the one we are dealing with The true position seems to be that there are two substances, namely, Carum and Black Cumin, which are some what alike in appearance. Originally, Black Cumin was described as kala-zeera, but is now-described as "Kalonji". It seems that there are numerous varieties of Kala-zeera, some of which come in the category of Black Cumin and some of which come in the category of Carum. In order to be adulterated the substance must first be categorised, i.e. described as either Carum or as Black Cumin and then its standard must be compared with its prescribed standard. As it happens, the substance purchased from the shop. of the accused was Carum and not Black Cumin. It would, Therefore, be necessary to compare the standard of the substance purchased with the prescribed standard in the Prevention of Food Adulteration Rules, 1955. As it happens, the standard relating to Carum was not introduced into those Rules till Nov.. 1965. As the samples in the present case were taken in April, 1965, it cannot be held that the samples in question were adulterated. It would, Therefore follow that the said articles of food cannot be held to be adulterated on the ground of being sub-standard. Thus this argument also fails.

(9) Consequently, the appeal against acquittal has to fail and is dismissed.