

(1975) 02 DEL CK 0012

In the Delhi High Court

Case No : Criminal Appeal No. 38 of 1971

Municipal Corporation of Delhi

APPELLANT

Vs

Bhawani Shankar

RESPONDENT

Date of Decision : 02-02-1975

Acts Referred:

Citation : (1975) 2 ILR Delhi 897 : (1975) ILR Delhi 897

Hon'ble Judges : M.S. Joshi, J; Jagjit Singh, J

Bench : Division Bench

Advocate : B. Dayal and Gulshan Rai, for the Appellant;

Judgement

Jagjit Singh, J.

(1) Bhawani Shankar, who is respondent in this case, was tried for an offence u/s 16 read with Section 7 of the Prevention of Food Adulteration Act, 1954. He was alleged to have sold, on August 22, 1969, adulterated chillies powder to Food Inspector Parkash Chopra, He was, however, acquitted by the trial Magistrate on November 21, 1971. Against the order of acquittal the present appeal was filed on behalf of the Municipal Corporation of Delhi.

(2) The respondent has a grocery shop at No. 105, Samman Bazar, Bhogal. On August 22, 1969 Food Inspector Parkash Chupra purchased from the respondent after necessary formalities, 450 grams of chillies powder for purposes of analysis. On one part of the sample being delivered by the Food Inspector to Shri Prem Parkash, Public Analyst for the Delhi Municipal Corporation area, it was reported to be adulterated due to insect infestation. It was also mentioned in the report (Exhibit PE) of the Public Analyst that living insects were found present. Further the result of the analysis was described as follows:-

"Date of Analysis : 2-9-1969. Moisture : 8.82 per cent by weight. Total Ash : 6.89 per cent by weight. Ash Insoluble in dilute Hcl. : 0.49 per percent by weight Non-volatile ether extract : 17.0 by weight. Crude Fibre : 18.7 per cent by weight. Colour: no artificial colour present. Insect Infestation : inscci infested-

Microscopes examination : No objection. living insects were present."

(3) What mainly weighed with the learned Magistrate was the tact that the Public Analyst in his report did not mention the percentage of insect infestation and while appearing as a defense witness made a statement that if articles like kaju contain less than 5 per cent insect infested pieces then he does not declare those articles to be insect infested but if one or two insects are found in a sample of an article of food he calls it insect infested.

(4) We are constrained to remark that Shri Prem Parkash, Public Analyst, has either notions about the nature of insect infestation which are not consistent with the dictionary meanings or judicial interpretation of that expression, or for some reason when he is called as a witness by courts he tries to put an interpretation which may cause confusion and uncertainty about the result of analysis.

(5) In the case of Wazir Chand Wadhwa Vs. State, Shri Prem Parkash had made a statement that if he does not find any living insects present in foodgrains but finds the foodgrains to be damaged then he makes a report that the foodgrains are insect damaged, but if he finds living insects present and the foodgrains are also found damaged then he reports the foodgrains to be insect infested. In the case of Mohinder Pershad v. State 1972 F.A.C. 474 (2) he made a statement that if in any sample there may not be any insects but only eggs even then he treats such a sample as insect infested. In the present case he went to the extent of saying that one or two insects found in a sample of an article of food would make it insect infested.

(6) In the case of Dhan Raj v. Municipal Corporation of Delhi mid State 1972 F.A.C. 335 (3) a Bench of this Court, of which one of us (Jagjit Singh, J.) was a member, explained the expression insect infested" as under :-

"The expression "insec-infested" was not defined in the Prevention of Food Adulteration Act and has, Therefore, to be given its ordinary meanings. The word "infest" appears to have been derived from the latin word "infestare" which meant to assail or molest. According to the Oxford English Dictionary (Volume V at page 259) the word "infest" means "To attack, assail, annoy, or trouble (a person or thing) in a persistent manner;" to visit persistently or in large number for purposes of destruction or plunder ;" "to swarm in or about, so as to be "troublesome". In the same Dictionary the word "infestation" is stated to mean; "The action of infesting, assailing, harassing, or persistently molesting". It is also mentioned that the word is now used especially for "insects which attack plants, grain etc. in large swarms". Thus an article of food would be "insect-infested", if it has been attacked by insects in swarms or numbers. It, however, seems to us that there is no justification for the view that insect-infestation would only continue so long as "the insects continue to be alive. If an article of food is attacked by insects in large swarms or numbers and for some reason those insects die, the mere fact that the article of food has no longer living insects but has dead insects will not change its character of being insect-infested."

In the same case it was also stated that it was not open for any Public Analyst to arrogate to himself the power of saying that irrespective of the prescribed standard he will not treat any article of food as adulterated which is insect infested to the extent of five per cent. It is not even "open for courts to change the standards of quality that have been prescribed for various articles of food and where the quality or purity of an article of food falls below the prescribed standard or its constituents are present in quantities which are in excess of the prescribed limits of variability the article has to be deemed to be adulterated." In *M.V. Joshi Vs. M.U. Shimpi and Another*, it was observed by their Lordships of the Supreme Court that under the Prevention of Food Adulteration Act if the prescribed standard is not maintained the article of food, by fiction, becomes an adulterated food and the dealer in such article of food cannot adduce evidence to prove that notwithstanding the deficiency in the standard it is not adulterated.

(7) As from the data given in the report of Shri Prem Parkash, when it is read in the light of his statement in this case and in other cases, "it cannot be said with certainty whether or not the sample analysed was in fact insect infested within the dictionary meanings of that expression. Moreover no evidence was produced to show that due to insect infestation the article of food had become unfit for human consumption so as to attract clause (f) of "the definition of "adulterated", as given in Section 2(i) of the Prevention of Food Adulteration Act." In these circumstances the respondent could not be convicted for the offence of selling an adulterated article of food by applying clause (f) of Section 2(i). Even clause (1) of the definition of "adulterated" could not be made use of as according to item A.0.5.05.01 of Appendix B to the Prevention of Food Adulteration Rules, 1955, chillies powder has to be free of insect infestation. Mere presence of one or two insects in the sample not being the same thing as insect infestation, it cannot be said that the quality or purity of the sample fell below the prescribed standard.

(8) The order of acquittal being justified, the appeal is dismissed.