

(1983) 04 DEL CK 0045

In the Delhi High Court

Case No : Criminal Appeal No. 228 of 1975

Municipal Corporation of Delhi

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 22-04-1983

Acts Referred:

Citation : (1983) CriLJ 1933 : (1983) 2 Crimes 372 : (1983) 5 DRJ 138 : (1983) RLR 539

Hon'ble Judges : R.N. Aggarwal, J;G.R. Luthra, J

Bench : Division Bench

Advocate : M.N. Sharma, Gurcharan Singh and Bharati Anand, for the Appellant;

Judgement

Aggarwal, J.

(1) This is an appeal by the Delhi Municipal Corporation against the acquittal of the Respondent Ramji Dass who was prosecuted u/s 7 read with Section 16 of the Prevention of Food Adulteration Act.

(2) On 12th September 1969 Shri V.P. Anand, Food Inspector, took a sample of Suji from the Grocery shop of the respondent at Nehru Bazar. One part of the sample was sent to the Public Analyst who found the sample to be adulterated on account of insect infestation. The sample was analysed on 17th September 1969 and the report of the analysis was as follows :

"Moisture : 12.05% Total ash : 0.51% Gluten : 6.42% Insect Infestation : Present Odour : Agreeable

Living insects are present. Total amount of Suji passes in no. 100 sieve -1.14%. The same is adulterated as the same is insect infested (living insects are present)."

(3) On the receipt of the report of the Public Analyst a complaint u/s 7 read with Section 16 of the Prevention of Food Adulteration Act was filed against the

respondent. The learned trial Magistrate found the accused guilty of the offence charged with and sentenced him to rigorous imprisonment for 6 months and to a fine of Rs. 1000.00 and in default of payment of fine to further undergo rigorous imprisonment for 120 days.

(4) Dissatisfied with the judgment, of the trial Magistrate the accused went in appeal to the Sessions Judge. Shri N.L. Kakkar, Additional Sessions Judge, who heard the appeal on 19th September 1975 set aside the conviction and sentence. The appeal was allowed on the ground that the Public Analyst in the report had not given the extent of insect infestation and Therefore, it could not be said that the sample of Suji was unfit for human consumption. Against the judgment of the Additional Sessions Judge, the Municipal Corporation of Delhi has come in appeal.

(5) Shri M.N. Sharma, learned counsel for the appellant, contended that if an article of food is insect infested that by itself is an offence and it has not to be further proved that the article of food was unfit for human consumption .The counsel in support of his contention relied upon Municipal Corporation of Delhi v. Tek Chand Bhatia (1979) 2 F.A.C. 218. It is not disputed by Mr. Gurcharan Singh, on behalf of the respondent that the definition clause 2(1)(f) of the Prevention of Food Adulteration Act has been interpreted to mean that if an article of food is insect infested that would amount to adulteration within the meaning of section 2(1)(f) and it has not further to be proved that the article was unfit for human consumption.

(6) Mr. Gurcharan Singh, however, contended that the sample was taken on 12th September 1969 and it was analysed on 17th September and it was possible that the living insects had developed in the article of food after the sample was taken. Mr. Gurcharan Singh referred to the statement of Dr. Ajwani, Deputy Health Officer, who had stated that the normal life cycle of an insect is 1 to 14 days. Mr. Gurcharan Singh further contended that the report of the Public Analyst is vague inasmuch as he had not given the number or the percentage of living insects found in the sample. According to Mr. Gurcharan Singh if the living insects were only 3 or 4 in number then it could not be said that the article of food was insect infested .Mr. Gurcharan Singh further contended that item A. 1803 (framed under rule 5 of the Prevention of Food Adulteration Rules) which lays down the standard of quality for Suji was amended in 1970 and the amended rule permitted rodent hair and excreta up to 5 pieces in one K.G., and according to the counsel the words "rodent hair" would mean and include living or dead insects. Mr. Gurcharan Singh in support of his above contention relied upon the statement of the Food Inspector dated 12th August 1970 wherein he had stated that rodent hair mean dead insects and the hair formed on them.

(7) We do not agree in this contention. According to the Twentieth Century Dictionary the word "rodent" means "gnawing : of the Rodentia, a member of the Rodentia, Rodentia, an order of mammals with prominent incisor teeth and no canines, as squirrels, beavers, rats, rabbits". In our view, the words "rodent hair"

do not include dead or living insects. The amendment in the standard of quality of Suji appears to have been brought about for the reason that it was well known that rats, mouse, etc. frequently inhabit the places where atta and like articles are stored and, Therefore, sometimes it was likely that they leave their hair and excreta in those articles. The amended definition, in our opinion, would cover only cases where hair or excreta up to 5 pieces in one K.G. are found but it would not include dead or living insects.

(8) We, however, feel that there is some force in the first two contentions of Mr. Gurcharan Singh. The article of food was taken on 12th September-and it was analysed on 17th September. There was a time lapse of about 6 days in the taking of the sample and its examination. Dr. Ajwani has stated that an insect may develop from an egg to an insect in about 1 to 14 days. It is possible that the living insects may have developed in the sample in question after the sample was taken. Public Witness 4 gave evidence that the sample of Suji was taken out of a gunny bag which was half full and that he did not see any insect when the sample was taken. We also find that the report of the Public Analyst does not mention the number of living insects found in the sample which could mean that the number of insects may be only 2 or 3. The expression "insect infested" would mean a swarm of insects or at least a large number of insects. The Food Inspector may have from the presence of few insects concluded that the article of food was insect. See *M.C.D. v. Bhawani Shankar* 1975 1 F.p. 251 and *Raghubir Sharan v. State* 1972 F.A.C. 389.

(9) For the above reasons and also in view of the fact that the offence took place in 1969 and now more than 14 years have elapsed, we do not think it to be a fit case for interference. The appeal is dismissed.