
(1990) 02 DEL CK 0034

In the Delhi High Court

Case No : Criminal Appeal No. 68 of 1980

New Delhi Municipal Corporation

APPELLANT

Vs

Pramod Kumar and Others

RESPONDENT

Date of Decision : 05-02-1990

Acts Referred:

Citation : (1990) 41 DLT 450 : (1990) 19 DRJ 1 : (1990) RLR 160

Hon'ble Judges : M.K. Chawla, J;M. Sharief-ud-din, J

Bench : Division Bench

Advocate : B.J. Nayyar and M.C. Sanghi, for the Appellant;

Judgement

Malik Sharief-ud-Din, J.

(1) This acquittal appeal is directed against the order of the learned Metropolitan Magistrate, New Delhi, dated 30th November 1979 by which order a complaint lodged by the New Delhi Municipal Committee against the respondents under Sections 7, 16 and 17 of the Prevention of Food Adulteration Act was dismissed and the accused/ respondents were acquitted. In effect, the court below held that the sample of Dal Chini was adulterated. We may notice that during the trial one of the respondents, namely. Ram Karan, the vendor had died.

(2) The facts are that on 8th of January 1976, a sample of Dal Chini was lifted from the deceased Ram Karan which he had been displaying for sale and human consumption and after usual sampling it was sent to the public analyst for examination. The shop from which the sample was lifted was then situated in Bengali Market, New Delhi, with the name and style of M/s. Laxmi Store of which Ram Karan deceased and Framed Kumar were partners and were responsible for the conduct of the business.

(3) The trial court was guided mainly by the report of the public analyst who on examination and analysis found the sample conforming to the standard ,though he found Chinese Casio or any other foreign he vegetable matter to the extent of 4.6% also present in the sample which, according to the complaint, was in

violation of the prescribed standard given in rule A.05 06 in appendix B of the Act.

(4) The contention of the learned counsel for the appellant is that according to the settled law if there be any conflict between the opinion of the public analyst and the date on which it is based, the data should prevail and the court is obliged to record a finding on the basis of that data, ignoring the opinion of the public analyst. This is particularly suggested in view of the fact that the public analyst has given no reason for the opinion he held and while being examined as a witness, the only reason given by him is that foreign clement was not substantial. According to the learned counsel, this he could not do nor can the court accept such an opinion.

(5) We have been taken by the learned counsel for the respondents through the statement of the public analyst Mr. P.P. Bhatnagar. According to the public analyst the only thing present in the Dal Chini which matters is the volatile oil. In the instant case he found 0.75% volatile oil present in the sample as against the minimum standard of 0.5% required by the Act. He found that the volatile oil present in the sample was more than required by the rules and it was in this context, he goes on to state, that the presence of 4.6% of Chinese Cassia or any other foreign vegetable was not considered by him to be substantial at the sample contained more than the required minimum standard of volatile oil. He further went on to explain that this foreign vegetable material is not something really foreign but it is the outer bark of the plant of Dal Chini of which inner bark represents Dal Chini. He further went on to state that, in any case, it is not injurious to health.

(6) We are of the view that the opinion of the public analyst, based on a particular data, should not be read out of context. That 4.6% of the foreign vegetable material was not considered by him to be substantial or injurious to health was due to the fact that contents of volatile oil in the Dal Chini were more than the minimum required under the rules. If the presence of the volatile oil is up to the standard laid down by the rules it could not have, in our opinion, persuaded the public analyst to hold that it was adulterated. On that basis we do not find any ground to interfere with the impugned judgment. To our mind, the reasoning advanced for acquittal by the learned trial Judge is quite reasonable and keeping in view the limitations of acquittal appeals, we have to be slow in interfering with the same.

(7) That apart, the acquittal was recorded as far back as 30th of November 1979. We are now in February 1990. That also is one of the reasons we would not have interfered even if we had agreed with the learned counsel for the appellant. The appeal shall stand dismissed.