(1998) 06 P&H CK 0009

In the Punjab And Haryana At Chandigarh

Case No : Criminal Revision No. 1064 of 1987

Nutrine Confectionery Company Pvt.Ltd. APPELLANT

Vs

State of Haryana RESPONDENT

Date of Decision : 29-06-1998

Acts Referred:

Citation : (1999) 2 AICLR 363 : (1998) 3 RCR(Criminal) 701

Hon'ble Judges : M.L.Singhal, J

Advocate : Avinach Chander Jain, S.S. Pattar, Advocates for appearing Parties

Judgement

M.L. Singhal, J.

1. This judgment will dispose of two Criminal Revisions No. 1064 and 1050, both of 1987 arising out of the same judgment dated 4th November, 1987 passed by the Additional Sessions Judge, Jind confirming the judgment dated 18/20th May, 1987 of the Chief Judicial Magistrate Jind.

2. Facts of the case briefly stated emerge as under :

On 30.11.1985 at about 10.30 AM, Shri Kali Ram, Government Food Inspector, Jind vested with the powers of Food Inspector under the Prevention of Food Adulteration Act, 1954 (in short Act) authorised to seize articles of food from their vendors and to have the same analysed from the public analyst, Haryana raised the business premises of Annu Provision Store, near Bharat Cinema Chowk, Jind and found its proprietor Satish Kumar son of Hans Raj sitting there at the sale point. At that time, Dr. S.S. Wadhwa, Medical Officer, Civil Hospital, Jind was also with him. Dilbagh Singh was also called at the spot. At the said business premises, 39 kilograms of Hard Boiled Sugar Confectionery (Toffees) was found lying for public sale. At the very outset, Shri Kali Ram disclosed his identity to Satish Kumar viz., he was Food Inspector vested with the powers of Food Inspector authorised to seize articles of foodstuff from their vendors and to have the same analysed from the public analyst and that he was there with a view to seize hard boiled sugar confectionery by way of sample for having the same analysed. He served notice Ex. PA upon Satish Kumar which was expressive of this intention on his part. He then purchased 600 grams of hard boiled sugar confectionery (toffees) on payment of necessary price to him. Notice Ex. PA was signed by Satish Kumar and attested by Dilbagh Singh and Dr. S.S. Wadhwa PWs. Satish Kumar supplied 600 grams of hard boiled confectionery (toffees) to Shri Kali Ram on receipt of Rs. 11.50 from him vide receipt Ex. PB which was signed by him and attested by Dr. S.S. Wadhwa, Dilbagh Singh and Kali Ram PWs. The said hard boiled sugar confectionery (toffees) was manufactured by M/s Nutrine Confectionery Pvt. Ltd., Chittoor, Andhra Pradesh. Sample so purchased was divided into three equal parts. Each of the parts was put in dry, clean and empty bottles. Bottles were stoppered tightly and sealed on the neck with the seal of medical officer., Bottles were labelled and wrapped in strong thick paper. Ends of the papers were pasted with gum. Paper slip bearing code number and signatures of the local health authority was pasted on each bottle from top to bottom. Each bottle/packet was secured by means of strong twine and sealed with the seal of medical officer and Food Inspector at the spot. Signature of Satish Kumar was obtained in such a manner that part of the signatures appeared on the paper slip and part on the wrapper. One sealed bottle along with memorandum in Form No. 7 was sent to the public analyst, Haryana for analysis in sealed packed by parcel. A memo in Form No. 7 along with seal impression used in sealing the bottles/packets was sent separately by registered post. Other two sealed bottles/packets along with two copies of memo in Form No. VII were deposited with local health authority. On analysis of the sample the public analyst found vide analysis report Ex. PD that there was contravention of Food Health Authority Notification No. 8/242PH85/3384 dated 6.4.1985. After receipt of report of public analyst Shri Kali Ram instituted complaint under section 7 read with Section 16(1)(a)(ii) of the Act against Satish Kumar, the proprietor of "Annu Provision Store", and M/s Nutrine Confectionery Company Pvt. Ltd., Chittoor, Andhra Pradesh through Sh. S.K. Sharma, Sales Executive/ Representative the manufacturer of this article of foodstuff.

3. On the conclusion of the trial, Chief Judicial Magistrate, Jind found the offence under Section 16(1)(a)(ii) read with Section 7 of the Act proved against Satish Kumar, the proprietor of Annu Provision Store and also the manufacturing company namely M/s Nutrine Confectionery Co. Ltd. Satish Kumar was convicted and sentenced to undergo imprisonment for 3 months and to pay fine of Rs. 500/ in default of payment of fine to undergo one month''s imprisonment while Shri S.K. Sharma, Sales Executive/Representative of the company was sentenced to pay fine of Rs. 500/ as the company could not be sentenced to substantive imprisonment and the company could be sentenced only to pay fine. Aggrieved from the order of conviction and sentence passed by Chief Judicial Magistrate, Jind dated 18/20.5.1987, Company through Shri S.K. Sharma, Sales Executive/ Representative went in appeal to the Court of Session. Similarly Satish Kumar, the proprietor of M/s Annu Provision Store also went in appeal to the Court of Session. Both these appeals failed. Not satisfied with the order of conviction and

sentence passed by two courts below, they have sought to test the correctness of the judgments of the two courts below through these criminal revisions.

4. I have heard learned counsel for the petitioners in both these revisions, learned Assistant Advocate General for the State of Haryana and have gone through the record.

5. It has been submitted by the learned Counsel for the petitioner that hard boiled confectionery is specified in Appendix B of the Prevention of Food Adulteration Rules 1955 at No. A.25.01 which is reproduced as below :

A.25.01 Sugar Boiled Confectionery Whether sold as hard boiled sugar confectionery or pan goods confectionery or toffee or milk toffee or modified toffee or lactobonbon or by any other name shall mean a processed composite food article made from sugar with or without doctoring agents such as cream of tartar, by process of boiling whether panned or not. It may contain centre filling, or otherwise, which may be in the form of liquid, semisolid or solids with or without coating of sugar or chocolate or both. It may also contain any of the following :

(i) Sweetening agents such as sugar, invert sugar, jaggery, lactose, gur, bura sugar, khandsari, sorbitol, honey, liquid glucose;

(ii) milk and milk products;

(iii) edible molassess;

(iv) malt extracts;

(v) edible starches;

(vi) edible oils and fats;

(vii) edible common salt;

(viii) fruit and fruit products and nut and nut products;

(ix) tea extract, coffee extract, chocolate, cocoa;

(x) vitamins and minerals;

(xi) shellac (food grade) not exceeding 0.4 per cent by weight, bee wax (food grade), paraffin wax (food grade), carnuba wax (food grade), and other food grade wax or any combination thereof;

(xii) edible desiccated coconut;

(xiii) spices and condiments and their extracts;

(xiv) candied peels;

(xv) enzymes;

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Item A.25.02 deals with Lozenges.

A.25.02 Lozenges Lozenges shall mean confections made mainly out of pulverised sugar, or icing sugar with binding materials such as edible gums, edible gelatine, liquid glucose or dextrin and generally made from cold mixing which does not require primary boiling or cooking of the ingredients. It may contain any of the following :

(i) sweetening agents such as dextrose, dextrosemonohydrate, honey, invert sugar, sugar jaggery, bura sugar, khandsari, sorbitol, liquid glucose;

(ii) milk and milk products;

(iii) nuts and nuts products;

(iv) malt syrup;

(v) edible starches;

(vi) edible common salt;

(vii) ginger powder or extracts;

(viii) cinnamon powder or extracts;

(ix) aniseed powder or extracts;

(x) caraway powder or extracts;

(xi) cardamom powder or extracts;

(xii) cocoa powder or extracts;

(xiv) protein isolates;

(xiv) coffee extracts or its flavour;

(xv) permitted flavouring agents;

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6. Food Inspector took the sample of hard boiled confectionery i.e. Orange Candy. In his statement, he has described it to be toffees. He took 600 grams of hard boiled confectionery as sample from a packet of one kilogram after opening the same. He did not take into possession whole of the plastic packet or the slip which was lying in the packet. In his cross examination, he admitted that the plastic packet was similar to packet Ex. D1 which was shown to him in the Court. He also admitted that there was a slip in the packet similar to Ex. D2. Slip Ex. D2 reads as follows :

"Nutrine"

Hard boiled sugar confectionery

Net weight 1 kg

Maximum price Rs. 26.56 (LT extra)

Code No. J 35521

Nutrine Confectionery Company (P) Ltd.

Chittoor (AP)

Transfer the contents and this card to air tight container."

7. Shri Kali Ram Food Inspector did not take the whole of the packet by way of sample. He did not take into possession the declaration as to the contents thereof written on Ex. D2 reproduced above. In Ex. D2 it was written that the contents of the packet were required to be transferred to air tight container along with Ex. D2. Learned Counsel for the petitioners has submitted that the Food Inspector could have treated one sealed packet as one part of the sample. He should have taken two other sealed packets and treated the same as other two parts of the sample. He has violated the provisions of Rule 22A of the Food Adulteration Rules inasmuch as he got the sealed packet opened and took 600 grams of hard boiled confectionery. He ought to have treated one sealed packet as one part of the sample in itself. Rule 22A of the Rules 1955 reads as follows :

22A Contents of one or more similar sealed containers having identical labels to constitute the quantity of a food sample.

"Where food is sold or stocked for sale or for distribution in sealed containers having identical label declaration, the contents of one or more of such containers as may be required to satisfy the quantity prescribed in Rule 22 shall be treated to be as a part of the sample."

8. It has been submitted that Rule 22 of the Rules enjoins upon the Food Inspector to take three samples of the hard boiled confectionery and each sample should weight 300 grams. Item No. 25 to Rule 22 has laid down the quantity of sample to be taken by the Food Inspector so far as toffee chocolate, hard boiled sugar confectionery and allied articles of food are concerned. Relying upon Rules 22 and 22A of the Rules together, it was submitted that the Food Inspector should have taken 3 sealed packets from the proprietor of M/s Annu Provision Store and treated each packet as one part of the sample. Contents of such sealed container is part and parcel of the sample as per Rule 22A.

9. It was held in Oswal Vanaspati and Allied Industries, Ludhiana v. State of Punjab, 1985(3) FAC 37 that "if Food Inspector breaks open the sealed tin and then takes sample and thereafter divides it into 3 parts, he clearly violates the provisions of Rule 22A of the Rules. Rule 22A is mandatory. Where procedure has been prescribed by a statute or the rules made thereunder, it is incumbent that all acts done or purported to be done thereunder must be in accordance with that statute or rules." Learned Single Judge while taking this view relied upon Division Bench judgment of this Court in Criminal Appeal No. 198DBA of 1981 (State of Punjab v. Surinder Singh).

10. Shri Kali Ram, Food Inspector stated in his statement that he was told at the spot by Shri Satish Kumar that he purchased these toffees from M/s. Nutrine Confectionery Company Pvt. Ltd., Chhittoor against Bill No. 216 dated 31.10.1985 from their Ambala Cantt. Office. Hard boiled Confectionery was thus purchased in sealed packets by Annu Provision Store from M/s. Nutrine Confectionery Company Pvt. Ltd. Shri S.K. Sharma in his statement recorded under section 313 Cr.P.C. admitted the sale of hard boiled confectionery to Annu Provision Store on 31.10.1985 vide Bill No. 216. Annu Provision Store thus purchased hard boiled confectionery from Nutrine with written warranty. Annu Provision Store was selling the hard boiled confectionery in the same state in which it had been purchased from the company. Shri Kali Ram, Food Inspector admitted this position when he stated that he took sample from a sealed packet of one kilogram. Section 19(2) of the Act lays down that "A vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves (a) that he purchased the article of food (i) in a case where a licence is prescribed for the sale thereof from a duly licensed manufacturer, distributor or dealer; (ii) in any other case, from any manufacturer, distributor or dealer with a written warranty in the prescribed form; (b) that the article of food, while in his possession, was properly stored and that he sold it in the same state as he purchased it."

11. In Bill No. 216 dated 31.10.1985, the following warranty is recorded :

"We hereby certify that the goods mentioned in the bill are warranted to be of the nature and quality which they purport to be."

12. Sample was taken on 30.11.1985 while goods were purchased on 31.10.1985. There is no evidence that there had been any lapse on the part of Satish Kumar so far as the storage of this article of food is concerned. Satish Kumar, proprietor of Annu Provision Store is thus entitled to the benefit of Section 19(2).

13. Notification which is said to have been violated is Ex. DA. It was issued by the Food Health Authority, Haryana in exercise of the powers conferred by Section 7(IV) of the Act laying down that no person in Haryana shall manufacture for sale or store, sell or distribute sweets (hard boiled confectionery in which there is permitted coal tar dye) except in packed container bearing clear lable indicating use of the permitted coal tar dye as per Rule 32 and the same is also within the limits prescribed under Rule 30 of the PFA Rules, 1955. This notification is dated 6.4.1985. Perusal of Ex. D2 shows that Rule 32 has been fully complied with. Annu Provision Store was selling hard boiled confectionery under a warranty in sealed packets and therefore no offence was committed by them. No offence can be said to have been committed by the company because there was improper sampling on the part of the Food Inspector. He did not take the sealed packets as such for sampling. He broke open the seals of the packets, purchased 600 grams of hard boiled confectionery and divided it into 3 parts. How could the company vouchsafe that the same thing had been purchased by

the Food Inspector and in the same condition in which they had sold it to Annu Provision Store and, therefore, company is also not liable.

14. For the reasons given above, both these revisions succeed and are accepted. Judgments of the two courts below are set aside. Accused petitioners are consequently acquitted. Fine, if paid, shall be refunded.

Revision allowed.