

(2008) 05 P&H CK 0037

In the Punjab And Haryana At Chandigarh

Case No : Criminal R No. 568 of 2007 (O and M)

Pawan Kumar Prashar

APPELLANT

Vs

State (Food Inspector), UT, Chandigarh and others

RESPONDENT

Date of Decision : 14-05-2008

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16(1A)(i)

Citation : (2008) 4 RCR(Criminal) 232

Hon'ble Judges : Vinod K.Sharma, J

Bench : Single Bench

Advocate : R.S. Bains, for the Appellant; Geeta Singhwal, Advocate for Union of India, for the Respondent No. 3, for the Respondent

Final Decision : Allowed

Judgement

Vinod K. Sharma, J.—This revision petition has been filed against framing of charge against the petitioner in a complaint filed under sections 7(i) (2)(i) (j) & 16 (1-A) (i) of the Prevention of Food Adulteration Act, 1954 (for short the Act) read with Rule 219 of the Prevention of Food Adulteration Rules, 1955 (for short the Rules).

2. The allegations against the petitioner are that on 20.12.2004 at about 3.00 p.m. Jagmohan Singh, Food Inspector found the petitioner in possession of 5 kilograms of Shahi Paneer for public sale at M/s Prashar Sweets & Restaurant SCO 12, 30 Bays Building, Sector 17-B, Chandigarh. The Food Inspector purchased 1500 grams of Shahi Paneer for the purposes of analysis and examination which on analysis has been found to be adulterated as the contents of the sample contained synthetic food colour sunset yellow (C.1.15985), whereas the addition of which is not permitted under Rule 29 of the Rules 1955 and thus, committed an offence under sections 7 (1)(2) (i)(j) of the Act.

Charge has been framed on the basis of complaint filed by Chandigarh Administration.

3. Mr. R.S. Bains, learned counsel appearing on behalf of the petitioner sought quashing of the charge-sheet primarily on the ground that Rule 29 of the Rules was ultra vires being biased and against the principles of natural justice. It is the contention of the learned counsel for the petitioner that food colour used by the petitioner is permitted colour under Rule 28 of the Rules for use in food products.

4. The petitioner seeks quashing of Rule 29 on the ground that the use of said colour is permitted by big manufacturers but the same is prohibited in the food products manufactured by poor persons like Dhaba/Restaurant owners.

5. Learned counsel by placing reliance on the judgment of Hon"ble Kerala High Court in the case of P.M. Nianan and Others Vs. The Executive Officer, Anikad and Others, contends that the validity of the Rules or Act can be validly challenged in criminal proceedings.

6. Learned counsel also placed reliance on the judgment of Hon"ble Calcutta High Court in the case of Sudhir Kumar Ghosh Vs. The State and Another, to contend that if Rule goes beyond rule making power the same can be quashed by the court in criminal proceedings.

7. However, I find no force in this contention of the learned counsel for the petitioner that Rule 29 is ultra vires. Rules 28 and 29 of the Rules read as under:

"28. Synthetic food colours which may be used

No Synthetic food colours or a mixture thereof except the following shall be used in food:

Sr. No

Colour

Common name

Colour Index (1956)

Chemical Class

1.

Red

Ponceau 4R

16255

AZO

Camoisine

14720

AZO

Erythrosine

45430

Xanthene

2.

Yellow

Tartrazine

19140

Pyrazolone

Sunset Yellow

15985

Azo

FCF

3.

Blue

Indigo Carmine

73015

Indigoid

Brilliant Blue

FCF

42090

Triarylmethane

4.

Green

Fast Green, Triarylmethane

FCF

42053

"29. Use of permitted synthetic food colours prohibited:--Use of permitted synthetic food colours in or upon any food other than those enumerated below is prohibited:

(a) Ice-cream, milk lollies, frozen dessert, flavoured milk, yoghurt, ice- cream mix-powder.

(b) Biscuits, including biscuit wafer, pastries, cakes, confectionery, threat candies, sweets, savouries (dal moth, mongia, phululab, sago papad, dal biji only);

(c) Peas, strawberries and cherries in hermetically sealed containers, preserved or processed papaya, canned tamato juice, fruit syrup, fruit squash, fruit cordial, jellies, jam, marmalade, candied crystalized or glazed fruits;

(d) Non-alcoholic carbonated and non-carbonated ready to serve synthetic beverages including synthetic syrups, sherbets, fruit bar, fruit beverages, fruit drinks, synthetic soft drink concentrates;

(e) Custard power,

(f) Jelly crystal and ice candy;

(g).....

(h) Flavour emulsion and flavour paste for use in carbonated or non-carbonated beverages only under label declaration as provided in clause (13) of Rule 42 (ZZZ)."

8. Rule making authority has been pleased to allow the synthetic food colours for use in food items under Rule 28 whereas as per Rule 29 of the Rules, the use of synthetic food colour is prohibited except the food items enumerated therein.

9. The charge against the petitioner deserves to be quashed. As per the reading of the allegations in the complaint or the evidence collected by the prosecution do not constitute an offence under Sections 7(1)(2), (i)(o) of the Act.

10. It may be noticed that synthetic food colour said to have been used by the petitioner is permitted under Rule 28 of the Rules. Shahi Paneer in which colour is said to have been used would be covered under Rule 29 (b) of the Rules. Rule 29 (b) of the Rules referred to above reads as under:

"(b) Biscuits, including biscuit wafer, pastries, cakes, confectionery, threat candies, sweets, savouries (dal moth, mongia, phululab, sago papad, dal biji only)"

11. The reading of Rule 29 (b) of the Rules shows that it is not restricted in nature as is sought to be projected by the prosecution but only indicative of the food items in which the permitted colour can be used. Dictionary meaning of Savoury is as under:

"(US Savory) adj. 1 (of food salty or spicy 2/VSU with nag.) or acceptable n. (P. Savouries) chiefly Brit a savoury snack."

12. Thus, it would be seen that once Shahi Peneer is a snack the use of permitted colour would thus be permissible even under Rule 29.

13. The allegations against the petitioner even if taken on their face value do not

show the contravention of Rule 29 of the Rules.

Consequently, the revision petition is allowed. Charge framed against the petitioner is ordered to be quashed.