
(1989) 04 AP CK 0005

In the Andhra Pradesh High Court

Case No : Criminal Miscellaneous Petition 3968 of 1985

R. Venkoba Rao and Another

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 05-04-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1989) 2 APLJ 11

Hon'ble Judges : K. Jayachandra Reddy, J; Bhaskara Rao, J

Bench : Division Bench

Advocate : K.R.K. Vara Prasad, for the Appellant; Public Prosecutor, for the Respondent

Judgement

Jayachandra Reddy, J.—Civilisation among the Society is rapidly advancing. People are developing tastes for various types of articles of food, and there are any number of articles which in the modern days are coming within the definition of articles of food under the Prevention of Food Adulteration Act, 1954. Chewing of betel-nut treated with Chunam is an age-old habit. Of this Chunam is flavoured and is being bottled and sold as "scented Chunam" and the same is pink in colour.

2. The 2nd petitioner A.R.R. Seeval Factory, Kumbakonam, manufactures scented Chunam and sells the same in the name and style of "A.R.R. Scented Chunam". Admittedly this scented Chunam is treated with Erythrocin which comes under the category of coal-tar dye.

3. The Food Inspector, Kalyandurg, took a sample of the Chunam and sent it to the Analyst and after analysis the Analyst opined that the sample contained "added colour Erythrocin" and therefore it is adulterated. On the basis of this report of the Analyst, a prosecution was launched against the petitioner after complying with the necessary procedural formalities. The case was taken on file and numbered as C.C. 163 of 1985 on the file of the Judicial Magistrate of First Class, Kalyandurg of Anantapur District. The present criminal miscellaneous

petition is filed under S. 482, Cr.P.C. with a prayer that the proceedings in the said case should be quashed.

4. It is submitted that the use of Erythrocin which is coal-tar dye is permitted in the article of food which comes under the category of "flavouring agents", and Chunam is an article of food coming under the category of "flavouring agent" and, therefore, there is no adulteration.

5. To appreciate this contention, it becomes necessary to refer to some of the provisions of the Prevention of Food Adulteration Act (hereinafter referred to as "the Act"). Section 2 contains various definitions and sub-section (i-a)(a) lays down that an article of food shall be deemed to be adulterated if the article sold by a vendor is not of the nature, substance or quality demanded by the purchaser and is to his prejudice or is not of the nature, substance or quality which it purports or is represented to be. Sub-section (i-a)(j) lays down that if any colouring matter other than that prescribed thereof is present in the article or if the amounts of the prescribed colouring matter which is present in the article are not within the prescribed limits of variability, then the article of food should be deemed to be adulterated. Section 2(v) defines "food" as to mean any article used as food drink for human consumption other than drugs and water, and includes any article which is used in the consumption or preparation of human food.

6. Rule 28 of the Prevention of Food Adulteration Rules 1955, contains the list of coal-tar dyes that may be used. Coal-tar dye is a substance which is used for colouring purposes. Rule 23 prohibits unauthorised addition of colouring matter except to the extent specifically permitted by the Rules. In R. 28 as already mentioned, we find a list of coal-tar dyes which are permitted to be used for colouring purposes, and Erythrocin is one such permitted coal-tar dyes. Rule 29 however lays down that use of these permitted coal-tar food colours dyes is allowed only in respect of the articles of food enumerates therein and prohibits the use of the same in respect of other food articles. Under R. 29(m) the category of articles of food mentioned are "flavouring agents". Therefore a combined reading of Rr. 28 and 29 goes to show that Erythrocin which is a coal-tar dye is permitted to be used in the article of food which comes under the category of "flavouring agents". Part-XIII of these rules deal with Flavouring Agents and the meaning of the expression for the purpose of the Act and the Rules framed thereunder, is explained. Under R. 63 it is mentioned that "Flavouring agents" include flavour substance, flavour extracts, flavour preparations, which are capable of imparting flavouring properties, namely taste or odour or both to food. Taking the commonsense view, flavouring agent can be something which is used as a means to flavour an article of food. Undoubtedly Chunam is one such agent. When used, it adds its own taste and odour to the chewing of betel-nut. Then the Rule proceeds to lay down the types of flavouring agents and they are categorised into three categories. The second category viz., "natural identical flavouring substances" is explained in the following terms :-

"Natural identical flavouring substances are substances chemically isolated from aromatic raw materials or obtained synthetically; they are chemically identical to substances present in natural products intended for human consumption either processed or not."

Chunam (lime) which is used in chewing the betel-nut undoubtedly comes under this category and, is therefore, a flavouring agent and the same is used in the consumption, i.e., which chewing betel-nut. When once Chunam comes under the category of "flavouring agent" and thereby falls within the meaning of R. 29(m), the use of Erythrocin, a coal-tar dye, is permitted for colouring Chunam which is a flavouring agent. Consequently, the presence of Erythrocin, which by itself is a coal-tar dye in the sample does not render the article of food, viz., Chunam which is a flavouring agent, an adulterated one. In the analysis report we find that the opinion is only to the effect that "the sample contains added colour Erythrocin and is therefore adulterated." The report does not show that the presence of Erythrocin is more than the standard prescribed under item A-26.04 in Appendix-B.

7. From the above discussion it emerges that the sample of scented Chunam in the instant case cannot be called an adulterated article of food. The analyst's report does not show that the sample contains any other extraneous matter. Therefore, there is no violation of any of the provisions of the Act or the Rule made thereunder. Consequently, no offence is made out. It may be mentioned here that only a copy of the analyst's report is placed before us. We, therefore, deem it proper to direct the lower court to peruse the original report and if it mentions that "the sample contains added colour Erythrocin and noting else, then the proceedings may be dropped and the accused shall be discharged.

8. With the above direction, the criminal miscellaneous petition is disposed of.

9. Order accordingly.