
(1986) 08 SHI CK 0006
In the High Court Of Himachal Pradesh

Raghunath Dass and etc.

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 08-08-1986

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 2(f), 2(ia), 2(m)

Citation : (1987) CriLJ 671 : (1986) ShimLC 281

Hon'ble Judges : V.P. Bhatnagar, J;H.S. Thakur, J

Bench : Division Bench

Judgement

V.P. Bhatnagar, J.—Criminal liability in case of insect-damaged and/or insect-infested articles of food under the Prevention of Food Adulteration Act, 1954 falls for determination in these revision petitions.

2. At the admission stage of Criminal Revision No. 7 of 1983, it was urged that Sub-clauses (1) and (m) take out the case of primary food from the purview of Sub-clauses (f) of clause (ia) of Section 2 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as "the Act") as held in State of Haryana Vs. Rama Nand, The Court was then of the view that important questions of law being involved, the case be placed before a Division Bench. For similar reasons, Criminal Revision No. 75 of 1983 and Criminal Revision No. 100 of 1983 were ordered to be heard along with Criminal Revision No. 7 of 1983. We proceed to dispose of all the above-mentioned three cases by this judgment.

3. The facts of three cases are as follows.

4. In Criminal Revision No. 7 of 1983, the Food Inspector collected sample of Kala Channa (black grams) from the shop/godown of Shri Bhagat Ram, petitioner, on Oct. 24, 1980. The sample sent to the Public Analyst was analysed on Oct. 27, 1980. The report of the Public Analyst at Ex. PE is that he is "of the opinion that the weevilled grains found on 27-10-80, 12% (by count) against ! theH maximum prescribed limit of 10.0%." tip petitioner was convicted and sentenced to undergo simple imprisonment for a period, 0t 6 months and also to

pay a fine of Rs. 1,000/- by the learned Sub-Divisional judicial Magistrate, Kandaghat. The learned Additional Sessions Judge, Solan and Sirmur districts at Nalagarh, in appeal, maintained the order of conviction but reduced the sentence to a period of 3 months and fine of Rs. 506/-. In default of payment of fine, the petitioner was directed to undergo further imprisonment for a period of 15 days. Criminal Revision No. 7 of 1983 has arisen out of the aforesaid judgment. ; . .

5. Criminal Revision No. 75 of 1983, is directed against the judgment dt. July 20, 1983 of the learned Sessions Judge, Kangra at Dharamsala whereby he dismissed the appeal preferred by Shri Raghunath Dass, petitioner before this Court, against his order of conviction u/s 16(1)(a) of the Act by the learned Sub-Divisional Judicial Magistrate, Dalhousie sentencing him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 1,000/-. In default of payment of fine, the petitioner was directed to suffer simple imprisonment for another period of 6 months. The Food Inspector collected a sample of Kala Channa (black grams) from Shri Raghunath Dass's shop situate at Bakloh, District Chamba on June 26, 1980. The perusal of report Ex. PE shows that the macro and micro analysis done by the Public Analyst on June 29, 1980 detected 8 living insects in the sample. The Public Analyst was, therefore, of the opinion that the contents were unfit for human consumption.

6. The third case, viz., Criminal Revision No. 100 of 1983 pertains to a sample of Ajwain (Bishop's weed). The sample was collected by the Food Inspector on Feb. 5, 1981 and its analysis was done on Feb. 19, 1981. The Public Analyst, according to his report Ex. PF, found the sample to be adulterated. The Public Analyst was of the opinion that "the contents of the sample contain 2.25% of inorganic extraneous matter against the maximum prescribed standard of 2.0%" and further "55 dead insects are also contained in the sample which as such is unfit for human consumption." The learned Chief Judicial Magistrate, Una convicted Shri Banarsi petitioner, before this Court; and sentenced him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 1,000/-. In default of payment of fine he was to undergo rigorous imprisonment for a further period of 3 months. The above order was maintained in entirety by the learned Sessions Judge, Hamirpur at Una vide his impugned judgment dated September 29, 1983.

7. At the very outset, it would be appropriate to consider the facts and the law laid down in State of Haryana Vs. Rama Nand, In that case, the Food Inspector purchased 600 grams of "Sabut Haldi" on Dec. 2, 1977 for analysis from the shop of the accused situate at Gurgaon. The sample, when analysed on Jan. 12, 1978, was found to contain 7.7% insect-damaged fingers against the maximum prescribed limit of 5.0% besides one living weevil and one dead meal worm.

8. Here, it may also be convenient to reproduce Sub-clauses (f), (1) and (m) of clause (ia) of Section 2 of the Act which are as follows:

(ia) "adulterated" an article of food shall be deemed to be adulterated ?

(a) to (e)....

(f) if the article consists wholly or in part of any filthy, putrid, rotten, decomposed or diseased animals or vegetable substance is insect-infested or is otherwise unfit for human consumption;

(g) to (k)....

(1) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits or variability, which renders it injurious to health;

(m) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability but which does not render it injurious to health.

Provided that, where the quality or purity of the article, being primary food has fallen below the prescribed standards or its constituents are present in quantities not within the prescribed limits of variability, in either case, solely due to natural causes and beyond the control of human agency, then, such articles shall not be deemed to be adulterated within the meaning of this sub-clause.

Explanation....

9. The language of the proviso to sub-h.clause (m) makes it abundantly clear that the said proviso applies to sub-clause (m) alone. It has no application to Sub-clauses (1) what to speak of Sub-clauses (f). In other words, if a sample of primary food is found to be substandard solely due to natural causes and beyond the control of human agency it shall not be deemed to be adulterated provided the variation in quality or purity does not render it injurious to health. If rendered injurious to health, the sample would be deemed to be adulterated notwithstanding the fact that the variation is solely attributable to natural causes and is beyond the control of human agency. In that eventuality, the case falls within the four-corner of Sub-clauses (1) to which the proviso to Sub-clauses (m) has no applicability. It is rightly so, because no vendor, under any circumstances can be permitted to sell articles of food which are injurious to health. Any interpretation permitting sale of injurious food would be grossly repugnant to the very object of the Prevention of Food Adulteration Act, viz., to ensure sale of wholesome food to the people.

10. Another reason why Sub-clauses (1) and (m), after the amendments brought about by Act 24 of 1976 cannot be construed so as to oust Sub-clauses (f) even with regard to primary food is the marked difference between "insect-damaged" and "insect-infested" matter, which must be constantly borne in mind. True, an article of food cannot ordinarily become insect-damaged without having been invaded by insects. Nevertheless, an article of food may contain insect-damaged matter but no insects and vice versa at a particular point of time. The standard laid down in Appendix B to Rule 5, in most cases, pertains to insect-damaged matter (for example, item No. A. 18.06 regarding foodgrains which would cover

Kala Channa, the subject-matter of two cases in hand) and does not touch the presence of insects at all. In such cases, the provisions of Sub-clauses (1) and (m) would govern the determination of the article being adulterated or not, keeping in view how much insect-damaged matter has been found. Where living or dead insects have been found in addition to or without insect-damaged matter and the prescribed standards are totally silent about such presence of insects, Sub-clauses (f) would be attracted to find out if the degree of such presence is so acute as to render the article "insect-infested" and, therefore, adulterated. Thus, Sub-clauses (1) and (m) on one hand and Sub-clauses (f) on the other are complementary to each other and there is no question of either of them excluding the other.

11. Difficulty can, of course, arise in cases where the standard prescribed in Appendix B covers the presence of insects, living and/or dead, as well. Evidently, such provision may clash with Sub-clauses (f) and, being specific in nature, in our view, edge out the concept of insect-infestation incorporated in the latter clause. This would, however, depend upon facts of each case and constitutes no ground whatsoever for holding that Sub-clauses (1) and (m) take out the case of primary food from the purview of Sub-clauses (f) as held in *State of Haryana Vs. Rama Nand*,

12. The above conclusion is also fortified by the ratio of *Prem Ballab and Another Vs. The State (Delhi Admn.)*, on the point that different clauses of Section 2 (ia) are not mutually exclusive. *Prem Ballab's* case (*supra*) has been held inapplicable due to the amendments brought about by Act 34 of 1976 in *State of Haryana Vs. Rama Nand*, by a process of reasoning which involves undue stretching and straining of the language used by the Legislature in the relevant Sections of the Act. We have not been able to persuade ourselves to agree with the said reasoning. Therefore, we hold, with all respect, that *Rama Nand's* case does not lay down the correct law on the point adverted to above.

13. We may now pass on to the next important law point.

14. Whenever a case of insect-infestation is sought to be fastened on a person within the ambit of Section 2 (ia)(f) of the Act, the court would be required to state whether insect-infestation *per se* would be sufficient to hold the sample adulterated or if it would also be necessary to return a finding that the said sample is unfit for human consumption on account of its being so insect-infested. The above question in turn would depend upon whether the phrase "or is otherwise unfit for human consumption" appearing in Sub-clauses (f) should be read in association with what precedes it or not. In other words, whether this phrase has to be read conjunctively or dis-junctively. This important law point has been dealt with in depth by the Supreme court in *Municipal Corporation of Delhi Vs. Kacheroo Mal*, and *Municipal Corporation of Delhi Vs. Tek Chand Bhatia*, by Benches of equal strength. In *Kacheroo Mai's* case (*supra*), the Supreme Court has held that the above phrase should be read conjunctively with the result that a sample shall be deemed to be adulterated if it is proved to be not only insect-

infested but also unfit for human consumption on that account. Tek Chand Bhatia's case (supra) is diametrically opposite on the above point inasmuch as it has been held that the said phrase is to be read disjunctively meaning thereby that mere proof of insect-infestation would bring the sample within the purview of the word "adulterated" as defined in Section 2(ia) (f) of the Act. Having said so, the learned judges in Tek Chand Bhatia's case (supra) still considered the evidence in the case before them and concluded that there was sufficient evidence to hold that the sample collected in that case was not only insect-infested but that the insect-infestation found was of such nature and extent as to make it unfit for human consumption.

15. The Supreme Court had yet another occasion to consider the important law point referred to above in *Municipal Corporation of Delhi Vs. Man Mohan Lal and Another*, . That Bench also consisted of two Hon'ble Judges as in each of the earlier two cases. In *Manmohan Lai's case* (supra), the Supreme Court noticed that there was a clear conflict between the decisions in *Municipal Corporation of Delhi Vs. Kacheroo Mal*, and *Municipal Corporation of Delhi Vs. Tek Chand Bhatia*, This resulted in the observation that "if we had to examine this question, we might perhaps have been constrained to refer this question to a larger Bench for resolving this controversy but it is not necessary to do so, since it is clear from the evidence that the infestation had rendered the sample unfit for human consumption".

16. The next case in which the Supreme Court dealt with this very question is reported in *State (Delhi Administration) Vs. Puran Mal*, After noticing the controversy, one of the learned Judges of two-Judge Bench observed that he would refrain from expressing any opinion as to which of the two aforesaid views was correct. The other learned Judge, however, was of the view that *Municipal Corporation of Delhi Vs. Tek Chand Bhatia*, brought out the true meaning of Section 2(ia)(f). However, that case too was decided on some other point.

17. Thus, the Supreme Court has not said the last word on the controversy whether mere proof of insect-infestation would bring the guilt home to the accused or it would be necessary to give a finding that the infestation is of such nature and degree as to render the article of food unfit for human consumption. A vigilant Legislature would have stepped in long ago to clarify the matter and place it beyond the pale of controversy and even now may hopefully consider the desirability of doing so. It is in the above background that we have addressed ourselves to the Various provisions of the Act" and made an endeavour to fathom out the true meaning thereof. With all respect, the controversy does not appear to us of much consequence either way for the reasons given below.

18. What is insect-infestation? "Infest" means to over-run or spread in large numbers so as to be unpleasant or unsafe (see *State (Delhi Administration) Vs. Puran Mal*, An article of food would be insect-infested if insects are present therein in swarms or numbers (see *Municipal Corporation of Delhi Vs. Kacheroo Mal*, . Can an article of food swarming with insects be fit for human

consumption? Answer to the above query has to be in the negative. To put it somewhat differently, in order to determine if an article of food can be deemed to be insect-infested and, therefore, adulterated, the extent and degree of infestation should be such as to render it unfit for human consumption. Therefore, no court of law can categorise a sample insect-infested unless it is also of the opinion that the sample is unfit for human consumption on that account. It follows that the prosecution can invariably strengthen its case by adducing evidence to show that the sample in question has been rendered unfit for human consumption due to the presence of insects in number, as found. Failure to adduce such evidence per se cannot, however, be fatal to the prosecution case if the Court can justifiably conclude from the mere extent and degree of infestation that the article of food has thereby become unfit for human consumption. It may be stated here that such a conclusion has to be arrived at by the Court itself (after applying its own mind) and not by following blindly the ipse dixit of the experts, notwithstanding the fact that their opinion would constitute legal evidence to be kept in view for arriving at the aforesaid conclusion.

19. To sum up, an article of food has to be unfit for human consumption due to presence of insects in large number in order to hold it insect-infested and, therefore, adulterated within the meaning of Section 2(ia)(1).

20. We would now deal with each revision petition on its merits.

21. In the sample collected from Shri Bhagat Ram, petitioner, which has resulted in the filing of criminal revision No. 7 of 1983, 12% (by count), weevilled grains were found against the maximum limit of 10.0% prescribed under item A. 18.06 in Appendix B t Rule 5. The case is obviously covered by the definition of "adulterated" contained in Sub-clauses (m) of Section 2(ia). Manifestly, the sample collected has been found to be below the prescribed standard and, therefore, adulterated. Nevertheless, the plea raised by the petitioner, in defence, appears to have some force. It is that the bag containing Kala Channa from which the sample was taken was lying in the godown situate at a distance of about 40 to 50 yards from his shop and that he had told the Food Inspector then and there that the grams were meant for the use of his own cattle and not as an article of food for human consumption. Shri Neem Chand (PW 2), in whose presence the Food Inspector admittedly took the sample, has supported the petitioner fully on the above point. The defence version, thus, appears to be quite probable and cannot be dismissed straightway as totally unreliable and unworthy of credence. In any case, we are of the view that the petitioner is entitled to benefit of doubt on this account. The criminal revision is, therefore, accepted and the order of conviction and sentence passed against the petitioner quashed. His bail bonds are discharged. Fine, if paid, be refunded to him.

22. As regards the sample of black grams collected from Shri Raghunath Dass, petitioner, in criminal revision No. 75 of 1983, 8 living insects were detected on July 2, 1980 in the sample taken on June 26, 1980. this sample is stated to be

insect-infested and, therefore, adulterated within the ambit of Sub-clauses (f). We do not think the presence of 8 living insects in 200 grams of Kala Channa would render the sample insect-infested keeping in view the pros and cons of the relevant provisions of law discussed above. The criminal revision is, therefore, accepted and the order of conviction and sentence passed against the petitioner quashed. His bail bonds are discharged. Fine, if paid, be refunded to him.

23. As regards criminal revision No. 100 of 1983, the sample is of Ajwain. Its standard of purity has been laid down in item A. 05.23 which reads as follows:

A. 05.23 Ajwain (Bishop's weed) means the dried ripe seeds of *Trachyspermum ammi* (Linn) Sprague. The proportion of organic and inorganic extraneous matter shall not exceed 3 per cent, and 2 per cent, respectively. The seeds shall be free from living insects, insect fragments and rodent contamination visible to the eyes.

Inorganic extraneous matters, such as, dust, dirt, stones lumps of earth have been found to be 2.25% against the maximum prescribed limit of 2.0%. Therefore, the sample cannot but be regarded as adulterated within the ambit of Sub-clauses (m) of Section 2(ia). Besides, 55 dead insects were also detected in it. Such a large number of insects would render it unfit for human consumption and insect-infested under Sub-clauses (f). Shri Banarsi Dass, petitioner, therefore, has been rightly convicted. In the totality of the circumstances, however, we are prone to take a somewhat lenient view on the point of sentence and accordingly reduce it to simple imprisonment for a period of 6 months and a fine of Rs. 500/-. In default of payment of fine, the petitioner would undergo further simple imprisonment for a period of 15 days.

24. Before parting with this case, we would like to put down a few other aspects which have come to our notice during the hearing of these revisions. In all the three cases in hand, the respective Food Inspector purchased sample and thereafter divided it into 3 parts out of which one part duly packed and sealed was sent to the Public Analyst. A very vital question which arises is whether the Food Inspector followed the method of quartering for the purpose of dividing the sample into three parts. This method has been described in an authoritative book on the subject viz., *Chemical Analysis of Foods and Food Products* (Second Edition) by Morris B. Jacobs. The procedure of quartering has been described at page 10 in the following words:

A method in common usage for obtaining representative samples is the procedure of quartering. Combine the portions obtained from various sections of the lot and, after mixing as thoroughly as possible by rolling in a sheet or blanket, if the sample is large, or paper, if the sample is of moderate size, form the material into a cone. Flatten the cone into a circular shape and divide into quarters. Take two opposite quarters, that is, quadrants 1 and 3, and repeat the above process. However, after dividing into quarters this time, the opposite quarters to those used before, namely, quadrants 2 and 4, are taken. This process is continued until a sample small enough for submission for analysis is

secured.

Manifestly, the above procedure is required to be followed in order to obtain a representative sample. This appears to be a must when sample of foodgrains or articles like Ajwain are collected with the object of finding the extent and degree of insect-damaged matter or insect-infestation. There can be no denying the fact that insect damaged matter would be comparatively light in weight and would accumulate at the top when shaken in a container. Where the Food Inspector does not strictly adhere to the procedure of quartering, the possibility of a greater proportion of insect-damaged matter being put in one part, specially that part which is sent to the Public Analyst for examination, cannot be altogether ruled out. Similarly, it also stands to reason that the three parts made by the Food Inspector should equally divide the insects. If so, the report of the Public Analyst with respect to the extent and degree of insect-damaged matter or insect-infestation may result in serious errors due to the concentration of such matters and/or insects in the sample which is sent to the Public Analyst. "The failure to obtain a proper sample makes a subsequent analysis worthless" observes Morris B. Jacobs at page 6 of his book referred to above.

25. Another point which needs serious consideration concerns the life-cycle of an insect. After all, the criminal liability of the accused has to be determined with respect to the state of the sample, meaning thereby the extent and degree of insect-infestation or the presence of insect-damaged matter, on the day when the sample is collected. The insects, however, are known to multiply rapidly. In this connection, expert evidence discussed in *Municipal Corporation of Delhi Vs. State*, may be referred to. No trader would add insects to an article of food with motive to earn more profits. At the same time, he cannot be absolved from his duty to ensure such hygienic conditions as would keep the article as free from insects as is possible. The cumulative effect of these two factors is that the courts must exercise added caution before convicting the traders for insect-damaged matter or insect-infestation. This is specially so because the minimum sentence in case of conviction is that of imprisonment. Where adulterators must be dealt with severely, no society can brook the sending of innocent behind the bar.

26. We earnestly hope and recommend that the authorities concerned in the Government of India would have intensive research initiated on the above aspects and take suitable steps by legislative amendments or otherwise in furtherance of the object of the Act.

27. Orders made as indicated above.