
(1985) 01 DEL CK 0049

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 534 of 1982

Raja Ram and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 10-01-1985

Acts Referred:

Citation : (1985) 8 DRJ 233

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

Bench : Single Bench

Advocate : D.C. Mathur, Randhir Jain and B.T. Singh, for the Appellant;

Judgement

Malik Sharief-Ud-Din, J.

(1) The grievance of the petitioner is that he is being wrongly prosecuted u/s 7/16 of the Prevention of Food Adulteration Act, 1954 in case No. 57/82 titled State v. Raja Ram, pending in the court of Shri M.L. Sahni, Metropolitan Magistrate, (Now Mr. V.K. Shali, M.M. New Delhi).

(2) During the pendency of the case the petitioner moved a petition u/s 245 Cr.P.C. praying for his discharge. The learned Magistrate, however, declined the prayer by his order dated 3-9-82. The petitioner has, Therefore, come up u/s 482 Cr.P.C. seeking the quashing of those proceedings after setting aside the impugned order dated 3-9-82 and to his consequent discharge.

(3) The admitted facts are that the food inspector Gian Chand took sample of Anardana powder on 21-10-81 at 3 P.M. from the premises of petitioner No. 2 which is a partnership concern situated at Kamla Nagar. On analysis it was found to contain permitted colour (panacea 4 R. Coal tar dye) which is the name of the colour. It is one of the coal tar dyes and it is a permitted colour under Rule 28 of the Prevention of Food Adulteration Act. This is the admitted position. After receiving report of the public analyst and fulfilling other requisite formalities the complaint which is sought to be quashed came to be filed.

(4) I have heard the counsel for the parties at length. To begin with I would like to make reference to the Panchnama wherein it is clearly stated that the article of food was stored by the petitioner for preparation of food articles for sale for human consumption. This seems to be the real basis. The food inspector purchased the sample as he felt that an adulterated article as being used by the petitioner for preparation of food article namely confectionary in which the petitioners are admittedly dealing. He, however, did not purchase the article of confectionary in which he thought Anardana powder was being mixed." Conscious of this difficulty the senior prosecutor of the department of "Prevention of" Food Adulteration Delhi. Mr. R.C. Chopra while framing the complaint changed the complexion of the case by stating that the petitioners were storing this article for sale and that the article of food thus purchased was found to be adulterated and misbranded by the public analyst. Actually, this is an incorrect statement of facts as neither it was the case of the Food Inspector when he purchased the sample that Anardana powder was being stored for sale as such nor it is the case of the food inspector that he purchased the article as misbranded and similarly when the stuff was referred for analysis the public analyst has nowhere stated that the article was adulterated or that it was misbranded. That by itself is sufficient reasons against the maintainability of the complaint. It is the basis requirement of Justice that a person facing a criminal trial or for that matter of fact any action, should be clearly told about the claim that has been pressed against him. If that is not done and, in case that requirement is lacking, there would be no justice in prosecution as the person facing the charge cannot be said to be in a position to know what he is required to defend. In the present case the food inspector has leveled a charge against the petitioners that they were storing Anardana powder mixed with permitted colour for preparation of food articles for human consumption which according to him would make that preparation adulterated. The Senior Prosecutor while filing the complaint has leveled altogether a different charge against him which is that, he was in fact storing for sale Anardana powder mixed with permitted colour and that this was found to be adulterated and misbranded by the public analyst. The complaint obviously is contrary to what is mentioned in the panchnama. The least that can be said is that there is absolutely no foundation on which the complaint is based.

(5) That apart, Mr. Mathur, learned counsel for the petitioner, has urged that Anardana powder found with the petitioner in his premises, even if it was mixed with permitted colour, was not for sale then question that arises is as to whether the food Inspector under Sub-section (2) of Section 10 of Prevention of Food Adulteration Act was authorised to take the sample or not? I would not touch on this question for the reason that otherwise also, as stated above, I find that the complaint itself has no foundation.

(6) I may, however, make a reference to yet other contention of Mr. D.C. Mathur which is that there are no standards laid down by the Prevention of Food Adulteration Rules in respect of Anardana powder and under Rule 28 the colour

used is admittedly the permitted colour. Mr. Mathur further urged that Anardana powder as such is the product of fruit and in such products use of permitted coal tar dye is permissible under Rule 29(f). His further contention is that he is even saved under Rule 29(e) and (g) as he is a confectioner by profession and it is permissible for him to make use of such dyes as flavouring agents or as savouries. This position is undisputed. In view of these observations I find that the entire complaint is misconceived and the learned Magistrate has fallen into an error by refusing to act u/s 245 Cr.P.C.

(7) The result is that the petition is accepted. The complaint case No. 57 of 1982 now pending before Shri V.K. Shali, Metropolitan Magistrate, New Delhi, shall stand quashed. The impugned order dated 3-9-82 passed by the learned Magistrate is also quashed. The complaint is dismissed and the petitioners are discharged.