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(1982) 08 BOM CK 0032

In the Bombay High Court

Case No : Criminal Revision Application No. 734 of 1981

Ratansi Hirji Jain APPELLANT

Vs

State of Maharashtra RESPONDENT

Date of Decision : 31-08-1982

Acts Referred:
Prevention of Food Adulteration Act, 1954 — Section 16(1), 7

Citation : (1982) 2 BomCR 590

Hon'ble Judges : R.R. Jahagirdar, J

Bench : Single Bench

Judgement

1. The petitioner, hereinafter referred to as "the accused", was prosecuted in Criminal Case No. 169 of 1978 in the Court of the Chief Judicial Magistrate of Kulaba at Alibag for an offence punishable under S. 16(1)(a)(i) of the Prevention of Food Adulteration Act, hereinafter called "the Act" and was sentenced to rigorous imprisonment for six months. He was also sentenced to pay a fine of Rs. 1,000/-. In default of the payment of fine, rigorous imprisonment for three months was stipulated. The prosecution case was as far as it can be made out from the complaint filed and the deposition of the Food Inspector, that the accused sold to the Food Inspector 900 grammes of adulterated chocolates (milk toffee) in contravention of S. 7 of the Act. In particular the case of the prosecution was that the sample which was taken from the accused when analysed contained ash insoluble in dilute hydrochloric acid of more than 0.2 per cent by weight, thus contravening Rule A-25.02 of the Prevention of Food Adulteration Rules, hereinafter referred to as "the Rules". The defence of the accused was manifold, one of which was that what was sold to the Food Inspector was not milk toffee but chocolate.

2. The learned trial Magistrate convicted the accused and sentenced him as mentioned above. The accused preferred an appeal, being Criminal Appeal No. 100 of 1978, which was dismissed by the learned Sessions Judge of Raigad at Alibag by his judgment and order dated 18th November, 1981, which is the

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subject-matter of challenge in this petition supported before me by the learned Advocate Mr. Ganatra.

3. Mr. Ganatra has challenged the conviction on several grounds. However, it is not necessary to refer to all of them because after hearing him and the learned Public Prosecutor Mr. S. B. Patil I am satisfied that the petitioner must succeed on the ground that what was sold to the Food Inspector was not milk toffee, as found by the two Courts below, but it was chocolate for which no standards have been prescribed under the Rules. Mr. Ganatra has taken me through the judgment of the learned Additional Sessions Judge as also thorough the relevant evidence. Mr. Apte, the Food Inspector who took the samples from the factory of the accused, has mentioned that on 17th July, 1977 at noon time he visited the factory along with two panchas. The accused himself was present. He entered one room in which separate trays of hard-boiled confectionary, milk chocolates and Lactobonbon were found kept stored. The Food Inspector has further mentioned that there were in all five items of the confectionary. He took samples of all the five and thereafter the Food Inspector has proceeded to mention "the present case relates to the taking of samples of milk chocolates". Thereafter the Food Inspector has in unmistakable terms further mentioned "I demanded of him to sell to me for the purpose of analysis 900 grammes of chocolates (milk toffee) ...." From the report of the Public Analyst it is also seen that what was sent to him for the purpose of analysis was chocolates (milk toffees).

4. The Public Analyst has proceeded to examine the samples sent to him as if it is milk toffee and not chocolate or, in any case, milk toffee not containing chocolate and has found that it contained ash insoluble in dilute hydrochloric acid of more than 0.2 per cent by weight. On this he has based his opinion that the sample analysed by him was adulterated.

5. The learned Sessions Judge, with whose judgment alone I should deal, has found fault with the Food Inspector who, according to him, has not correctly described the product of which he has taken sample. I am afraid, it is not possible to agree with the learned Sessions Judge on this point because if the Food Inspector has not correctly understood the nature of the product of which he has taken the sample, it is not for him to explain the nature of the product of which he has took the sample. I have mentioned above at least three instances where the Food Inspector has proceeded on the basis that it was milk chocolate of which he was taking the sample and not milk toffee. That there would be a crucial difference in the samples of milk chocolate and milk toffee cannot be disputed. The learned Sessions Judge, has mentioned as follows :-

"Accordingly what was sought to be purchased by the Food Inspector was milk chocolate and not milk toffee or plain toffee. The learned Advocate has simply relied upon the phraseology used by the Food Inspector. This seems to be an aberration on the part of the Food Inspector whose knowledge about the chocolates is poor in view of his admissions in the cross-examination that he is unaware of all the varieties of chocolate."

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These observations of the learned Sessions Judge should in fact support the case of the accused. The fruits of the ignorance or of incompetence of the Food Inspector should be available, if at all, to the accused and not to the prosecution. Moreover, it is not clear as to how the learned Sessions Judge has come to the conclusion that milk toffee is a variety of chocolate. Even in the Rules which are framed under the Act it is seen that milk toffee is not required to contain chocolate at all. It is clear to me that milk toffees cannot be called chocolates nor chocolates can be called milk toffees. If the Food Inspector has taken sample of chocolates, as he indeed did from all accounts given by him, the sample sent to the Public Analyst could not have been analysed as sample of milk toffee.

6. In Criminal Revision Application No. 73 of 1977 decided on 12th June 1978 by me. I have held that a person can be prosecuted for adulteration if it is shown that the sample contained something which it should not contain or it contained something which is permitted but in contravention of the standards prescribed under the Rules. The sample of chocolate purchased by the Food Inspector in the instant case is not shown to contain anything which under the Act it should not contain because it has not been examined at all as a sample of chocolate. No standards have been prescribed for the purity of chocolate as a food item under the Rules. In these circumstances, I do not see how the conviction recorded by the two Courts below can be sustained. On this limited ground and without examining the other contentions such as the contravention of the Rules raised by Mr. Ganatra, I would allow this petition and set aside the conviction of the accused.

7. In the result, this petition must succeed. The order of conviction and sentence dt. 29th November, 1978 passed by the learned Chief Judicial Magistrate, Kulaba in Criminal Case No. 169 of 1978 and confirmed by the learned Sessions Judge of Kulaba by his judgment and order dt. 18th of November, 1981 in Criminal Appeal No. 100 of 1978 is set aside. The accused is acquitted of the offence with which he was charged. The bail bond of the accused stands cancelled. Fine, if paid, be refunded to the accused.

8. Petition allowed.

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