
(1984) 02 DEL CK 0017

In the Delhi High Court

Case No : Criminal Revision Appeal No. 270 of 1978

R.M. Kalia and Another

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 12-02-1984

Acts Referred:

Citation : (1985) CriLJ 1514 : (1985) 8 DRJ 186 : (1985) 2 RCR(Criminal) 428

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

Bench : Single Bench

Advocate : F. Anthony, B.P. Soni and R.K. Anand, for the Appellant;

Judgement

Malik Sharif-Ud-Din, J.

(1) The Public Analyst examined a sample of "Flavoured Cornflour" as Cornflour simplicitor. This was because the Food inspector did not send the printed colour cartons with the food stuff. The result was, the public analyst declared the sample adulterated as it was found to be containing colour, flavour and common salt which a sample of cornflour under Rule A. 18.08 of the Prevention of Food Adulteration Rules was not expected to contain. The result was a complaint u/s 7/16 of the Prevention of Food Adulteration Act and conviction. The petitioner No. 1, Mr. R.M. Kalia, was sentenced to rigorous imprisonment for one year and to the payment of fine of Rs. 5000.00 in default of payment of which, he was required to undergo further 6 months rigorous imprisonment, while the petitioner No. 2, firm M/s. Wakefield Products Company, was fined a sum of Rs. 20,000.00 . This was reduced to 6 months rigorous imprisonment, and in default of payment of fine to 3 months rigorous imprisonment in appeal. The other two persons, one Mr. B.R. Malhotra and Shri H.R. Malhotra Managing Director and Production Director respectively were acquitted as the prosecution had failed to place on record the constitution of the firm and the position held by these two accused. Aggrieved of this order, the Petitioner has come in revision.

(2) It will be noticed that the Public Analyst, who was examined as D.W. 4, Mr.

P.P. Bhatnagar, stated in cross-examination that he had examined the sample according to the standard laid down in rules for Cornflour at A. 18.08 which prescribes that Cornflour should contain no colour, flavour or other Chemicals. He has however made two prominent and significant admissions, which are-(a) that no standard has been prescribed by rules for Flavoured Cornflour, and (b) that he would not have declared the sample adulterated if the cartons had come to him along with the sample. The reason given by him is that the ingredients are printed on cartons and the sample was found by him containing the same ingredients. A look at the carton cover which was withheld from the Public Analyst shows that the food stuff contained the following ingredients, namely cornflour salt flavouring and coloring 175 gins. net and the directions given are as follows.

"One of the enclosed envelops two table spoons sugar, 570 ml. Milk, Mix the Blancmange powder in a little of the milk, boil the remainder of milk with sugar, while boiling and slowly the Blancmange paste, stirring well boil approximately half a minute, chill and serve with fruits, jelly etc."

(3) The Trial Court held "had it been Blancmange or custard powder the position could have been quite different." Mr. Frank Anthony urged that Blancmange is a house-hold name for Flavoured Cornflour not only in Europe but also in leading hotels and restaurants in India and there is no justification to declare the sample as adulterated as it conformed to the ingredients printed on the cartons which were withheld from the Public Analyst who in fact examined the sample according to the standard prescribed for sample of Cornflour and this was done despite the fact that sample was represented as "Flavoured Cornflour" and no standard has been prescribed by Rules for Flavoured Cornflour. Mr. Anthony also submitted that the words "Flavoured Cornflour" are not the words coined by the petitioner. He has made a reference to the Government of India Import Policy at page 189 to urge his point that the Government has recognised "Flavoured Cornflour" as an article of food different than the simple "Cornflour". His contention is that once it is found that Flavoured Cornflour is an article of food different than simple Cornflour, it cannot be judged by the standard prescribed for Cornflour in the same manner in which the standard prescribed for simple milk cannot be applied to Flavoured Milk, even though the main ingredient of Flavoured Milk is also milk. Mr. Anthony submitted that previously no standard was prescribed for Flavoured Milk and once this article of food became prominent, Rule A.11.01.05 came to be added and that similar action can be taken by the Legislature in respect of Flavoured Cornflour. Mr. Anthony claims that in fact the ingredients of Flavoured Cornflour are the same as that of custard powder and that it has been the consistent stand of the petitioner. He submitted that if the custard powder is not adulterated stuff, how than could Flavoured Cornflour be adulterated, particularly, when its ingredients are similar to the one of custard powder. Mr. Frank Anthony made many more submissions about this article of food (Flavoured Cornflour) being of international fame and being supplied to army and approved by Isi etc., but for purposes of point in

controversy in this case, it is not necessary for me to discuss the same.

(4) Mr. Anand, who appeared on behalf of the State, states that all these submissions of Mr. Frank Anthony are not relevant for the settlement of the issues in this case. He has invited my attention to Section 2(is(j) which reads as under :-

"If any coloring matter other than that prescribed in respect there of is present in the article, or if the amounts of the prescribed coloring matter which is present in the article are not within the prescribed limits of variability ;"-a food article shall be deemed to be adulterated. Mr. Anand has made a reference to the aforesaid section to press his point that if law prescribes that no coloring matter can be added to cornflour, it is the end of the matter as in the present case coloring matter was used in the Cornflour. Reliance is placed by him on the case reported a Prem Ballab and Another Vs. The State (Delhi Admn.), . I do not think Mr. Anand's argument is sustainable. The case mentioned by him was in respect of linseed oil for which the standard prescribed is no coloring matter. Here, in this case, court is faced with the different situation inasmuch as no standard prescribed for Flavoured Cornflour and if it is analysed as simple Cornflour, it is bound to give results different than that of the simple Cornflour. The question that arises is as to whether a man could be convicted of adulteration for failure of the Legislature to prescribe standard in respect of a particular food item such as "Flavoured Cornflour" as in the present case ? This is unheard of. Even D.W. 4, Shri P.P. Bhatnagar, Public Analyst, was thus compelled to admit that he examined the food article as "Cornflour" and not as "Flavoured Cornflour". He has also stated that if cartons had been sent to him, he would not declare it adulterated as otherwise he found it to contain the ingredients similar to those described in the cartons.

(5) Blancmange which has the same ingredients as that of custard powder undisputably is an article of food, internationally recognised and even recognised by Government of India's Import Trade Control Policy. If it has not so far found its place in Food Adulteration Rules, the petitioner can neither be blamed nor penalised for the same. I may here make a reference to the object of Prevention of Food Adulteration Act which is to make sure that the citizen is provided with unadulterated food stuffs not injurious to health. This is a measure in the direction of public health. Section 2(ia)(a) of the Prevention of Food Adulteration Act also defines "what is meant by adulterated" and it reads as under :-

"(A)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 ;"-it will be deemed to be adulterated.

(6) Thus, if an article sold by a vendor is not of the nature, substance and quality demanded by the purchaser and is to his prejudice, or is not of the nature, substance or quality which it purports to be or is represented to be it is deemed to be adulterated for the reason that the customer was not supplied what he

asked for or that he was supplied a food stuff different than the one it is represented to him.

(7) The case of the State is not that the petitioner has sold the article as Cornflour. As a matter of fact, the entire record shows that it was purchased as "Flavoured Cornflour" and was even sent to the laboratory for test as "Flavoured Cornflour". The trouble has only been created because the Food Inspector did not choose to send to the Public Analyst the cartons of the foodstuffs to indicate to him as what it represented to be. The Public Analyst, Mr. P.P. Bhatnagar, D.W. 4, in this way seems to have fallen into an error by analysing the stuff according to the standard prescribed for simple "Cornflour" as given under Rule A. 18.08 of the Prevention of Food Adulteration Rules, 1955. The Food Inspector does not even seem to have made an attempt to understand what he was lifting for analysis. Since the stuff was examined according to the standard prescribed for "Cornflour", naturally the result could not be different that the one arrived at by the public Analyst. That is why the Public Analyst has gone on record to state .that if the cartons had come to him, he would not have declared the food stuff as adulterated as he found the same ingredients as arc represented on the cartons. This is in fact a case. where, essential and crucial facts as evidenced by Mr. P.P. Bhatnagar, Public Analyst, have been withheld from him. It is not denied that the nature, substance and quality of the foodstuff, named us "Flavoured Cornflour" was in conformity with the ingredients described on the cartons. It was thus the same thing what was represented by the vendor. The consistent stand of the petitioner has been that this Flavoured Cornflour was same as custard powder as the ingredients are similar. The fact that Blancmange is a well recognised article of food brooks out no doubt. Mr. Anthony has invited my attention to the book "The Chemical Analysis of Foods" written by David Pearson. In the 7th Edition of his book at page 244, he has described the Chemical combination of Blancmange and Custard Powder and the ingredients of both are almost similar. It would be seen that even Director General (Health Services) vide his letter. Annexure "A", to this petition has said that Blancmange Powder shall conform to the specifications of custard powder laid down in Item A. 18.10 Appendix "B" to the Prevention of Food Adulteration Rules, 1955. That exactly is the article of food that it was found to be on analysis.

(8) Keeping in view the facts of the case in their entirety, I am of the opinion that the petitioner has fallen a victim to the most causal and mechanical functioning of the Food Inspector. One is intrigued to find as to why the Food Inspector did not consider it necessary to send the cartons to Public Analyst or at least to describe the ingredients that the article of food consisted of and represented on the cartons. Had that been done, the Public Analyst would certainly have said that he is unable to examine it as no standard is prescribed. Had that been done, both the State and the petitioner would have been saved of useless waste of time and expense.

(9) With these observations, I find force in the contentions raised by Mr. Frank

Anthony. The petition is accepted and the conviction and sentence as recorded by the learned Metropolitan Magistrate by his order dated 19-1-77 and modified by the learned Sessions Judge by his order dated 8-9-1978 are set aside. The petitioners are acquitted and the case against them is dismissed.