
(1969) 10 DEL CK 0007

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 203 of 1967

Sohan Lal

APPELLANT

Vs

State/Municipal Corporation of Delhi

RESPONDENT

Date of Decision : 09-10-1969

Acts Referred:

Citation : (1969) ILR Delhi 913

Hon'ble Judges : Hardayal Hardy, J

Bench : Single Bench

Advocate : Daya Kishan, D.C. Mathur and B. Dayal, for the Appellant;

Judgement

Hardayal Hardy, J.

(1) This order will dispose of a batch of eight petitions u/s 561-A Criminal Procedure Code involving common points. The petitioners are being prosecuted in the Court of a Magistrate for an offence u/s 7 read with section 16 of the Prevention of Food Adulteration Act, 1954 (hereafter referred to as the Act), for sale of supari sabat (areca whole-nut). In three cases the result of analysis by the Public Analyst appointed under the Act is said to be as follows:-

(1) Cr.M.(M) 203 of 1967 "The sample was in fit condition for analysis. Date of analysis :- 22-5-67. 14.7.8% of the Supari Sabat were found infested. The sample contained Sabat Supari and am of the opinion that the same is adulterated due to infestation to the extent of 14.78 %"

(2) Cr.M. (M) 205 of 1967 "The sample was in fit condition for analysis. Date of analysis:- 22-5-67. 39.6 % of the supari sabat were found infested. The sample contained sabat supari and am of the opinion that the same is adulterated due to infestation to the extent of 30.6 %."

(3) Cr.M. (M) 206 of 1967 "The sample was in fit condition for analysis. Date of analysis: 22-5-67. 36.1% of the Supari Sabat were found infested. The sample contained sabat supari and am of the opinion that the same is adulterated due to

infestation to the extent of 36.1%. In the remaining five cases the result of the analysis is as follows:-

(4) Cr.M. (M) 204 of 1967 "The sample was in fit condition for analysis. Date of analysis: 7-6-67 Deteriorated supari 20.37% Infested supari 7.72% and am of the opinion that the same is adulterated due to the presence of 20.37 per cent deteriorated and 7.72 per cent infested supari."

(5) Cr.M. (M) 207 of 1967 "The sample was in fit condition for analysis. Date of analysis: 7-6-67. Deteriorated supari: 4.7%. Infested supari: 5.28%. and am of the opinion that the same is adulterated due to presence of 4.7 per cent deteriorated and 5.28 per cent infested supari."

(6) Cr.M. (M) 208 of 1967. "The sample was in fit condition for analysis. Date of analysis: 7-6-67. Deteriorated supari 3.6% Infested supari 5.04% and am of the opinion that the same is adulterated due to the presence of 3.69 per cent deteriorated and 5.04 per cent infested supari."

(7)Cr.M.(M) 5 of 1968. "The sample was in fit condition for analysis. Date of analysis. 19-7-67. Infested and deteriorated supari 16.5% and am of the opinion that the same is adulterated due to 16.5 % of infested and deteriorated supari."

(8) Cr.M.(M) 6 of 1968. "The sample was in fit condition for analysis .Date of analysis: 19-7-67. Infested and deteriorated supari: 100% (Hundred per cent) and am of the opinion that the same is adulterated to cent percent infested and deteriorated supari."

(2) L the cases are at an initial stage and no evidence has so far been recorded. The petitioners however contend that the prosecution allegations even if taken to be true, do not establish any offence against them and as such any further continuation of proceedings will amount to abuse of the process of the court. Their prayer Therefore is that the proceedings against them be quashed. At the hearing of the petitions the following three contentions have been raised on their behalf-

(I)that supari is not an article of food as defined in section 2(v) of the Act;

(II)that in any case no standard of purity has been prescribed by the Rules framed under the Act; and

(III)that according to the analysis the samples in all the cases are shown to have been merely infested and as such they could not be said to be adulterated within the meaning of that expression as defined in section 2(i)(f) of the Act.

(3) With regard to the first point it is urged that it is only that article which supplies nourishment to organic bodies that can be treated as food. Supari has not been shown to have any such quality .Under section 2(v) the word "food" means "any article used as food or drink for human consumption other than drugs and water and includes-

(A)any article which ordinarily enters into, or is used in the composition or preparation of human food, and

(B)any flavouring matter or condiments."

(4) It is apparent that the definition of food as given in the Act is very wide and includes any article used as food or drink and for human consumption other than drugs and water. It also includes any article which ordinarily enters into or is used in the composition or preparation of human food and also an flavouring mat or condiments. The question as to whether the definition of the word "food" is wide enough to include supari is a question of fact which can only be decided on evidence. It cannot be disputed that supari is used for human consumption in that it is chewed or masticated either alone or with betel leaves. Evidently it is not water and it is also not drug. The only question is whether it is an article used as food because it is certainly not used as drink. This can however be ascertained by evidence alone which as I have said before has not yet been recorded. I do not wish to suggest that the argument has no force. All I say is that this is not the stage when such a question can be raised or decided.

(5) As regards the second point, it is true that till November 1966 the Central Committee for Food Standards appointed by the Central Government was not in a position to lay down any standard for supari. On 4-11-1966 the Government published certain draft Rules to amend the Prevention of Food Adulteration Rules, 1955. With regard to supari (areca-nut) it was proposed to add the following standard of quality in Appendix B to the said rules.

"A.05.23-ARECANUT(supari) whole or single cut means fresh stored or dried nut from the green or ripe fruits of palm Areca Catechu LINN. The nuts may be prepared by drying the whole nut or cutting and drying or cutting, boiling and drying. The product may be coated with the concentrated aqueous extract of areca- nut or other coloring matters such as sandalwood, essence bark of jambu (Engenea Jambolana) and peepul tree (Ficus Religiona). The nuts shall have "the characteristic aroma, taste, and chewing qualities of arecanut and shall be free from dust, dirt, insect, and visual fungus infestation. It shall not have any extraneous nut or other organic substance mixed with it.

"A.05.23.01-ARECANUTPowder means the powder obtained by grinding the fresh stored or dried but from the green or ripe fruits of the Palm Areca Caechu LINO. It shall conform to the following standards:- Total-Nto more than 3 per cent by weight. As insoluble(indults HCl)-Nto more than 0.15 per cent by weight.

ARECOLINE content. not less than 0.1 per cent. Crude fibre-Nto less than 20 per cent."

(6) The draft standard for areca-nut published in the Gazette of 4-11-1966 was discussed at the meeting of the Central Committee for Food Standards at its meeting held on 14-8-1967. But no final decision could be taken and the meeting ended with the following recommendation:-

THE Committee further recommended that till such time as suitable and workable standard of whole or single cut arecanut is formulated action should not be taken under the P.F.A. Rules or u/s 2 of P.F.A. Act for the presence of fungus infestation inside the nut (whole or single cut) if it is otherwise found fit.

"A.M.A. will be requested to investigate the percentage of deteriorated nuts in each grade and also define the term deterioration specifically. This is an urgent work and the A.M.A. be requested to let us have this information within three months from today."

(7) It is thus common ground that no standard for fungus infestation has so far been prescribed for areca-nut. The question for consideration is whether in the absence of a prescribed standard it is permissible to take action against the petitioners. Counsel for the petitioners argues that the Analysis Reports in three cases, merely showed that the samples were infested while in the other five cases the reports stated that the samples were "Infested" and "deteriorated" in quality. So long as the Rule-making authority has not fixed suitable standard, can it be said that the sample is adulterated within the meaning of that expression as used in section 2(i)(a) to (1) of the Act ?

(8) Counsel for respondents argues on the other hand that it is not necessary in every case that the Rules should lay down a standard for the article of food before it can be held to be adulterated. u/s 2(i)(a) an article can 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." The same will apply if, as laid down in sub-clause (f) of clause (i) of section 2, "the article consists of wholly or in part of any filthy, putrid, disgusting, rotten, decomposed or diseased animal or vegetable substance or is insect-infested or is otherwise unfit for human consumption."

(9) The argument is not entirely without force because when one reads the definition of "adulteration" in the Act, it is only with reference to sub-clause (1) that the question of prescribed standard enters into consideration. But no such consideration appears to be relevant so far as the other sub-clauses of the section are concerned. Sub-clause (1) which is one of the 12 sub-clauses clause (i) of section (2) and which alone refers to prescribed standard reads:-

"If the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities which are in excess of the prescribed limits of variability;"

(10) On the other hand when you turn to the recommendation of the Committee to which a reference has already been made, it would appear that in the opinion of the Committee before action could be taken under the Act or the Rules on account of presence of fungus infestation inside the nut it was necessary that a suitable and workable standard of whole or single cut areca-nut should be formulated. The Committee also appeared to be of the view that the Agricultural

Marketing Adviser should investigate the percentage of deteriorated nuts in each grade and also define the term "deterioration" specifically. Counsel for the respondents do not dispute that no definition of the term "deterioration" has so far been provided in the Rules nor has any suitable or workable standard been formulated in respect of areca-nuts. In the circumstances, it seems rather difficult to successfully prosecute an offender on account of deterioration in areca-nuts by reference to sub-clause (a) of clause (i) of section 2 of the Act only. It is again not disputed by the counsel for the respondents that neither in the reports submitted to the Municipal Corporation by the Food Inspectors nor in the complaints filed on Court there is anything to suggest that a demand for areca-nuts of a particular quality, nature or substance. was made by the Food Inspectors while taking samples from the petitioners or any representation was made by the latter with respect to the quality, nature or substance and that the samples did not conform to what was asked for. Counsel for the respondents however strongly urge that no evidence has so far been recorded in any case and Therefore it is premature to ask at this stage whether the requirements of section 2(i)(a) of the Act are satisfied or not.

(11) The last contention urged on behalf of the petitioners is that according to the Analysis Reports the samples were found "infested" only whereas for the purpose of attracting the provisions of the Act the article of food must be found to be "insect infested" and not merely "infested". In support of this argument reliance is placed on an un-reported judgment of Inder Dev Dua C.J. (as his Lordship then was) in Criminal Revision No. 102 of 1966: Radhey Sham and Others v. Municipal Corporation of Delhi (1) decided in 21st March 1968 where a sample of dry dhanias was found according to the report of the Public Analyst to be "Infested" The Addl. Sessions Judge had recommended that was not sufficient for the purpose of framing a charge of adulteration in that case. The recommendation was accepted by the learned Chief Justice and it was held that merely because the article was found "infested". did not attract sections 2 and 16 of the Act, what was needed was that it must be insect infested.

(12) On behalf of the State, it was argued before his Lordship that evidence had yet to be led to show that the sample in question was "insect-infested." The argument was held to be misconceived because the stage of evidence for the purpose of framing a charge had long since passed in that case and if the charge was not supportable on the evidence that had already been led the charge had to be quashed.

(13) The next case to which I have been referred is an unreported decision of S.K. Kapur J. in Criminal Revision No. 143-D of 1964 : Shri Sita Ram v. Municipal Corporation of Delhi (2). In that case a sample of turmeric which was in roto form was found by the Public Analyst to be adulterated due to 16.6 % of the sample being infested with insects by virtue of section 2(f) of the Act read with A.65.11 of the Rules. It was argued on behalf of the petitioner that according to the evidence of the Public Analyst the sample bottle had been opened about four

or five days prior to its analysis and it was placed all this time in a steel almirah along with other samples. It was urged that it was possible that some live insects might have travelled from samples or from elsewhere during the period of four or five days when it was lying open in the almirah. On the other hand it was argued on behalf of the State that since the report mentioned that turmeric was infested with insect it was apparent that live insects had eaten into the roto which could not have happened in four or five days. The argument was repelled and it was held that "infested" did not necessarily mean that insects had eaten into the root. It might as well mean that they were present on the pieces of turmeric and it was for the prosecution to clarify that the report conveyed the meaning which was sought to be placed on it by the learned counsel for the State.

(14) Apart from the fact that no such contention as was raised before Kapur J. has been raised before me by either side, the sample in that case was clearly found to be infested with insects. The samples in the present cases are not shown to have been infested with insects and the adulteration is due to "infestation" simplifier .

(15) The decision has Therefore no direct bearing on the question before me. The decision in Radhey Sham's case however appears to me to be directly in point and I am being asked to follow the same. The argument advanced by the counsel for the respondents that the cases have not yet advanced to the stage of evidence and Therefore it is too early to say what was meant by the words "infestation" and "deterioration" as used in the Analyst's reports which could only be explained when evidence was recorded, does not appeal to me so far as the charge of "infestation" is concerned. The decision does support the argument of the learned counsel for the petitioners, although I must say that in a way, it does go a little too far. It is true that the words used in section 2(i)(f) of the Act are "insect-infested". but the definition in the section seems to be wide enough to include infestation of other kinds, for instance infestation by fungus or infestation by bacteria, provided as a result of such infestation the article is found to be unfit for human consumption. Can it be said that an article which is infested with fungus and bacteria is not adulterated although it is rotten, disgusting or otherwise unfit for human consumption on account of fungus or bacterial infestation.

(16) In this connection reference may be made to the standards of quality laid down in Appendix B of the Rules. It will be seen that in Items A.05.8 and A.05.01 the standards of quality prescribed for Ginger and Turmeric are that they "shall be free from damage from insect pests." On the other hand the standard of quality for Pearl Barley as per Item No. A.18.05 is that it will be free from "insect and fungus infestation". The standard of quality prescribed for Catech (Edible) in Item No. 21, inter-alia, is that "It shall be free from infestation" and the same is the standard of quality in respect of Chillies (Capsicum) as per Item No. 1.05.10 Likewise the standard of quality of Nutmeg (Jaiphal) as per Item No. 1.05.14 is that it shall be "free from infestation". If infestation under the Act is to be

confined to insect infestation alone then the standard prescribed for catechu and nutmeg will perhaps have to be held as being in excess of what is required by the Act which does not seem to be warranted by the language of section 2(i)(f).

(17) In the cases with which I am now concerned, however, the Public Analyst having used the word "infested" without specifying that infestation was due to the presence of insects either on the surface or in the core of the nuts and without stating further that the samples were either rotten, disgusting or otherwise unfit for human consumption, the prosecution cannot be allowed to fill the gap by leading oral evidence on the point. The Public Analyst is presumed to know the difference between the two expressions and Therefore when submitting his report he confined his observations to "Infestation" simpliciter, it is legitimate to infer that infestation by insects was ruled out. A fortiori adulteration on the ground that the samples were either rotten, disgusting or otherwise unfit for human consumption on account of fungus or bacterial infestation must also be held to be ruled out. Infestation in these cases must Therefore be traced to causes other than the presence of insects. The presence of fungus inside the nuts thus seems to be the only other mode of infestation which in the opinion of the Standards Committee would attract the penal provisions of the Act and for that no standard has admittedly been fixed so far. Infestation by bacteria may be yet another mode of infestation; but apparently no standard has been fixed for that either.

(18) In the circumstances, I am of the opinion that so far as the charge of infestation is concerned no such charge can be framed against the petitioners. To that extent Therefore the petitions for quashing the prosecution succeed and are allowed. As regards the charge of "deterioration" however which applies to petitions Nos. Cr. M. (M) 204, 207 and 208 of 1967 and Cr.M.(M) 5 and 6 of 1968 only the cases will proceed. It will however be open to the petitioners in those cases to raise before the trial Court at a proper stage the question that supari is not an article of food and also the other question that in the absence of a prescribed standard regarding the quality, nature and substance of the said article, the petitioners cannot be convicted of violation of any of the provisions of the Act and the Rules.

(19) The result is that the petitions in the first three cases, namely Cr.M.(M) 203, 205 and 206 of 1967 are accepted and the proceedings in those cases are quashed. With regard to the other five case, i.e. Cr.M.(M) 204, 207, and 208 of 1967 and Cr.M.(M) 5 and 6 of 1968 the same are only partly allowed. These cases will Therefore proceed on the charge of adulteration on the ground of "deteriorated quality" only. The petitioners in these five cases should appear before the Magistrate on 31st October, 1969. The records of the cases should be sent back to the learned Magistrate concerned at once.