

(1982) 08 DEL CK 0020

In the Delhi High Court

Case No : Criminal Rev. No. 318 of 1981 (From order of J. P. Sharma,
Metropolitan Magistrate, D/- 20-5-1981)

State (Delhi Administration)

APPELLANT

Vs

Charanjit Singh and other

RESPONDENT

Date of Decision : 17-08-1982

Acts Referred:

Citation : (1983) 4 DRJ 61

Hon'ble Judges : Charanjit Talwar, J

Bench : Single Bench

Judgement

1. By this petition the Delhi Administration is seeking to challenge the order passed on 20th May, 1981, by Shri J. P. Sharma, Metropolitan Magistrate discharging the respondent herein for an offence under S. 7/16 of the Prevention of Food Adulteration Act (herein called "the Act"). A complaint for this offence was filed by Mr. R. N. Gujral, Assistant Municipal Prosecutor in the Court of the Magistrate against the accused in his capacity as the proprietor of M/s. Gulati Stores, Naya Bans, Delhi, on the allegation that the sample of tea purchased from him on 8th May, 1980 by a Food Inspector was found to be adulterated on analysis.

2. On an application moved by the accused, u/s 13(2) of the Act one counter part of the sample was sent to the Director, Central Food Laboratory, Ghaziabad who opined, "the sample shows presence of extraneous iron particles. The size of the iron particles is, however, less than 1 mm." The Director found that the sample contained "Light iron particles of size less than 1 mm present in 50 gm. sample : Total iron content of the extraneous iron particles (on sample basis) : 72.0 ppm."

3. The learned Magistrate in support of his decision relied on two letters issued by the Central Government to the State Governments wherein after noticing the fact that "during the processing of tea a certain quantity of iron filings is left in the tea powder due to friction of machinery parts and despite all efforts, the

entire quantity of iron filings deposited during the processing cannot be removed," it was recommended to the State Governments that prosecutions be launched only in cases where the samples of the tea were found to contain iron filings of more than 2 mm. in size subject of the condition that total content of these filings was not more than 250 parts per million (ppm.).

4. The learned Magistrate was of the view that as the iron filings in the present sample were within the tolerance limit and were less than 1 mm in size, the Delhi Administration had no jurisdiction to file the present complaint. He accordingly discharged the accused.

5. In support of the revision petition it is urged by Mr. Teja Singh Sodhi that reliance by the Magistrate on those letters was not warranted as those letters contain instructions purely of administrative nature which have no statutory force. He urged that the standard prescribed for tea was laid down only in item A. 14 of Appendix B to the Rules framed under the Act. He submitted that the standard prescribed by that item did not contain the tolerance limit as envisaged by the said administrative instructions. According to him the instruction issued by the Central Government cannot modify the Rules. The sample in question, he urged, not conforming to the standard laid down, was obviously adulterated and, Therefore, the order quashing the complaint was illegal and was liable to be set aside.

6. The proposition of law propounded by the counsel for the State has already been dealt with by this court in two decisions. In Criminal Revn. No. 10 of 1981 (R. N. Gujral v. Mahabir Trading Co.), decided on 23rd July, 1981 1982 F.A.J. 27 and Criminal Revn. No. 5 of 1981, R.N. Gujral and Others Vs. Shyam Sunder and Sons and Others, , it has been held that the standard prescribed by the Rules can be modified by the Central Government only in accordance with the provisions of the Act and not by an executive fiat.

7. Mr. Sodhi is right to the extent that the finding of the Magistrate that because of the aforesaid instructions the Delhi Administration had no jurisdiction to file the present complaint, cannot be upheld in law. The reliance by Mr. Sanghi, counsel for the respondent on the decision in Rallis India Ltd. v. Municipal Corporation of Delhi, (1979) (2) FAC 311 in support of the contention that the said instructions prima facie having been issued u/s 22-A of the Act, were binding on Delhi Administration and as such they were prohibited to file the impugned complaint, is misplaced. In Rallis India Ltd.'s case (supra) the question for consideration was different. The prosecution was relying on the standard laid down for "sauce" to prove that the sample in question of chillies sauce was adulterated. The Committee's observation to the effect that chillies sauce was different than "Sauce" as it was neither derived from fruit nor from vegetables, did not amount to modifying or over-riding the standard laid down for "sauce". Its recommendation that this position be brought to the notice of "All State Health Authorities" could not be construed to modify the standard laid down. In fact the Committee went on to recommend that the standard of chillies

sauce be incorporated in the Rules by an appropriate amendment.

8. It may be noted here that under S. 22-A, the directions which can be issued by the Central Government to the State Governments can only be with regard to "carrying into execution all or any one of the provisions of the Act". A bare reading of the provision shows that the Central Government has no power to modify or amend the Rules by means of Administration instructions. The standard prescribed by the Rules can be modified only in accordance with the provisions of the Act.

9. In this view of the matter the impugned decision is liable to be set aside. However, in my opinion to secure the ends of justice, the present prosecution has to be quashed for the following reasons.

10. The Central Government by its letter dated 30th June, 1976, addressed to All Secretaries to State Government Union Territories (Medical and Public Health Department) informed them that the tea industry had brought to its notice that during processing of the tea certain quantity, of iron filings was left in the tea powder due to friction of machinery parts during the manufacturing process and that despite all efforts those iron filings could not be removed. It is stated therein that the matter was considered by the Central Committee for Food Standards who have come to a provisional conclusion that it was not possible to completely remove the iron filings from tea. Accordingly the tolerance limit of iron filings was recommended. The limit provided was 250 parts per million subject to the iron particles being not more than 1 mm in size. It was the considered opinion of the Sub-Committee that these iron particles of less than 1 mm in size within the tolerance limit would not be injurious to human health. However, the letter goes on to say that till further tests were carried out, it was not possible to modify the standard for tea in the Rules. Nevertheless, it was recommended that the prosecution should be launched only in those cases where the samples exceeded the tolerance limit. By a subsequent letter dated 26th March, 1981, it was further recommended that iron particles within the tolerance limit of 250 parts per million should not be more than 2 mm in size.

11. Apparently, on further tests it was considered by the Committee that even iron filings of 2 mm in size in tea were not dangerous to human health. It was, Therefore, requested by the Central Government that "instructions may be issued accordingly to the enforcement staff and the public analysis appointed under the Prevention of Food Adulteration Act."

12. It is obvious from the two letter which were brought on record in the trial Court that during the manufacturing process of tea certain quantity of iron filings is bound to be left in the tea powder because of friction of machinery parts and that despite all efforts those filings cannot be removed. Within the tolerance limit of 250 ppm., it was firstly considered that the size of the iron filings less than 1 mm in size were not injurious to human health. Later on, after further tests were carried out, it was found that even iron filings of the size of 2 mm., within the

tolerance limit were not injurious to human health. In spite of recommendation issued u/s 22-A of the Act, not to launch prosecution this complaint has been filed. When pointedly asked as to why these unambiguous directions were not being complied with by the State, learned counsel submitted that the State Government is not sure whether these instructions were statutory and would stand judicial scrutiny. As held by this Court in the earlier two decisions, referred to above, these directions are not statutory and till such time the standard as suggested in these letters is incorporated in the Rules, in accordance with the law, no judicial cognizance of these directions can be taken. But I cannot help noticing the fact that on repeated tests carried out during the last 10 years it has been found by the Central Committee for Food Standards which is the apex body in these matters to assist the Central Government that despite efforts all the iron filings cannot be removed from the manufactured tea. In the present case as noticed by the Director, Central Food Laboratory, the iron particles which are within the tolerance limit and are in size less than 1 mm., are not injurious to human health. As it is well-nigh impossible for any manufacturer of tea to remove the iron filings which are bound to be present because of the manufacturing process and further that consumption of tea cannot be banned, I consider that to secure the ends of justice the prosecution launched in the present case be quashed. Accordingly, although the order of discharge passed by the learned Magistrate is liable to be set aside, yet in exercise of inherent powers of this court under S. 482 of the Cri.P.C. I quash the instant complaint

13. The petition stands disposed of in these terms.

14. Order accordingly.