

(2002) 07 SHI CK 0019
In the High Court Of Himachal Pradesh
Case No : Criminal A. No. 343 of 1998

State of H.P.

APPELLANT

Vs

Sainu Ram

RESPONDENT

Date of Decision : 15-07-2002

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16(1A), 2, 7

Citation : (2003) CriLJ 933 : (2003) 2 RCR(Criminal) 546

Hon'ble Judges : R.L. Khurana, J

Bench : Single Bench

Advocate : M.C. Mandhotra, A.A.G, for the Appellant; R.K. Gautam and Shailja, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Khurana, J.—The present appeal u/s 378, Code of Criminal Procedure, has been directed by the State against the Judgment dated 15-3-1996 of the learned Sessions Judge, Solan, in Cr. Appeal No. 14-NL/10 of 1994 acquitting the respondent of the offence under Section; 16(1-A)(i) read with Section 7 of the Prevention of Food Adulteration Act, 1954 (for short the Act).

2. Briefly stated, the prosecution story is this. The respondent is a sweet meat seller at Nalagarh. On 23-7-1992 Food Inspector P.W. 1 Shri H. L. Pathak purchased 1200 grams of "Burfi" as sample from the respondent for the purpose of analysis. At that time, the respondent was having about 5 Kgs. of "Burfi" for sale to the general public. The sample so purchased was divided into three equal parts and after adding the necessary preservative each of the three parts were packed, fastened and sealed in three separate neat, clean and dry bottles. On the sample having been sent for analysis, the Public Analyst reported the sample to be adulterated since it contained aluminium leaf which is not used for edible purpose. After obtaining the requisite consent of the competent authority, the Food Inspector launched the prosecution against the respondent for the offence u/s 16(1-A)(i) of the Act.

3. The respondent did not plead guilty (sic) and claimed trial. The defence put forth by the respondent is that the "Burfi" had not been kept by him for sale. The same was prepared on the asking of Hari Ram. Pradhan and that the raw material therefore was supplied by the said Hari Ram.

4. The learned Magistrate, on consideration of the material placed before him, vide judgment dated 19-9-1994 convicted the respondent for the offence u/s 16(1-A)(i) of the Act and sentenced him to simple imprisonment for one year and fine of Rs. 2000/-. In default of payment of fine, the respondent was sentenced to undergo simple imprisonment for a further period of three months.

5. On appeal having been preferred by the respondent, the learned Sessions Judge vide the impugned judgment set aside the conviction and sentence imposed upon the respondent by the learned Magistrate and acquitted him of the offence. Hence the present appeal by the State assailing the acquittal of the respondent as recorded by the learned Sessions Judge.

6. The respondent has been charged for the offence u/s 16(1-A)(i) of the Act, which provides :

"If any person whether by himself or by any other person on his behalf imports into India or manufactures for sale or stores, sells or distributes.--

(i) any article of food which is adulterated within the meaning of the Sub-clauses (e) to (1) (both inclusive) of Clause (ia) of Section 2; or

(ii)he shall, in addition to the penalty to which he may be liable under the provisions of Section 6, be punishable with imprisonment for a term which shall not be less than one year but which may extend to six years and with fine which shall not be less than two thousand rupees."

7. Section 2(ia) of the Act defines the word "adulterated". For the purpose of offence u/s 16(1-A)(i) of the Act the article of food must be shown to be adulterated within the meaning of Sub-clauses (e) to (1) of Section 2(ia) of the Act. Under these sub-clauses, an article of food would be adulterated :--

(i) if the article had been prepared, packed or kept under insanitary conditions whereby it has become contaminated or injurious to health;

(ii) if the article consists wholly or in part of any filthy, putrid, rotten, decomposed or diseased animal or vegetable substance or is insect-infested or is otherwise unfit for human consumption;

(iii) if the article is obtained from a diseased animal;

(iv) if the article contains any poisonous or other ingredient which renders it injurious to health;

(v) if the container of the article is composed, whether wholly or in part, of any poisonous or deleterious substance which renders its contents injurious to health;

(vi) if any colouring matter other than that prescribed in respect thereof is present in the article, or if the amounts of the prescribed colouring matter which is present in the article are not within the prescribed limits of variability;

(vii) if the article contains any prohibited preservative or permitted preservative in excess of the prescribed limits;

(viii) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability, which renders it injurious to health.

8. There is no denying that no standard has been prescribed under the Act and/or the Rules framed thereunder for "Burfi". The Public Analyst has found the sample of "Burfi" to be adulterated since it contained aluminium leaf, which is not edible. The alleged adulteration, on the face of it, does not fall within the ambit of Sub-clauses (e) to (1) of Section 2(ia) of the Act.

9. Be it stated that the Public Analyst in the present case in his report Ex. P.W. 1/H has not stated that the aluminium leaf used by the respondent in decorating the "Burfi" was injurious to health.

10. In *State of Maharashtra v. Ramkishan Gangadin Yadav* (1980) 2 FAC 107 (Bombay) the sample of "Mawa Burfi" taken by the Food Inspector from the accused therein was also found to have been decorated with aluminium leaf instead of silver leaf. It was held by the Bombay High Court that under the Act or the Rules framed thereunder there was no prohibition to use the aluminium leaf for the purpose of decorating the "Burfi" and unless such a prohibition was incorporated in the enactment, user of aluminium leaf, which is not injurious to health, by itself would not amount to adulteration.

11. Again, in *Iqbal Musubhai Hunani v. State of Gujarat* 1993 FAJ 262, the Article of food, namely, "Khajur" with silver leaf coated thereon on analysis was found to be coated with aluminium leaf instead of silver leaf. Following the ratio laid down by the Bombay High Court in *Ramkishan Gangadin Yadav's* case (1980 (2) FAC 107) (supra), the High Court of Gujarat acquitted the accused therein by observing that there was no prohibition under the law to the use of aluminium leaf for decorating the sweetmeat and the absence of evidence that aluminium leaf was injurious to health. It was further held that the use of aluminium leaf instead of silver leaf to coat an article of food by itself would not render that article to be adulterated.

12. The ratio laid down by the High Courts of Bombay and Gujarat, with which I am in full agreement, applies to the facts of the present case on all fours. Following the said ratio, the sample of "Burfi" taken from the respondent cannot be said to be adulterated within the meaning of Section 2(ia) of the Act and as such the respondent cannot be held guilty of the offence u/s 16(1-A)(i) read with Section 7 of the Act. The respondent stands rightly acquitted by the learned Sessions Judge and such acquittal does not call for any interference.

13. Resultantly, the present appeal fails and the same is accordingly dismissed. Bail bonds of the respondent shall stand cancelled and discharged.