

(2000) 01 SC CK 0171

In the Supreme Court Of India

Case No : Criminal Appeal No: 88 of 2000

State of Maharashtra

APPELLANT

Vs

Thakur and Company and Another

RESPONDENT

Date of Decision : 27-01-2000

Acts Referred:

Constitution of India Art 227 ,Prevention of Food Adulteration Act, 1954 Sec 16, Sec 7, Sec 11(5)

Citation : (2000) 4 JT 224

Hon'ble Judges : K. T. Thomas, J;D. P. Mohapatra, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. Leave granted.

2. This appeal is by the State of Maharashtra. A Food Inspector visited the business place of the respondent on 8-1-1998 and took a sample from groundnut oil stored in a barrel. When one of the samples was sent to the public analyst for analysis it was reported that the sample was adulterated inasmuch as it did not conform to the standard prescribed for edible groundnut oil. The Food Inspector had seized all the barrels (54 in number) stacked in the same business place containing edible groundnut oil on the premise that all contained the same quality of groundnut oil. The respondent applied to the Court before which the prosecution was pending for release of 53 barrels of groundnut oil after keeping the one barrel from which sample was taken. The trial Magistrate passed an order as prayed for by the respondent against which the State preferred a revision before the Sessions Court, Nagpur. The VIth Additional Sessions Judge, Nagpur affirmed the order passed by the Magistrate and hence the State approached the High Court with a writ petition filed under Article 227 of the Constitution. A Division Bench of the High Court found no error in the orders passed by the trial Magistrate and the Sessions Judge and hence the writ petition was dismissed by the impugned judgment.

3. If the sample taken from one barrel is adulterated the question to be determined by the trial court is whether it was a representative sample of all the remaining barrels stacked at the same place. The seizure of 54 barrels was actually made on that assumption. What would happen if ultimately the Court finds that it was a representative sample and in the meanwhile the contents of all the 53 barrels had gone to the innocent consumers? It would make them consume adulterated groundnut oil. On the contrary, if the vendor is able to establish either that the analysis was wrong or (even if correct) the contents of that barrel did not represent the contents of all the remaining barrels, he would then be in a position to make a prayer, on his own right, for return of the groundnut oil contained in 53 barrels.

4. We are of the view that the order passed by the trial Magistrate releasing the seized articles was at a premature stage. The objects of enacting the Prevention of Food Adulteration Act cannot be permitted to be stultified through such orders passed at premature stages. The hazards involved in selling adulterated food articles were the *raison d'être* for Parliament to step up with the measures envisaged in the said Act. The finding rendered at this premature stage that the barrel from which sample was taken did not represent the contents of the remaining barrels was, to say emphatically, uncalled for.

5. We may point out that the Division Bench of the High Court had fallen into an error in observing that "the report of the public analyst indicates that the sample sent to him was not adulterated". A copy of the report of the public analyst is produced before us. We do not find any such indication therefrom and we do not know how the High Court made such an observation. On the contrary the report of the public analyst after setting out the result of the test made on various component parts of the sample expressed the opinion thus: "The above sample does not conform to the standards of "groundnut oil" as per Item A. 17.03 of Appendix B of the PFA Rules, 1955."

6. It is open to the accused-respondent to challenge the report of the public analyst in the manner permitted by law. Hence, we refrain from passing any other remark on the correctness or otherwise of the said report at this stage. All the same, we disapprove the observation of the Division Bench of the High Court that the report does not indicate that the sample is not adulterated.

7. In the result, we upset the orders under challenge. We make it clear that this will be without prejudice to the right of the prosecution as well as the accused to establish the points arising in this case and any other point which they may raise at the appropriate stage.

8. This appeal is accordingly disposed of.