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**(1974) 04 DEL CK 0019**

**In the Delhi High Court**

**Case No :** Criminal Revision Appeal No's. 128 and 129 of 1972

Sunder Lal and Nandlal and Co.

APPELLANT

Vs

Municipal Corporation

RESPONDENT

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**Date of Decision :** 30-04-1974

**Acts Referred:**

**Citation :** (1974) RLR 381

**Hon'ble Judges :** P.S. Safeer, J

**Bench :** Single Bench

**Advocate :** M.L. Bagai and A.K. Marwaha, for the Appellant;

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## Judgement

P.S. Safeer, J.

(1) This petition No. 128 arises out of trial of case no. 721/3 of 1970. It is connected with Cr.R. 129 of 1972. Petitioners in the two are Sunder Lal and Nand Lal & Co.

(2) This judgment will dispose of both. Sunder Lal was functioning at 918, Gali Chah Sharin, Farash Khana when he was approached by Food Inspector B. R. Kochar on the 23rd of September, 1970, who after disclosing his identity expressed that he wanted to purchase a sample of compounded hing. The Food Inspector purchased 600 grams of compounded hing on payment of Rs. 6.00 Exhibit P.A., the receipt, pertained to the said purchase. On being analysed, the compounded hing was found adulterated. On receiving the report of the Public Analyst Exhibit P. E. a complaint was filed u/s 20 of the Prevention of Food Adulteration Act (hereafter called "the Act"), The adulteration found was :-

"...THE same is adulterated due to 0.79 excess in total ash per cent and 0.04 excess in ash insoluble in dilute hydrochloric acid percent."

(3) The petitioners were prosecuted and convicted u/s 16 of the Act. The trial court, in respect of the purchase made by Food Inspector B.R. Kochar. after convicting the accused u/s 16 ordered Sunder Lal to undergo imprisonment till

the rising of the court and to pay a fine of Rs. 100.00 in default of payment whereof he was to undergo simple imprisonment for a period of one month. Messrs Nand Lal and Company was also ordered to pay a fine of Rs. 100.00.

(4) In case of the second purchase made by Po

(5) Various contentions were raised before the courts below and the same have been emphatically rejected before me. It was contended before the courts below that the commodity was not meant for human consumption and that Sunder Lal made it clear at the time he was asked to sell, the commodity that he was not having any compounded hing which he could sell for human consumption. It has been also emphasised that there were certain boards displayed at the premises which clarified that the commodity was not being sold for human consumption. It has been then contended that the Food Inspector should have resorted to the quartering system while making the purchase of the commodity.

(6) The evidence has been read over and over again in order to make out a case that because of the failure to conform to the quartering system the samples could not have been the basis of a true analysis for the purpose of finding out adulteration. At the very end of the arguments the learned counsel appearing for the petitioners contended that the adulteration found in respect of the first purchase in terms of Exhibit P.E. was very marginal and the adulteration found in respect of the second purchase by Food Inspector N.M. Oberoi was also such which could occur due to the peculiar food stuff which is used as the basis for the preparation of compounded hing.

(7) The ultimate contention has persuaded me to keep all other arguments apart and for examining it I have gone through Rule A.04 contained in the Prevention of Food Adulteration Rules and the counsel appearing for the Corporation has given me valuable assistance while explaining its scope. The Rule is :-(...)

(8) The opening terms in the rule describe hing or hingra as being the same thing. The specifications pertaining to them are, however, different. The adulteration found in the case of the purchase by Food Inspector B. K. Kochar has already been reproduced above. The adulteration as described in exhibit P.E. in respect of the commodity purchased by Food Inspector N. M. Oberoi within a few minutes of the first purchase was found as:- ".....the same is adulterated due to 3.59 excess in total ash per cent and 0.06 excess in asp insoluble in dilute hydrochloric acid per cent.

(9) It is the admitted case of the prosecution that these two purchases were made from the same premises and the same person as well as of the same commodity. The variation of adulteration found throws an arrow mark in the direction of Rule A.04 in which hing or hingra are described and their specifications are given. The question arises why the compounded hing sold by Sunder Lal at the same premises within a very short period of a few minutes to the two Food Inspectors, when subjected to analysis disclosed such a variation that in one case it was found adulterated due to 0.79 excess in total ash per

cent, while in the other the adulteration was due to 3.50 excess in total ash per cent.

(10) It is difficult on the state of the records in these two cases to hold that Sunder Lal sold any different commodity to one or the other Food Inspector. The answer to the problem lies within the ambit of Rule A.04, quoted above. Mr. A.K. Marwaha has drawn a fine distinction in pointing out that although hing or hingra are described as being something common in the opening party of Rule A.04, compounded hing itself is permitted to be prepared on the basis of grani or Pathani hing or both and in that part of the Rule hingra is not included. The argument is that when compounded hing is to be manufactured its basis would be Irani or Pathani Hing or both. There in is a fallacy, which persuades me to notice that hing or hingra. as is clear from the opening part of Rule A.04 are derived from the same source. There is no clear-cut distinction as to whether what is derived is hing or hingra. Both of them are specified as food stuffs. In case of hing if it is purchased under the Act and analysed for purposes of prosecution, the permissive total ash content may be up to 15 per cent by weight. Ash insoluble in dilute by hydrochloric acid shall not exceed 2.5 per cent by weight. But in case of hingra, which is derived from identical sources, the total ash content which is permitted by the Rule, may not exceed 20 per cent by weight. Ash insoluble in dilute hydrochloric acid shall not exceed 8 per cent by weight.

(11) The commodity concerned in these two litigations was compounded hing. In case of compounded hing the total ash content was not to be more than 10 per cent and 1.5 per cent ash insoluble in dilute hydrochloric acid would be permissive. If a person goes to purchase hing for manufacturing compounded hing he may be sold out hing or hingra hing the two being the derivations from identical sources. In that situation, while preparing compounded hing he will be required to reduce the total ash and the ash insoluble in dilute hydrochloric acid, and if he purchases hingra then even if he uses the same specified material for the preparation of compounded hing, he can legitimately incur the difference of 5 per cent in respect of the total ash content. Similar would be the incurring of the difference in respect of ash insoluble in dilute hydrochloric acid. That being the situation, in case of compounded hing the adulteration found is to be taken into consideration bearing in mind that the commodity used in its preparation may have been hingra sold out as hing. I am also dissatisfied with the analysis itself. Whatever the conclusive nature of the proof, I cannot accept that the purchases made one after the other by the two Food Inspectors from the same person, at the same time, at the same place and of the same commodity could result into such variations in adulteration as found by the Public Analyst.

(12) For the purpose of punishing any one within the purview of section 16 of the Act, which is stringent penal provision, adulteration, must be established so as to persuade the Judicial conscience that it has been correctly found I am not satisfied that the same commodity purchased by the two different Food

Inspectors in separate quantities of 600 grams within fifteen minutes should have yielded the variations in the analysis performed separately. The other aspect is that the opening part of the rule makes hardly any distinction between hing or hingra. The two being derived from identical sources either of them can be sold out to a customer who may be making the purchase for preparing compounded hing. Such a person would walk into the trap of purchasing hingra instead of hing. Once that happens, the compounded hing prepared by him is bound to incur the difference between the two specifications pertaining to hing and hingra. In view of the conclusions recorded above, I am of the view that the petitioners should not have been punished u/s 16 of the Act. Accepting the petitions their convictions are hereby set aside.