
(1970) 04 DEL CK 0027

In the Delhi High Court

Case No : Criminal Revision Appeal No. 272D of 1965

Sunder Lal

APPELLANT

Vs

M.C.D

RESPONDENT

Date of Decision : 23-04-1970

Acts Referred:

Citation : (1971) CriLJ 154 : (1970) 6 DLT 445

Hon'ble Judges : V.D. Misra, J;H.R. Khanna, J

Bench : Division Bench

Advocate : M.L. Bajaj and B. Dayal, for the Appellant;

Judgement

V.D. Misra

(1) A sample of 600 grams of compounded Hing was taken from the shop of the petitioner on 19th December, 1962 by Shri. R. L. Kapur, Food Inspector, after paying its price, It was divided into three portions and was sealed in three clean and dry bottles. One of the samples was given to the Public Analyst while the third was kept by the Food Inspector himself according to the rules. Notice Exhibit Pb was given to the petitioner. Inventory, Exhibit Pc, was prepared at the spot. After receiving the report from the Public Analyst, Exhibit Pe, that the sample of compounded Hing was adulterated due to extraneous matter of sand to the extent of 105 per cent, which was totally prohibited, the Delhi Municipal Corporation filed a complaint u/s 7/16 of the Prevention of Food Adulteration Act, 1954. After recording the evidence, the petitioner was found guilty and was convicted and sentenced to pay a fine of Rs. 500. On appeal the learned Additional Sessions Judge, Delhi, upheld the conviction but reduced the fine to Rs. 7 only, The petitioner has now come up in revision against his conviction and sentence.

(2) The petitioner does not contest the fact that the sample was duly taken from his shop nor the report of the Public Analyst. His only contention is that during the pendency of the proceeding in this Court the standard of compounded Hing

was changed by Notification No. G.S.R. 382 dated 9th March 1966 and that hi? sample conforms to this new standard and he is entitled to acquittal. When this matter came up before me sitting as a Single Judge, I decided to refer the matter to a larger Bench since standards of many articles of food had been changed and such questions were likely to arise in many cases.

(3) The standard of compounded Hing has been laid down in rule A. 04 of Appendix B to the Prevention of Food Adulteration Rules, 1955. Before the amendment, it was in the following terms:-

"A.04 Compounded Asafoetida or Bandhani Hing is composed of one or more varieties of Asafoetida (Irani and/or Pathani Hing) gum arabic and wheat and/or rice flour. It shall not contain sand, gravel or other foreign mineral matter, colophony resin, galbanum resin, ammoniacum resin or any other foreign resin. The ash content shall not exceed 10 per cent of its weight and the alcoholic extract with 90 per cent alcohol) shall not be less than 10 per cent. Use of coal tar dyes or mineral pigment is prohibited".

The rule was later on substituted by a new rule vide aforesaid Notification No. G.S.R 382 dated 9th March, 1966 The present rule in the following terms;-

A.04** * * Compounded asafoetida or .Bhandani Hing is composed of one or more varieties of asfoetida (Irani or Pathani Hing or both) and gum arabic, atta, or rice flour or both. It shall not contain :- (a) colophony resin, (b) galbanum resin (c) ammonia-cum-resin, (d) any other foreign resin, (e) coal tar dyes, (f) mineral pigment, (g) more than 10 per cent total ash content, (h) more than 1.5 per cent ash insoluble in dilute hydrochloric acid. (i) less than 5 per cent. alcoholic extract (with 90 per cent of alcohol) as estimated by the U.S.P. 1936 method".

(4) The result of the analysis by the Public Analyst of the said sample was:-

"Date of analysis .. 31st December, 1962. Total ash ... 6.3 per cent. Ash insoluble in Hcl (Sand) ... 1.05 per cent Moisture ... 14.0 per cent. Alcoholic extract with 90 per cent alcohol 24.1 per cent. (hot process) Starch ... Present. Chalk ... Very slightly present. Reactions on (Fe Cl 3 Test No olive green colour. alcoholic axt-Hcl Test) bluish green colour. act. Opinion.-the sample is adulterated due to extraneous matter of sand to the extent of 1.05 per cent which is totally prohibited in Hing compounded."

(5) The result of the analysis shows that the ash insoluble in Hcl (Sand) was present and it was 1.05 per cent. It was because of this that the Public Analyst declared the sample adulterated. According to the original standard the presence of sand was totally prohibited and no ash insoluble in Hydrochloric Acid was allowed. However, according to the new standard, ash insoluble in dilute hydrochloric acid can be present up to 1.5 per cent. In case the new standard is applicable to the present case, the petitioner would be entitled to acquittal since the sample does not fall below the standard.

(6) The learned counsel for the petitioner contends that the standards of articles of food are fixed by an expert body. Originally they were of the opinion that the presence of sand in compounded Hing would be injurious to public health and so they laid down a stand prohibiting its presence altogether. Latter on, during the course of years and after more investigations they have now fixed a new stand ird which allows the presence of ash insoluble in dilute hydrochloric acid (sand) up to 1.5 per cent. The new standard having taken away the rigorous of law and being in favor of the accused, it should be given a retrospective operation, tn this connection reliance has been placed on a Division Bench judgment of the Allahabad High Court in Shyam Lal v. State wherein after quoting Crawford's "Construction of Statute" 1940 Ed 599, with approval, it was observed:-

"THE above rule of constraction is based on principle that until the proceedings have reached final judgment in the Court of last resort, that Court, when it comes to announce its decision, must conform to the law then existing".

It was further held:-

"IT seems to us clear that the true rule of construction of a penal statute is that where the legislature evinces its intention to modify the law, in favor of the accused, so as to reduce the rigours to the law in the light of past experience and changed social conditions, so long as prosecution of the accused has not concluded by a judgment of conviction, the proceedings against him are regarded as inchoate and the law applicable to him would be the law as amended by the legislature. The Court trying an accused person has to take into consideration the law as it exists on the date of the judgment. It seems reasonable that an accused person cannot render Himself liable to a higher punishment under a statue which has ceased to exist and has been substituted to be anew which favors him. Where the question as to the interpretation of a penal statute is concerned, the Court must construe its provisions beneficially in regard to their applicability to the accused. It would be violating the spirit of the law and the will of the Legislature as expressed in the amending statute to sentence an accused person on the basis of the original Act which has been considered by the Legislature to be harmful and harsh against public interest".

(7) We are in respectful agreement with the Division Bench of the Allahabad High Court. In Rattan Lal v. The State of Punjab, Subha Rao, J., speaking for the majority observed:-

"EVERY law that takes away or impairs a vested right is retrospective. Every ex-post-facto law is necessarily retrospective. Under Article 20 of the Constitution, no person shall be convicted of any offence except for violation of a law in force at the time of the commission of that act charged an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. But an ex-post-facto law which only mollifies the rigour of a criminal law does not fall within the said

prohibition. If a particular law makes a provision to that effect, though retrospective in operation, it will be valid".

(8) In this case the Supreme Court was considering the effect of the Probation of Offenders Act, 1958, which was extended to the area after the accused had been convicted by the Magistrate. It was observed that in considering the scope of such a provision as the Probation of Act, the Court must adopt the rule of beneficial construction as enunciated by the modern trend of judicial opinion without doing violence to the provisions of the relevant section.

(9) Considered in the light of the above decisions we must give a effect to the standard of compounded Fling as it stands today. Notification No. G. S. R. 382, dated 9th March, 1965 which substituted a new standard in place of old, must be given a retrospective operation. The result is that in case it conforms to the present standard then it cannot be said that it was adulterated.

(10) As already discussed, we find that according to the report of the public Analyst, Exhibit Pe, the petitioner's sample of compounded Hing is not below the new standard and thus he is entitled to acquittal. We, Therefore, allow this revision petition, set aside the conviction and sentence of the petitioner and acquit him.