

(1984) 11 DEL CK 0038

In the Delhi High Court

Case No : Criminal Revision Appeal No. 133 of 1984

The Nilgiri Tea Emporium and Others

APPELLANT

Vs

Delhi Administration

RESPONDENT

Date of Decision : 28-11-1984

Acts Referred:

Citation : (1985) 8 DRJ 142 : (1985) 1 RCR(Criminal) 294

Hon'ble Judges : J.D. Jain, J

Bench : Single Bench

Advocate : O.P. Soni, Kamlesh Dutt and B.T. Singh, for the Appellant;

Judgement

J.D. Jain, J.

(1) This revision petition is directed against order dated 6th July 1984 of a Metropolitan Magistrate, Delhi, whereby he proceeded to framed charge against the petitioners u/s 7/16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as "the Act").

(2) The facts germane to the decision of this revision petition succinctly are that on 12th February 1982, Food Inspector Shri P.N. Khatri purchased a sample of "Lamsa" chocolate tea from the shop of M/s. Kallu Mal Suraj Bhan, Khari Baoli, Delhi for analysis in accordance with the provisions of the Act and the Rules made there under. The second part of the sample was sent to the Public Analyst who, vide his report dated 16th March 1982, found that it was a case of misbranding for not using proper label. While observing that from physical appearance the sample was of tea having added flavour of chocolate and prepared tea also gave taste and flavour of chocolate, he remarked:

"NO standard of chocolate tea has been prescribed in Appendix B of the P.F.A. Act 1954. In such types of proprietary foods the labels are to be got approved under Rule 37A of P.F.A. Rules 1955."

On the basis of the said report a complaint was instituted by the respondent-

Delhi Administration for prosecution of M/s. Kallu Mal Suraj Bhan, and the petitioners etc. for the aforesaid offence.

(3) The contention of the petitioners counsel precisely is that the food article in question is tea and the mere addition of chocolate thereto does not in any way change or alter its character and transform into a food stuff other than tea. In other words, it can by no stretch of reasoning be termed as a proprietary food or unconventional food for which no standard has been prescribed by the Prevention of Food Adulteration Rules, 1955 (for short "the Rules") as envisaged in Rule 37A. For ready reference the said rule is reproduced below:

"IN all types of proprietary foods, where fancy names or trade names are used, the name of the food or category under which it falls in these rules shall also be mentioned on the label. In case it cannot be classified in any of the standards prescribed in Appendix "B" the names of the ingredients used in the products in descending order of composition shall be indicated on the label subject to approval of the Central Committee for Food Standards. Explanation -Fancy trade name or proprietary name means the non-conventional type of food which has not been standardised under the Prevention of Food Adulteration Act, 1954".

On a bare reading of the main body of this rule it is manifest that it consists of two distinct parts. The first part relates to those type of propitiatory foods where fancy names or trade names are used but the name of the food or the category under which it falls is given in the Rules. In such a case all that is required is that the manufacturer or the producer etc. must also mention the name of such food on the label. Indeed such type of foods would not strictly speaking be covered by the definition of the expression "fancy trade name" or "proprietary name" as contained in the Explanation because by its very definition such foods must be non-conventional and must not have been standardised under the Act or the Rules made there under. Looked at the matter from this angle it is to be seen whether the sample in question falls in the first part of Rule 37-A or in the second part because the latter situation will arise only if the food article in question cannot be classified in any of the standardised food-stuffs as per provisions of the Act and the Rules made there under. Indeed the Explanation would govern the food articles falling under the latter part of Rule 37-A rather than the first.

(4) It may be pertinent to note here that the standard for tea has been prescribed in item A-14 of appendix B. However, no standard seems to have been laid down for chocolate as such. The learned counsel for the petitioner has, Therefore, canvassed with some fervor that really speaking chocolate is more of a flavouring agent and is used as an addition to the principal food article for making it more delicious and giving it a better flavour. There seems to be considerable merit in this contention. No doubt, chocolate is by itself a food-stuff but it has been evidently added to tea in the instant case for imparting chocolate flavour to the tea. Admittedly the label on the package in which the sample article was sold did indicate that the contents thereof were tea. The Addition of

the word "chocolate" thereto would not convert it to something else. Indeed, as observed earlier, the sample conformed to the specifications laid in item A-14 of appendix B which relates to tea and the Public Analyst has not found any deficiency or variation on that account. However, the only objection raised by him was that chocolate having been added to the tea by the manufacturer/vendor, he ought to have obtained the approval of the Central Committee for Food Standards thinking it to be a case falling under second part of Rule 37-A. Obviously, he has slipped into an error in this regard because food-stuff sold by the petitioners was tea and nothing else and by indicating this fact on the label provisions of first part of the said rule stood fully complied with.

(5) It may be significant to notice here that item A-11 02.08 of appendix B to the Rules prescribes a uniform standard for ice cream, kulfi and chocolate ice cream. It expressly states that the standard laid therein is to apply for ice cream or kulfi etc. irrespective of the addition of eggs, fruits, fruit juices, preserved fruits, nuts, chocolate, edible flavors and permitted food colours excepting, of course, when any of the aforesaid preparations (viz. kulfi, ice cream and chocolate ice cream) contains fruits or nuts or both, the content of milk fat shall not be less than 8.0 per cent by weight as against 10.0 per cent in the normal course. It is thus manifest that addition of chocolate to ice cream does not change its character and it has to be tested as ice cream by the same yard-stick as if it were without chocolate. On a parity of reasoning, Therefore, tea with chocolate added thereto would still remain tea and its purity and quality would have to be tested by the standard laid for it in item A-14. The sample in question having been found to conform to the said standard it cannot be said to be adulterated and the petitioner having indicated on the label that it was tea containing chocolate also there is sufficient compliance with Rule 37-A.

(6) This conclusion of mine finds further support from a recent amendment of the Rules called the Prevention of Food Adulteration (Ninth Amendment) Rules, 1983, which came into force with effect from 19th November 1983(G.S.R.848(E)). Vide Rule 2 thereof the following sub-rule has been inserted in Rule 42 of the Rules :

"(Y)A package containing tea with added flavour for export shall bear the following label, namely: Tea with (name of flavor)For Export Only license No..... This amendment too suggests that addition of chocolate to tea does not alter its character or classification as tea.

(7) To sum up, Therefore, I am of the considered view that the sample sold to the Food Inspector in this case was of tea and the mere addition of chocolate thereto did not alter the nature or classification of the food-stuff. Since the petitioners had indicated on the label that the contents of the package were tea even though they had also written the words "Lamsa chocolate", (they had fully satisfied the provisions of Rule 37-A and the question of the sample being mis-branded does not arise. Consequently, this revision petition succeeds; the charge framed against the petitioners is quashed and they are discharged.