(1983) 04 RAJ CK 0015

In the Rajasthan High Court

Case No : Criminal Appeal No. 166/77

The State of Rajasthan APPELLANT

Vs

N.R. Keshan and Another RESPONDENT

Date of Decision : 04-04-1983

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 305, 313, 63
Essential Commodities Act, 1955 — Section 3, 7

Citation : (1983) WLN 145

Hon'ble Judges : Kanta Bhatnagar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kanta Bhatnagar, J.—This appeal is directed against the judgment dated September 21, 1976 passed by the Chief Judicial Magistrate, Chittorgarh, acquitting the respondents for the charge of contravention of Clause 4 of the Sugar (Packing and Marking) Order, 1970 (hereinafter to be refeferred as ''the Order!) read with Sugar Control Order, 1966, punishable u/s 3/7 of the Essential Commodities Act.

2. M/s. Mewar Sugar Mills Ltd. Bhupalsagar (Hereinafter to be referred as ''the Mills'' is manufacturer/ producer of sugar by vacuum pan process. Respondent No. 1 Shri N.R. Keshan is the Assistant Manager and respondent No. 2 Shri Sardar Singh Kothari is the General Manager of that Mills. In exercise of the powers conferred by Section 3 of the Essential Commodities Act, the Central Govetnment made the Sugar Control Order, 1966 Clause 5 of that Order authorising the Central Government to issue directions to the producers or recognised dealers by general or special order regarding production, maintenance of stocks, storage, sale, grading, packing, marking, weighment, disposal, delivery and distribution of any kind of sugar, as it may deem fit. In exercise of the power of aforesaid Clause 5 the Central Government made Sugar Packing and Marking Order, 1970. Clause 4(1) of the Order reads as under:

Every producer shall at the time of packing mark on the bag in which the sugar is packed, its quality in terms of Indian sugar Standards in force at that time and shall also ensure that the quality of sugar contained in the bag corresponds to the quality of sugar marked thereon until it is sold and delivered by him.

Vide notification dated June 12, 1970 Shri S.L. Tandon was appointed Inspector in the office of the Central Government, Directorate of Sugar and Vanspati, Ministry of Agriculture and was authorised to draw the samples of Sugar.

3. On June 15, 1973 Shri Tandon visited the factory godown of the Mills and drew 11 samples of Sugar of the 1972-73 season''s production in triplicate, in accordance wi!h the procedure prescribed under Clause 12 of the Sugar Control Order. The samples of sugar were taken in polythene bags and then packed and sealed in cloth bags in the presence of Mr, Keshan Ex. P.1 is the statement of drawing and packing the samples. One out of each three samples was handed-ever to Shri N.R. Keshan and the remaining 2-2 samples were furnished by Shri Tandon to the State and the Directorate of Sugar and Vanaspati. On November7, 1973 sample No. T-78/232 out of the 11 samples was forwarded to National Sugar Institute, Kanpur for determining the Indian Sugar Standard (I.S.S) grade. The marking on the packet from which the sample was taken was c-29. Mark c-relates to the size of the grains and number 29 relates to the whiteness of the sugar. After analysis of the said sample the National Sugar Institure, Kanpur made the report Ex P.4 As per that report the sample was found inferior in grade. Show cause notice was issued to the Mills by the Directorate The reply was not found satisfactorly. A complaint was therefore, filed against the Mills through its General Manager Shri S.S.Kothari and Shri N.R. Keshaan, Assistant Manager of the Mills for violation of Clause 4(1) of the Order read with the Sugar Control Order, 1966 which is an offence punishable u/s 3/7 of the Essential Commodities Act. An application u/s 63 read with 305 of the Code of Criminal Procedure (1973) was filed on January 25, 1975 by Shri S.S. Kothari, General Manager with the prayer that as the company has a statutory right to appoint a representative of its shown choice, choice is not of the complainant to name a person and obtain a warrant against that person, the process against the applicant may be vacated and his name be removed from the accused. On March 3, 1975 at the submission of APP that the prosecution has been launched against Shri S.S. Kothari and Shri N.R. Keshaan and not against the company, the name of M/s Mewar Mills, Bhupalsagar was struck off and Shri S.S. Kothari was referred to as the General Manager of the Company and the prosecution commenced against him in bis capacity as General Manager and not as representative of the company.

4 The repondent were charge sheeted for the aforesaid offence. They denied the indictments and claimed to be tried. P.W.I Shri S.L. Tandon and P.W.2 Shri A.K. Gupta were examined from the prosecution side. The respondents in their statements u/s 313 of the Code of Criminal Procedure admitted the visit of Shri Tandon and his drawing the samples from the factory godown, but denied the allegation of any of the samples being inferior to the perescribed I.S.S. grade

and stated that there was no complaint of any type from any one in that respect previously. Shri N.R. Keshaan appeared in the witness box as D.W.I. One Shri Gulsher Khan, labourer in the Mills was examined as (D.W.2). One of the submissions made from the defence side that found favour with the learned Chief Judicial Magistrate was that the samples were not taken as per the rules and therefore, they cannot be said to be the representative samples. The learned Magistrate arrived at a conclusion that it cannot be said that the smples were free from atmospheric effect and on that ground acquitted the respondents of the changes. The order of acquittal caused grievance to the State of Rajasthan. Hence the present appeal.

5. The learned Public Prosecutor has assailed the findings of the learned Magistrate on the ground that, when the samples drawn from the bags were duly packed in polythene bags and sealed thereafter there was no question of the sugar changing colour on account of any atmospheric effect. It has been stressed by the learned Public Prosecutor that, the polythene bags containing the representative samples after being properly packed and sealed were kept in dry atmosphere and therefore, the respondents cannot be given any benefit for the samples not being kept in glass bottles.

6. Controverting these contentions, the learned counsel for the appellant submitted that because of the samples having not been drawn and kept as per rules there was scope of the deterioration of the sample so far as colour grade was concerned. The learned counsel referred the various instructions issued by the National Sugar Institute (NSI) Kanpur regarding Indian Sugar Standards from time to time, the grievance of the producer regarding the packing of the samples, the visual comparision being prone to personal error regarding the specific colour of the sugar, the suggestions invited from the producers and placed before the Advisory Committee and the views of latter on these suggetions. The learned Public Prosecutor did not dispute the authenticity of the material referred to by the learned counsel for the respondents in this concern.

7. The sample in question, which was found to be inferior in grade to the ISS grade was up to the mark so far as grain colour was concerned. It is only regarding the witnesses of the sugar indicated by No 29 that it was held of that interior grade and therefore, I would confine the discussion the principle governing the quality of colour grade in view of the instructions and directions in that regard and the evidence on record.

8. Reference to the booklet of ''Methods of Sampling and Grading sugar in terms of Indian Sugar Standards'', 1970 issued by the Director, National Sugar Iustitute, Kanpur would be profitable for the purpose. In Appendix A at A-1.1 it is provided that the saomples shall be taken in a Clause A-1.4 it is mentioned that the sample shall be placed in clean, dry and moisture-proof containers. A-1.6 provides that the samples shall be protected from light as far as possible.

9. In another booklet'' Indian Standards Photoelecteic Reflectance Method for

measurement of Whitnesses of plantation White Sugar in Solid State issued by the Indian Standards Institution in December, 1974 it is mentioned that while the grain size is determined by employing various sizes, the whitnesses of sugar in reference to samples prespared by the Bureau of sugar standard is determined by the photoelectric reflectance meter. It has been further mentioned that the principal object of the development of this standard covering photoelectric reflectance method is to specify the procedure for preparing reference sample of identical whitnesses eliminating personal errors. This is necessary to be done every year as witnesses is affected during storage Beside, the standard method would also help in scientific evaluation of such issued as the introduction of new colour grade. Ex, D.11 are the minutes of proceedings of the 23rd meeting of the Standing Advisory Committee on Sugar Standards held on July31, 1975 at N.S.I., Kanpur. At para 5(1) of the minutes provision of an air conditioned room lab. for B.S.S. was emphasized in view of the difficulties being experienced by the Bureau of Sugar Standard at the National Sugar Institute having been pointed out and it was mentioned that when the sugar were seized and filled in the sugar standard bottles, the same were exposed to varrying humidity conditions leading to the fall of the quantity of the standards. Ex.D. 13 is the letter issued from the Directorate to the all Central Sugar Factories and other users of I.S.S , concerning the supply of sugar standards for 1975-76. ft is mentioned therein that the use of bottles manufactured in different periods brought in some variation in colour tinges and the Committee decided that bottles to be used for sugar standards of one particular year, should be of the same quality and should be of one colour. The use of old bottles was directed to be discontinued, for the standards of 1975-76 season, it was decided to employ bottles manufactured in 1975 and that no other bottles will be used. The producers were requested to send their requirements in accordance with the price schedules so that this policy may be implemented.

10. In the list of suggestions received from the users of sugar standards and views of the Standing Advisory Committee, item No. 23 speaks that, some times a slight difference in colour of the same sugar filled in two different standard bottles is observed and this appears to be due to non uniform composition of glass of the bottles. The views of Advisory Committee to this suggestion are that this may in some cases be due to some colour tinge present in glass bottles, and if absolutely colourless glass bottles are used there would not be any such difficulty.

11. Taking help from all these suggestions, observations and directions the learned counssel for the respondents built up the arguments that, prior to the year 1975 there was no rule about particular type of bottle being used for a particular year and as such the bottles with different shades manufactured in different factories in different years were used, leaving a room for variation in colour tinge.

12. It is pertinent to note that, in the case on hand while drawing the

representative samples instead of glass bottles polythene bags were used. From the statement of Gulshan Khan (D.W 2) it is evident that the sugar samples so drawn from the godown were taken to the office situtate at a distance of about 500 ft. and were packed and sealed there. The argument of the learned counsel for the respondents is that in the rainy season chances of humidity in open sugar being taken to such a distance cannot be ruled out.

13. At the relevant period rains had set in. There is dispute on the point as to whether on the relevant dated at relevant time it was raining or not. Be it as it may, the question is whether in the rainy season open sugar being taken to some distance before being packed, will lead to deterioration in colour tinge. It wouild also have to be seen whether the polythence bags were moisture-proof containers. The question will also aris whether visual comparison probobilises some error of judgement and for that reason the learned Magistrate was justified in extending benefit to the respondents.

14. In this connection the statment of Shri A.K. Gupta who was Technical Assistant at the N.S.I., Kanpur at the relevant time and had examined the sugar sample No. T/73/232 requires careful consideration. The witness stated that the sample reached the N.S.I. on November 13, 1973 from the Directorate of Sugar and Vanaspati, New Delhi According to the witness the cloth bag containing the sugar sample was opened by him and Mr. J.S. Mehta after being confirmed that the seals were intact. The is dated Dec. 5. 1978. Shri Gupta admmitted that in Ex.P.4 sugar was then graded in terms of I.S.S. Ex.4 it has not been mentioned that the sample of sugar had failed in colour. He also admitted that there was no colour in between 30 and 29. The witness admitted that for scientific measurement of the degree of whiteness in sugar sample one instrument Photoalectric Reflectance meter is there. He however, added that in order to bring the instrument into play, the sugar to be subjected should first be completely cent percent in a particular grade and then ail the crystals should be in uniform order. According to the witness factories are allowed to make a grain if its retention on the prescribed size is not less then 60 retention, sugar is graded by visual comparison permitted in the size grade. The witness further stated that since the commercial Transaction Sugar Factories have been allowed for 60% retention, sugar is graded by visual commparison with the master standard for colour, and they do not go for Photoelectric Reflectance Meter. The witness was unable to say whether it was rainy season or not when the sample was examined. The witness alse admitted that dampness does affect the sugar. According to the witness the sugar is very much hygroscopic and its colour deteriorates with any atmospheric exposure. He also stated about the sample being placed first in polythene bags and then in cloth bag and not in glass bottles. The witness admitted that the polythene bag is not an aboslute guarantee about dampness, He also admitted that if the samples are kept in two different grades of glass then there can be a difference in visual colour. This being the position, there is no material to suggest that the standard sample kept by the N.S.I, was in a bottle exactly similar to that which was supplied to the

factory. Apart from it when the expert himself admits that the polythene bag is not an absolute guarantee about dampness there is strength in the arguments advanced by the learned counsel for the respondents that the deterioration in colour might be on account of sugar being kept in polythene bags for a long period prior to the visual comparison i.e. from June 15, 1973 the date of taking the sample, up to December 5, 1973. The date of Ex. P.4 or nearabout it when the sample might have been compared by the Chemist. There is also force in the argument of the learned counsel that when 40% variation is permitted in the grain size, variation in the colour grade also is possible because of the atmospheric humidity and the sugar being highly to attract hydroscopic. Sugar has an inherent quality to attract moisure and I, therefore, find force in the aforesaid arguments of the learned counsel for the respondents.

15. The learned counsel for the respondents also advanced arguments regarding the company not being made an accused. As the learned Magistrate has acquitted the respondents on the ground of not drawing and packing the sample in conformity with the prescribed rules and for the reasons stated above, I agree with his findings, there is no necessity of discussing any other point raised by the learned counsel for the respondents.

16. The judgment of the learned Magistrate based on sound reasoning calls for no interference. The appeal filed by the State of Rajasthan having no merits is dismissed.