
(2006) 03 RAJ CK 0036

Rajasthan High Court (Jaipur Bench)

Case No: Criminal Appeal No. 328 of 1985

State of Rajasthan

APPELLANT

Vs

Gauri Shanker Agarwal

RESPONDENT

Date of Decision: March 22, 2006

Acts Referred:

- Prevention of Food Adulteration Act, 1954 - Section 10, 16, 16(1), 2, 7

Citation: (2006) CriLJ 2528 : (2006) 3 RCR(Criminal) 370 : (2006) 2 RLW 1638 : (2006) 4 WLC 705

Hon'ble Judges: K.C. Sharma, J

Bench: Single Bench

Advocate: Nirmla Sharma, for the Appellant; G.P. Sharma, for the Respondent

Final Decision: Dismissed

Judgement

K.C. Sharma, J.

This appeal by the State of Rajasthan, through Food Inspector arises out of the judgment and order dated 16.8.1983 passed by the learned Chief Judicial Magistrate, Jaipur, by which the learned Magistrate has acquitted the accused respondent from the charge u/s under Section 7/16 of the Prevention of Food Adulteration Act .

2. The prosecution case in nut shell is that on 16.6,1979, PW1 Devi Singh, Food Inspector visited the firm of accused respondent situated in Bagru-walon-ka-rasta, Jaipur and took the sample of chilly powder from the premises, which were being used by the accused respondent for selling chilly powder etc. The sample, on analysis was found to be adulterated. The report Ex.P8 of the State Central Public Health Laboratory Rajasthan, Jaipur reflects that Ash insoluble in dilute Hcl was 2.58%. On the contrary, the report, Ex.P9 of the Central Food Laboratory, Ghaziabad indicates that percentage of Ash insoluble in dilute HCL was 2.3%. The Rules framed under the Prevention of Food Adulteration Act prescribe the standards of guilty of

various articles of Food specified in Appendix B, C and D. Appendix B-A. 05.05.01 prescribes the standards of quality of Chillies powder, according to which the Ash insoluble in dilute HCL should not Contain more than 1.3% by weight. In this manner, the Ash insoluble in dilute HCL was above the maximum prescribed limit of 1.3% and as such the sample was found to be adulterated.

3. Having gone through the judgment it appears that the Trial Court after appreciating the evidence led by both the parties concluded that the prosecution has not been able to prove beyond doubt that the article of which sample was taken was kept for sale and on this ground acquitted the accused respondent.

4. Mrs. Nirmla Sharma, learned Public Prosecutor strenuously contended that the definition of the word "sale" as given in Section 2(xiii) of the Act includes within its ambit a sale for analysis and since the sample was sold to the Food Inspector, may be for analysis, it cannot be said that it was not kept for sale. On this premise, learned Public Prosecutor has argued that the Trial Court has committed serious error in acquitting the accused respondent on the ground that prosecution has failed to establish that the sample was kept for sale.

5. On the other hand, Mr. G.P. Sharma, learned Counsel for the respondent has supported the finding arrived at by the learned Trial Court and has vehemently contended that the Food Inspector had no authority to collect sample of chilly powder, which was not kept for sale.

6. I have given my anxious consideration to the rival submissions and have gone through the impugned judgment, the material and evidence on record. On reappraisal of prosecution evidence it appears that PW1 Devi Singh, Food Inspector inspected the shop and factory of accused respondent and took a sample of chilly powder from a gunny bag containing 30 Kgs chilly powder. When Devi Singh inspected the premises, the grinding process was in progress. The witness has admitted that accused respondent also used to sale "AG Mark" products, PW2 Kanhiya Lal has deposed that accused was sitting near Chakki and grinding of spices was in progress. According to this witness, spices were kept in gunny bags. The witness admitted that accused respondent had disclosed to the Food Inspector that he used to sale the spices after packing the same in packets. Likewise, PW3 Snanker Singh has admitted that at the time of checking the accused respondent was grinding chillies and the Food Inspector collected sample of chilly powder kept in the godown, where from no article was being sold to any one. The witness specifically admitted that accused used to sale chilly powder after shieving testing in laboratory and putting "AG mark" certificate on the products. The witness categorically deposed that accused had asked the Food Inspector to take sample out of the chillies powder which had gone through the process of shieving and certificate of AG mark had already been affixed, but the Food Inspector relied that he has already taken the sample,

7. It is also important to note that the defence witnesses have thoroughly described the process as to how the spices including chillies powder was ultimately marked with AG mark certificate. Further, the fact that accused respondent was granted Certification of Authorisation, Ex.D1 by the competent authority to use AG mark on the product is also not in dispute.

8. Thus, from what has been discussed above, it is evident that sample of chillies powder was taken out of a gunny bag. Admittedly, the sample was not taken from finished goods which were packed in packets and certified with AG mark. It is further evident that sample was taken from a processing factory and not from any shop where goods or articles were being sold. The evidence discloses that the sample was not taken from the sealed packets despite request having been made by the accused respondent. There is no evidence to show that accused respondent was using the AG mark certificate as camouflage on articles. In this view of the matter, the Inevitable conclusion would be that the Food Inspector took the sample out of the unfinished chillies powers stored in the godown and which was certainly not kept for sale. The Trial Court, in my considered view has not committed any error in arriving at the above conclusion. I am fortified in my view by a decision of three Judges Bench of the Supreme Court in *Municipal Corporation of Delhi v. Laxmi Narain Tondon* 1975 (2) FAC 444, wherein their Lordships, answering a question "whether the expression "store" as used in Sections 7 and 16 of the Act means storage simpliciter or storing for sale, has held as under:

From a conjoint reading of the above referred provisions, it will be clear that the broad scheme of the Act is to prohibit and penalise the sale, or import, manufacture, storage or distribution for sale of any adulterated article of food. The terms "store" and "distribute" takes their colour from the context and the collection of words in which they occur in Sections 7 and 16. "Store or distribution" of an adulterated article of food for a purpose other than for sale does not fall within the mischief of this Section. That this is the right construction of the terms "store" and "distribute" in Section 16(1) will be further clear from a reference to Section 10, Under that section the Food Inspector, whom the Act assigns a pivotal position for the enforcement of its provisions, is authorised to take samples of an article of food only from particular a persons indulging in a specified course of business activity. The immediate or ultimate end of such activity is the sale of an article of food. The section does not give a blanket power to the Food Inspector to take samples of an article of food from a person who is not covered by any of the sub-clauses of Sub-section 1(a) or Sub-section 2. The three sub-clauses of Sub-section 1(a) apply only to a person who answers the description of a seller or conveyer, deliverer, actual potential, of an article of food to a purchaser or consignee or his consignee after delivery of such an article to him. Sub-section (2) further makes it clear that sample can be taken only of that article of food which is "manufactured", "stored" or exposed for sale. It follows that if an article of food is not intended for sale and is in the possession of a person who does not fulfill the character of a seller, conveyer,

deliverer, consignee, manufacturer or storer for sale such as is referred in Sub-sections 1(a) and (2) of the section, the Food Inspector will not be competent under the law to take a sample and on such sample being found adulterated, to validly launch prosecution thereon. In short, the expression "store" in Section 7 means "storing for sale", and consequently storing of an adulterated article of food for purposes other than for sale would not constitute an offence u/s 16(1)(a).

9. In dealing with an appeal against acquittal, the Jurisdiction of this Court is circumscribed by the limitation that no Interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the Court below has taken a view which is plausible one, the Appellate court cannot legally interfere with an order of acquittal even it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous. Reference may be made to a judgment of the Apex Court in [Tota Singh and Another Vs. State of Punjab](#),

Tested in the light of the above principles, it must be held that the reasons assigned by the Trial Court for acquitting the accused respondent from the charge levelled against him are convincing. The approach made by the Trial Court to the consideration of evidence cannot be said to be vitiated by any manifest illegality.

10. For the reasons aforesaid, the judgment of acquittal calls for no interference and the appeal against acquittal stands dismissed.