
(1982) 04 AHC CK 0103

Allahabad High Court

Case No: Criminal Revision No. 2082 of 1980

Pratap Chand

APPELLANT

Vs

State

RESPONDENT

Date of Decision: April 6, 1982

Acts Referred:

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

Citation: (1982) 6 ACR 397

Hon'ble Judges: M.M. Gupta, J

Bench: Single Bench

Final Decision: Allowed

Judgement

M.M. Gupta, J.

This revision has been filed against the order of the Additional Sessions Judge, Orai dated 11th December, 1980 under which he dismissed the appeal of the applicant preferred against his conviction u/s 7/16 of the Prevention of Food Adulteration Act and a sentence of six months" RI and a fine of Rs. 1000/- imposed by Judicial Magistrate, Jalaun.

2. It appears that Sri B.L. Dohre Chief Food Inspector had visited the shop of the applicant on 29th November, 1976 and had found him selling among other things Lobia. He informed him that he was a Food Inspector and wanted to take the sample of Lobia for getting it analysed by the Public Analyst. He gave him requisite notice and purchased from the applicant 750 gms. of Lobia and paid him its price. Its receipt was duly given. The sample was divided into three separate parts and sealed in separate bottles. After levelling the bottles one of them was sent to the Public Analyst, the other was handed over to the applicant and the third was retained in the office of the Medical Officer of Health. The sample that was sent to the Public Analyst was analysed by him. His report dated 12th day of January 1977 shows that the sample contained 98.9% of Lobia and 1.1% of inorganic extraneous

matter and there were four pieces of rodent excreta in 250 gms. of sample. He found the insect damaged quantity 42.1% and uric acid 38.6 mg. per 100 gms. Thus the rodent excreta exceeded the prescribed quantity of 5 pieces per kg. and uric acid also exceeded against the prescribed limit of 10 mg. per 100 gms. The Public Analyst, however, has not mentioned that the sample in question was adulterated. But from his report the inference can be drawn that the sample in question was adulterated. This report of the Public Analyst is dated 12th January 1977. After the receipt of the report of the Public Analyst sanction of the Medical Officer of Health was duly obtained and the complaint was filed in the court of the Judicial Magistrate concerned. The defence of the applicant was a denial of the fact that any sample was purchased from him or that he was selling Lobia.

3. The prosecution in support of its case examined PW 1 B. L. Dohre, PW 2 R. S. Dewakar, PW 3 Subhas Chandra Dube. The applicant also examined two witnesses in his defence. They claim that the sample was not taken from the applicant but from one Ram Dayal. The applicant has been falsely implicated in this case.

4. The trial court as well as the appellate court accepted the prosecution version and rejected the defence version. The applicant was accordingly convicted by the trial court and his conviction was upheld by the appellate court.

5. In this revision the learned Counsel for the applicant has raised the following contentions (1). That the prosecution has failed to establish that the Food Inspector had satisfied himself that the primary food of which he was taking the sample was meant for human consumption and unless this fact was established by the prosecution the Food Inspector could not exercise his power to take the sample under the proviso of Section 10(2) of the Prevention of Food Adulteration Act. (2). That the Food Inspector had not added any preservative in the sample at the time of taking the sample and since the sample was examined by the Public Analyst about 1-1/2 months after the taking of the sample the percentage of being infested by the insects could increase and as such the applicant could not be convicted on such report. It is also contended that the proportion of rodent excreta calculated on the basis of 4 excreta in 250 gms. of the sample would be much more merely than the prescribed 5 excretas in one kg. could not form the basis of calculation. (3). It is also contended that the Public Analyst has given his report on the assumption that the Lobia sample taken in this case is a pulse and has judged it from the standard prescribed in para. A. 18.06 whereas he should have applied the standard given in para. A. 06 relating to beans and conviction, therefore, could not be found on treating Lobia as pulse.

6. So far as the first contention is concerned the reliance has been placed on the Proviso to Section 10(2) which prescribes that no sample of any article of food being primary food shall be taken under this Sub-section if it is not intended for sale as such food. If Lobia is an article of food there can be no doubt that it is a primary food. It is, therefore, contended on the basis of this proviso that it was for the Food

Inspector to have satisfied that the sample that was taken was an article of food meant for human consumption. Since it has not been stated anywhere by him that he had satisfied himself that Lobia in question was an article for human consumption the taking of the sample is not warranted by law. I do not think that there is any force in this contention as at no stage it was the case of the applicant that the Lobia which was sold by him was not meant for human consumption. This fact has also not been challenged at any stage. Thus I am unable to accept the contention of the applicant that the power by the Food Inspector in this case could not be exercised.

7. Ext. Ka. 7 is the letter sent by the Food Inspector to the Public Analyst dated 30th November, 1976. It mentions that no preservative was added to the sample when the sample was taken. It may be that the sample was infested by the insect, at the time of the taking of the sample and at that time it may not have exceeded the limit prescribed in the Prevention of Food Adulteration Rules but after 1-1/2 months, the time which was taken by the Public Analyst in examining it, the insect might have caused greater damage. It was the duty of the Food Inspector to have added some preservative like aldrin or dieldrin or any other preservative prescribed in the Rules to the food grains. Since no such preservative was used, no importance can be attached to the report of the Public Analyst.

8. The Public Analyst has also found on the basis of 4 rodent excreta in 250 gms. that one kg. of such Lobia would contain more than the prescribed excreta. It is quite likely that the entire quantity of Lobia found might have contained in all 4 such excretas but it is not possible to fix any proportionate criterion in such matters. The report of the Public Analyst, therefore, is of no help to the court in determining the quantity of excreta on the basis of which the Public Analyst has found.

9. The Public Analyst has prepared his report on the basis of criterion given in para A. 18.06 which contains prescribed limits for food grains meant for human consumption such as whole or broken kernels of cereals, millets and pulses. So far as pulses are concerned they cannot include Lobia as in my opinion it is bean for which a separate criterion is presented in para. A.06. It was observed in [The Public Prosecutor Vs. Qrandhi Venkataramana](#), follows:-

I think that "Beans" mentioned in paragraph A.06 are meant to include the varieties of Beans originally known as French Beans (kidney beans) Double beans (Lima Beans) Soya Beans, etc. The standard prescribed in paragraph A. 06 with reference to hydrocyanic acid content also indicates that "Beans" mentioned in paragraph A. 06 are Beans as commonly understood and not pulses. According to Winton in his "Analysis of Foods" Hydrocyanic Acid is evolved by Hydrolysis of Glucosides present in certain varieties of Beans particularly those grown in India. I do not therefore, think that the standard prescribed in paragraph A. 06 is applicable to pulses. Even if it is applicable to pulses I am of the view that pulses must also satisfy the standards prescribed in paragraph A.18.06. The failure to satisfy the standards prescribed in

paragraph A.18.06 is sufficient to hold that the pulses are adulterated within the meaning of the definition of "adulterated" in Section 2(i) of the Prevention of Food Adulteration Act.

10. It would, therefore, be clear from the above observation that standard prescribed for Beans is different from those prescribed for pulses in para. A. 18.06. The Public Analyst in this case of Lobia should have applied the standard given in para. A. 06. Since he has not given the opinion whether he has found it to be adulterated within the meaning of para. A.06 the Lobia in question cannot be held to be adulterated and the applicant could not be convicted on that basis.

11. The revision is, therefore, allowed and the conviction and sentences of imprisonment and fine imposed upon the applicant are hereby set aside. Since the applicant is on bail he need not surrender.