(1973) 12 SC CK 0023

Supreme Court of India

Case No: Criminal Appeal No. 170 of 1970

Vijay Kumar		APPELLANT
	Vs	
State of Punjab		RESPONDENT

Date of Decision: Dec. 14, 1973

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 342
- Prevention of Food Adulteration Act, 1954 - Section 16(1)

Citation: AIR 1974 SC 687 : (1998) AIRSCW 3923 : (1974) CriLJ 615 : (1974) 3 SCC 769 : (1974) SCC(Cri) 245 : (1974) 2 SCR 701 : (1998) 8 Supreme 110

Hon'ble Judges: Y. V. Chandrachud, J; M. Hameedullah Beg, J

Bench: Division Bench

Advocate: Nuruddin Ahmad, B.P. Singh and A.K. Verma, for the Appellant; S. K. Mehta and R.N. Sachthey, for the Respondent

Final Decision: dismissed

Judgement

Chandrachud, J.
The appellant, Vijay Kumar, runs a sweet meat shop in a village called Baba Bakala in Punjab. On June 10, 1968 the Food Inspector, Amritsar, took a sample from the Elachi Dana which was kept for sale by the appellant. The report of the Public Analyst shows that the simple was infested with insects to the extent of 9.7 per cent and the volatile oil content thereof was .5 per cent instead of 1 per cent.

2. On these facts the learned Judicial Magistrate, 1st Class, Amritsar convicted the appellant u/s 16(1)(a)(1) of the Prevention of Food Adulteration Act, 1954 and sentenced him to rigorous imprisonment for six months and a fine of Rs. 1,000/-. The order of conviction and sentence was confirmed in appeal by the learned Additional Sessions Judge. Amritsar and the appeal against that judgment was dismissed summarily by the High Court of Punjab and Haryana. This Court granted to the appellant special leave to appeal from the judgment of the High Court.

3. In his statement u/s 342, CrPC, the appellant admitted that he was in possession of the Elachi Dana for purposes of sale but he disputed that the Elachi Dana was insect-infested or that its volatile oil content was deficient.

4. It is contended on behalf of the appellant that on June 10, 1968 when the Food Inspector took the sample of the Elachi Dana from the appellant''s shop neither the Act nor the Rules there under had prescribed any standard for the purity of Elachi Dana and therefore deficiency in the volatile oil content could not attract penal consequences. This argument overlooks that on the relevant date. Rule A.05.09 of the Rules then in force provided that the seeds of Badi Elachi shall not contain Jess than 1 per cent of volatile essential oil. The new Rule No. A.05.04.01, prescribes the same requirement with the difference that the article is now described as Badi Elachi seeds instead of Badi Elaichi. This is a distinction without a difference because the substance of the matter is that ''Badi Elachi'' (which must include the ''Badi Elachi seeds'') ought to contain 1 per cent volatile oil. The Badi Elachi fruit contains the Elachi seeds and the kernel has no edible value apart from the seeds contained in the fruit.

5. The only other point urged on behalf of the appellant is that the Panch Sohan Singh, a prosecution witness, having admitted in his evidence that the stock of Elachi Dana from which the sample was taken by the Food Inspector was not insect-infested, it must follow that the infestation must have supervened between the date on which the sample was taken and the date of the analysis. The sample was analysed on June 22, 1968, that is 12 days after it was taken. The inference said to arise from the evidence of the Panch is impossible to accept. To the naked eye the insects may not be noticeable and that is why the Panch inferred that the stock of Elachi Dana was not insect-infested. Obviously, what he meant was that it did not appear to be infested by insects. We do not agree that during the short period of 12 days the sample could get infested to the extent of 9.7 per cent.

6. On September 7, 1964 instructions were issued by the Director, Health Services Punjab, that due to pressure of work samples sent for analysis could not be analysed for two or three days, that there was a possibility that the samples may get infested during that period and therefore Food Inspectors should mention in the forwarding letters whether the sample was infested at the time of seizure. In the instant case the Food Inspector had not taken this precaution and on his omission is founded the argument that the sample may have got infested between its seizure and the analysis. The instructions on which reliance is placed relate to articles of food like Atta and Maida. The instructions show that it is in the rainy season that such articles of food get infested within 15 days or one month. The sample in this case was seized before the rains had come and the article of food of which the sample was taken is not of the same variety referred to in the instructions issued by the Director.

7. Learned counsel for the appellant argued that the sentence is too severe especially in view of the fact that Elachi seeds are used more as a luxury item than as an item of necessity and because the appellant is a petty shopkeeper in a small village. What is the

proper sentence to impose is a matter primarily for the trial court to decide. The learned Magistrate exercised his discretion judicially and the sentence has been confirmed by the Sessions Court and the High Court. We see no justification for interfering therewith. Besides, the article being insect-infested, falls within the definition contained in Section 2(i)(f) of the Act and therefore the first clause of the proviso to Section 16 of the Act under which the Court can impose a sentence less than the minimum prescribed, has no application. The second clause of the proviso has also no application as the offence falls u/s 16(1)(a)(i) and not u/s 16(1)(a)(ii) of the Act.

8. For these reasons we confirm the order of conviction and sentence and dismiss the appeal.