Annapurna Stores and Another Vs Corporation of Calcutta and Another

Court: Calcutta High Court

Date of Decision: June 5, 1987

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 245(2)
Prevention of Food Adulteration Act, 1954 â€" Section 2(ia), 2(xii), 22A, 23, 6

Citation: 92 CWN 200

Hon'ble Judges: Sankar Bhattacharyya, J; J.N. Hore, J

Bench: Division Bench

Advocate: Dilip Dutta, S.K. Deb and S.B. Chowdhury, for the Appellant;A. Chatterjee for the Opposite Party No. 1 and Tapas Kumar Middya for the State, for the Respondent

Final Decision: Allowed

Judgement

Sankar Bhattacharyya, J.
This revisional application raises a short but important question of law. Petitioner No. 1, M/s. Annapurna Stores,

is a proprietary business owned by one Sohanlal Agarwal. Petitioner No.2 looks after the said business as constituted attorney of the proprietor

Sohanlal.

2. On 4.3.78 opposite party no.1, a Food Inspector, visited M/s. Annapurna Stores at 14, Mahatma Gandhi Road and took samples of refined

rapeseed oil (imported) from a 15.5 Kg. sealed tin of ""Bahar"" brand which was purchased by petitioner no. 1 from M/s. Vivek Kumar Lalit

Kumar of 31, Rani Rashmoni Road under cash memo No. 1577 dated February 23, 1978 with the warranty only printed on the cash memo.

3. On May 2, 1978 the Food Inspector lodged a complaint against the petitioners before the Metropolitan Magistrate and Judicial Magistrate, 1st

Class, Calcutta, alleging that the refined rapeseed oil in question which was stores/exposed by the petitioners for sale for human consumption was

found on chemical analysis to be adulterated. A copy of the Public Analyst"s report containing the opinion that the sample was adulterated only in

respect of peroxide value was also filed along with the complaint. On the basis of the complaint so lodged, a proceeding under sections 10(a)(i)

and 12, read with sections 7 and 6 of the Prevention of food Adulteration Act, 1954("Act") for short), was initiated against the petitioners.

4. During the pendency of the proceedings the petitioners made an application before the learned Magistrate for their discharge u/s 245(2) of the

code of criminal procedure primarily on the ground that at the time when the sample was taken there were no prescribed standards of quality or

purity for refined rapeseed oil (imported). It was contended that the standards were first prescribed in the Prevention of Food Adultration Rules,

1955 by incorporating paragraph A17.18 in Appendix-B thereto which came into force on 22.12.80 but even in paragraph A 17.18, no peroxide

value of imported rapeseed oil was laid down. Therefore, according to the petitioners, the sample could not be held to be adultrated and, that

being the position, the proceedings were liable to be dropped and they were entitled to an order of discharge.

5. The contention, however, was negatived by the learned Magistrate according to whom, the peroxide value of imported rapeseed oil was

prescribed by Government Order No. R 15076/14/77-PH(P&N) FFA dated August 27, 1977 issued by the Central Government u/s 22A of the

Act.

6. The only question presented for our determination in this Rule is whether a sample of refined rapseed oil which does not conform to the

specification as laid down in the Government Order quoted above, can be said to be adulterated. Mr. Dutt, learned Advocate appearing in

support of the Rule, vehemently contends before us that like the statutory rules, an administrative instruction issued by the Central Government in

this case in the form of a letter issued by the Central Government to all Public Analysts and Food (Health) Authorities etc. cannot have any

statutory force with the result that it cannot be taken into account by the Court for the purpose of determining whether the sample is adulterated or

not.

7. In support of his contention Mr. Dutt has placed before us a single Bench decision of the Delhi High Court in Sri R.N. Gujral, Assistant

Municipal Prosecutor & Anr. v. M/s. Mahavir Trading Co. & Ors. (1982 Ail India Prevention of Food Adulteration Journal, Page 27) where the

learned Single Judge has ruled that an administrative instruction issued u/s 22A of the Act cannot have any statutory force and consequently, a

prosecution based on such instruction is not sustainable.

8. Under the Act, an article of food shall be deemed to be adulterated if it comes within the mischief of any one or more of clauses (a) to (n) of

section 2(ia) of the Act. Under clauses (1) and (m), an article of food shall be demed to be adulterated if it does not conform to the prescribed

standards of quality or purity or its constituents are not within the prescribed limits of variability. In a case falling under clause (I), however, non-

conformity with the prescribed standards of quality or purity must also render the article of food injurious to health.

9. The expression ""prescribed"", according to the definition appearing in section 2(xii) of the Act, means prescribed by rule made under the Act that

is, u/s 23 of the Act. Obviously, therefore, an article of food may be deemed to be adulterated under clauses (1) and (m) only if it falls short of the

required standards prescribed by the rules, but not otherwise.

10. The view taken by us appears to be amply fortified by rule 5 of the Prevention of Food Adulteration Rules, 1955 which lays down in no

uncertain terms that the standards of quality of the various articles of food specified in Appendix-B to the rules are as defined in that appendix.

That necessarily means that where the standards of quality or purity in respect of any article of food or the limits of variability of its various

constituents have been specified in Appendix -B, the Court can only look to such standards for the purpose of determining whether the article of

food is adulterated or not. In our considered opinion, it is impermissible for the Court to look to any administrative instruction issued by the Central

Government in this regard to determine whether an article of food is adulterated or not.

11. Section 23 confers upon the Central Government the power to make rules in consultation with the ""committee"" to carry out the provisions of

the Act after observing the formality laid down therein. The power to make rules carries with it also the power to amend the rules. If in the opinion

of the Central Government some additional standards with regard to the quality or purity of refined rapeseed oil (imported) are required to be

prescribed, the same may be done by suitable amendment of paragraph A 17.18 of Appendix-B by virtue of the legislative power conferred upon

it by section 23 of the Act. It is, however, not open to the Central Government to circumvent the provisions of section 23 of the Act and to achieve

the above object by issuing administrative instruction because, such instruction can neither amend not supersede the statutory rules.

12. In this connection, an important aspect must also be burne in mind. A person concerned in any way with the manufacture, sale or storage of an

article of food to which the Act applies has the right to know the standards prescribed by the Central Government in regard to such food article

because non-conformity with the prescribed standards will expose him to the risk of criminal prosecution. Unless, therefore, the standards are laid

down in the rules which are required to be notified in the Official Gazette u/s 23 of the Act, it may not be possible for him to know the prescribed

standard of such article of food and his prosecution for non-conformity of the article of food with the standards laid down in administrative

instruction to which he cannot possibly have any access will be unfair, unjust and opposed to the principles of natural justice.

13. We, therefore, find ourselves in complete agreement with the decision of the learned single Judge in the case of R.N. Gujral (supra) and we

hold that the Court in determining whether an article of food is adulterated or not, cannot take into account the standards of quality or purity laid

down in any administrative instruction in this behalf.

14. It, therefore, necessarily follows that the learned Magistrate was absolutely wrong in rejecting the prayer of the petitioners for their discharge

u/s 245(2) of the Code of Criminal Procedure. In our view, the prosecution was bad in law and unsustainable. We, therefore, allow the revisional

application, make the Rule absolute and quash the impugned proceedings against the petitioners. Petitioner no. 2 who is on bail is hereby

discharged from his bail bond.

J.N. Hore, J.

I agree.