

the case in question. The marginal heading of this rule also seems to negative Shri Doabia's contention. I have, therefore, no hesitation in repelling it. On this conclusion also the order of the State Government must be struck down as contrary to law and liable to be quashed by this Court.

Joginder Singh
v.
The State
of Punjab
and others

Dua, J.

Article 226 of the Constitution, as is by now well settled, is very broadly worded and the power of this Court is not restricted to the writs specified in that Article or to the writs which the Courts in England can issue. This Court has full power to issue directions and orders or writs including writs in the nature of five categories mentioned therein and this can be done for the enforcement of any of the rights conferred by Part III of the Constitution as also for any other purpose, whether the impugned order is described to be an administrative or a *quasi-judicial* order the power of this Court to quash such an order where it vitally affects the right of the petitioner to the elected office, the election of which as also the setting aside of such election is regulated by the statutory rules framed under the Punjab Municipal Act.

For the reasons given above this appeal is allowed and setting aside the order of the learned Single Judge I quash the order of the State Government, dated 30th October, 1961, annulling the proceedings of the Municipal Committee, Nabha, dated 4th March, 1961, so far as it relates to the election of the petitioner as President. There would, however, be no order as to costs of this appeal.

D. FALSHAW, C. J.—I agree.

D. Falshaw, C. J.

B.R.T.

APPELLATE CRIMINAL

Before S. B. Kapoor and A. N. Grover, JJ

MUNICIPAL CORPORATION OF DELHI,—Appellant
versus

SATPAL KAPOOR AND ANOTHER,—Respondents

Criminal Appeal No. 170-D of 1961

Prevention of Food Adulteration Act (XXXVII of 1957)—Sections 7 and 16—Prevention of Food Adulteration Act, 1962
March, 27th

Rules, 1955—Rule 5 and Appendix B, paragraph A. 20.01—Synthetic Vinegar—Whether can contain sulphuric acid—Failure of Public Analyst to state quantity of sulphuric acid present in the sample—Whether entitles accused to acquittal.

Held, that synthetic vinegar is defined in paragraph 20.01 of Appendix B to the Prevention of Food Adulteration Rules, 1955, and it is expressly stated therein that it shall not contain sulphuric or any other mineral acid. If synthetic vinegar contains sulphuric acid in any quantity it shall be deemed to be adulterated and its sale or storage for sale will be a contravention of the provisions of the Act and rules made thereunder and as such punishable under section 16 of the Act. It was not open to the trial magistrate to acquit the accused on the ground that the report of the Public Analyst did not state the quantity of the sulphuric acid present in the sample. It is not necessary for the Public Analyst to state the quantity of the foreign substance present in the sample when the foreign substance happens to be one the presence of which is absolutely prohibited in that particular article of food.

Criminal Appeal from the order of Shri Amba Prakash, Magistrate 1st Class, Delhi, dated the 3rd October, 1961, acquitting Shri Mangal Singh and Shri S. P. Kapur.

TARA CHAND-BRILJ MOHAN LAL, ADVOCATE, for the Appellant.

RADHEY MOHAN LAL, ADVOCATE, for the Respondent No. 1.

ORDER

Capoor, J.

CAPOOR, J.—These six appeals (Criminal Appeal Nos. 170-D to 175-D of 1961) have been filed by the Municipal Corporation, Delhi, against the acquittal of the respondents on charges under section 7 read with section 16 of the Prevention of Food Adulteration Act, 1954 (Act No. 37 of 1954), hereinafter to be referred to as the Act.

It will be convenient to dispose of all the appeals in the course of the following order inasmuch as the orders of acquittal, dated the 3rd

October, 1961, as recorded by Shri Amba Parkash, Magistrate First Class, Delhi, are in identical terms and the facts are also in all the cases similar.

Municipal Corporation of
Delhi
v.

Satpal Kapoor
and another
Capoor, J.

Sat Pal Kapoor, the respondent, is the proprietor of the Ambrosia Food and Canning Industries, Delhi, and Mangal Singh, respondent was a salesman at that shop. The Food Inspector on various dates took into possession from this shop samples of synthetic vinegar. These were sent to the Public Analyst and as stated in the complaint filed by the Municipal Prosecutor of the Municipal Corporation, Delhi, the samples were found to be adulterated and the following adulteration is alleged to have been found:—

“The sample is adulterated and unfit for human consumption due to presence of sulphuric acid.”

When the case was put up before the learned Magistrate, the position was that Mangal Singh was untraceable and proceedings were taken against him under section 512 of the Code of Criminal Procedure. The 3rd October, 1961, was fixed as the date for the statement of Sat Pal Kapoor, but before that statement could be recorded it was argued on his behalf that the report of the Public Analyst, which formed the basis of those cases, did not mention the quantity of sulphuric acid alleged to have been present in the sample and that accordingly no conviction could be based on such a report. The case *Gurbux Rai v. State* (1), was cited. The learned Magistrate accepted these contentions and without taking any further steps in the case pronounced his order of acquittal of Mangal Singh, as well as S. P. Kapoor. We are clearly of the view that the order of acquittal proceeds on an incorrect view of the law and that the learned Magistrate did not take any pains to study the case cited before him and its application to the facts of these cases.

(1) (1961) 63 P.L.R. 37.

Municipal Corporation of Delhi
v.
Satpal Kapoor and another
—
Capoor, J.

The term "adulterated" is defined in clause (i) of section 2 of the Act that an article of food shall be deemed to be adulterated *inter alia* if it contains any poisonous or other ingredient which renders it injurious to health and if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities which are in excess of the prescribed limits of variability. Under section 7, no person shall himself or by an person on his behalf manufacture for sale, or store, sell or distribute any adulterated food or any article of food in contravention of any other provision of this Act or of any rule made thereunder. Rule 5 of the rules made under the Act states that the standards of quality of the various articles of food specified in Appendix B to these rules are as defined in that appendix. Paragraph A. 20.01 of the Appendix defines synthetic vinegar and prescribes its standard of quality as follows:—

"Synthetic vinegar means the product prepared from acetic acid. It shall contain not less than 3.75 grammes of acetic per 100 ml. It shall not contain—

- (a) Sulphuric or any other mineral acid,
- (b) lead or copper,
- (c) arsenic in amounts exceeding 1.5 parts per million,
- (d) any colouring matter, except caramel."

Sulphuric acid is not only an extremely deleterious substance for the human organism but its presence in any synthetic vinegar, offered for sale as an article of food, is absolutely prohibited. The combined effect of all these provisions is that if synthetic vinegar contains sulphuric acid in any quantity it shall be deemed to be adulterated and its sale or storage for sale will be a contravention of the provisions of the Act and rules made thereunder and as such punishable under section 16 of the Act. In this state of the law, it was not open to the learned Magistrate to hold that simply because the report of the Public Analyst did not mention the quantity of sulphuric acid alleged to have been present in the sample, it could not form the basis of a conviction.

In *Gurbux Rai's case*, which was relied upon by the learned Magistrate, the facts were that a sample of "Bandhani Hing" was found, according to the report of the Public Analyst, to contain extraneous grits, chalk and colophony resin, thereby showing that it was adulterated. The quantity of these foreign substances present in the sample was not mentioned in the report. The learned Judge held that he could not depend upon such an incomplete report for a definite finding that the substance in question was an adulterated one and in consequence the petitioner in that case was given the benefit of the doubt and acquitted. If the foreign substance is not injurious to human health and hence the article of food cannot be said to be adulterated under sub-clause (h) of clause (i) of section 2, nor is its presence absolutely prohibited in that particular food-stuff, then the question of quantity of the foreign substance would be a relevant factor, and if the report of the Public Analyst did not specify the quantity it might be treated as an incomplete document. It appears, however, that the attention of the learned Judge was not directed to paragraph A.04 of the Appendix B according to which Bandhani Hing shall not contain colophony resin. The learned Judge had, in support of his view, relied principally on *State v. Shanti Prakash* (2). Two appeals were disposed of by that judgment. The accused persons in both the cases were prosecuted for the possession of *haldi* (turmeric) alleged to have been adulterated. The Magistrate had acquitted both the accused persons because no standard had been prescribed for the examination of turmeric. In one of the appeals (*State v. Shanti Parkash* (2)), the Analyst had only stated as follows with regard to the sample of turmeric:—

"It is highly adulterated with extraneous vegetable matter."

The learned Judges considered that report to be insufficient because that did not show what was the

Municipal Corporation of Delhi
v.
Satpal Kapoor and another
Capoor, J.

Municipal Corporation of Delhi
 v.
 Satpal Kapoor and another

 Capoor, J.

extent of adulteration and with what foreign substance the sample sent to the Analyst had been adulterated, and they dismissed the State appeal as against Shanti Parkash. This case is clearly distinguishable on the facts of the cases before this Court. The other appeal *State v. Hukam Chand* was allowed and the accused person convicted on the basis of the Analyst's report that the sample sent to him contained ash 31.45 per cent and that it was highly adulterated with inorganic and vegetable matter. Thus the Division Bench judgment *State v. Shanti Parkash* (2), is no authority for the proposition that in every case of a prosecution under the Act it is necessary for the Public Analyst to state the exact quantity of foreign substance present in the sample sent to him. When the foreign substance happens to be one the presence of which is absolutely prohibited in that particular article of food, it would be unnecessary to state the quantity.

There is another aspect of the case. Under sub-section (2) of section 13 of the Act, after the institution of a prosecution under this Act the accused vendor or the complainant may, on payment of the prescribed fee, make an application to the court for sending part of the sample to the Director of the Central Food Laboratory for a certificate. If the case had proceeded in due course, the complainant could have made an application under this provision with a view to ascertain the exact quantity of the sulphuric acid in the sample and any doubt which the Court might have on that point could have been resolved. But by passing the order before the prosecution evidence had even started, the Court deprived the complainant of this statutory opportunity. For this reason also the orders under appeal cannot stand.

The result, therefore, is that all these appeals are allowed and the order of acquittal of the learned Magistrate in these cases set aside. The parties are directed to appear before the learned Magistrate on the 3rd May, 1962, for further proceedings

Grover, J.

A. N. GROVER, J.—I agree.

B.R.T.