

vacant plot satisfies that description, it can be considered as a 'street.' However, every street cannot be said to be a 'public street'. Before a street can be said to be a public street, it must have been levelled, paved, metalled, channelled, sewerred, or repaired out of municipal or other public funds or it must have been declared by the Committee or should have become, under the Act, a 'public street'. These conditions have to be satisfied before a vacant plot can be identified as a 'public street'.

(7) In the facts of the present case, the defendant-committee has completely failed to prove that any other building, shop or house abut on the plot in dispute. Moreover, it is also not the case of the defendant-committee that the plot has been levelled, paved, metalled or has been repaired out of municipal or public funds. Therefore, the contention of learned counsel for the defendant-committee that the plot in dispute being a street vested in the municipal-committee, cannot be accepted. No other point has been urged by learned counsel for the defendant-committee.

(8) As a result thereof, this appeal is dismissed but with no order as to costs.

*P.C.G.*

Before : A. L. Bahri & S. S. Grewal, JJ.

STATE OF PUNJAB,—Appellant.

*versus*

GULSHAN RAI,—Respondent.

Criminal Appeal No. 277-DBA of 1983.

9th May, 1991.

*Prevention of Food Adulteration Act (37 of 1954)—Ss. 2(ia)(m), 7 & 16—Prevention of Food Adulteration Rules, 1955—Rls. A. 19 & 17.19—Complaint stating that the medium used in the preparation of laddoos i.e. palm oil was sub-standard as per report of Director, Central Food Laboratory—No standard prescribed for laddoos under the Act or Rules—Sample of medium used for preparation of laddoos not taken—in the absence of prescribed standard, accused cannot be convicted under the Act.*

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*Held, that what were purchased by the Food Inspector were laddoos for which no standard is prescribed under the Act or the Rules. The Food Inspector did not purchase any sample of the medium used for preparation of the laddoos. Since no standard was prescribed for the laddoos, and the same were not found to be unfit for human consumption, the accused could not be convicted under the prevention of Food Adulteration Act.*

(Para 6)

*Appeal from the order of the Court of Shri Charan Dass Gupta, PCS, Judicial Magistrate 1st Class, Barnala dated 26th November, 1982 acquitting the accused.*

*Complaint No. 75 of 29th July, 1981.*

*Complaint under section 16 read with section 7 of the prevention of Food Adulteration Act, 1954.*

*It has been prayed in the grounds of appeal that the appeal be accepted and respondent dealt with according to law.*

*It is further prayed that the warrants of arrest of the accused/ respondent under Section 390, Cr. P.C. may kindly be issued.*

*S. K. Sharma, DAG, Punjab, for the Petitioner.*

*H. S. Sawhney, Advocate, for the Respondent.*

JUDGMENT

*A. L. Bahri, J.*

(1) State has come up in appeal against the order of acquittal of Gulshan Rai recorded by Judicial Magistrate I Class, Barnala, on November 26, 1982 of charge framed under section 7 read with section 16 of the Prevention of Food Adulteration Act (hereinafter called 'the Act').

(2) On June 12, 1981, Dr. P. K. Goel, visited the premises of Gulshan Rai Halwai who was having about 20 Kgs. of laddoos meant for sale. After necessary formalities having been complied with, sample of laddoos was taken into possession. After receipt of the report of the Public Analyst that the laddoos were prepared in palm oil which was not upto the prescribed standard, Complaint was filed against Gulshan Rai. During the course of the trial second sample of laddoos was sent to the Director, Central Food Laboratory. On receipt of the report charge was amended.

(3) The prosecution produced PW. 1 Dr. P. K. Goel, PW. 2 Suresh Kumar, Clerk from the Office of the Chief Medical Officer, Sangrur, and PW 3 Anup Kumar Kad, Medical Officer, Narike. Exhibit PF, report of the Director, Central Food Laboratory, was tendered. Gulshan Rai accused while denying allegations admitted that second sample was sent to the Director, Central Food Laboratory, and showed ignorance about the report. No evidence in defence was produced. As stated above, the accused was acquitted.

(4) Shri S. K. Sharma, D.A.G., Punjab, has referred to the reports of the Public Analyst as well as that of the Director, Central Food Laboratory, Exhibits PD and PF, respectively, and has argued that the palm oil which was used by the accused in preparation of the sweetmeat laddoos was not upto the standard prescribed and conviction of the accused be recorded. Section (2)(ia) (m) reads as under :—

“if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability but which does not render it injurious to health :

Provided that, where the quality or purity of the article, being primary food, has fallen below the prescribed standards or its constituents are present in quantities not within the prescribed limits of variability, in either case, solely due to natural causes and beyond the control of human agency, then, such article shall not be deemed to be adulterated within the meaning of this sub-clause.

*Explanation.*—Where two or more articles of primray food are mixed together and the resultant article of food :—

- (a) is stored, sold or distributed under a name which denotes the ingredients thereof; and
- (b) is not injurious to health, then, such resultant article shall not be deemed to be adulterated within the meaning of this clause.”

Violation of the aforesaid provision, of course, would be an offence punishable under section 7 read with section 16 of the Prevention of Food Adulteration Act. At the outset it may be stated that in

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the report Exhibit PF the Director, Central Food Laboratory, has not reported that the article was injurious to health on account of use of any adulterant such as coal-tar die or presence of any foreign body.

(5) In the complaint filed it was stated that the medium used in the preparation of *laddoos* was palm oil. This was so stated as the report of the Public Analyst had indicated so who further had reported that the medium used was not upto the standard prescribed for palm oil. Subsequently when the second sample was sent to the Director, Central Food Laboratory, he did not report as to what type of medium was used in preparation of the *laddoos*. This was not indicated on the labels attached to the sample. However, he reported that the medium used was not in conformity with the standard prescribed under the rules for vanaspati as well as for palm oil. Rule A. 19 of the Rules prescribes standard for vanaspati and Rule A.17.19 prescribed the standard for the palm oil. There is no standard prescribed for *laddoos*. The question for consideration is as to whether on the report of the Director, Central Food Laboratory, Exhibit PF, conviction of the accused can be recorded? None of the witnesses who appeared in Court on behalf of the prosecution stated that the medium used in preparation of the *laddoos* was palm oil or vanaspati. When the statement of the accused was recorded under section 313 of the Code of Criminal Procedure, it was not put to him that the medium used by him for preparation of the *laddoos* was palm oil. The report of the Public Analyst is superseded by the report of the Director, Central Food Laboratory. There is no evidence, as stated above, that the accused used palm oil. Till it is so proved by cogent evidence, he could not be convicted. It was not for the accused to come forward with any explanation that he had prepared the *laddoos* in a particular medium to escape punishment. Rather it was for the prosecution to establish that he had prepared the *laddoos* in the medium which was not upto the prescribed standard. In the present case the prosecution has failed beyond reasonable doubt to do so.

(6) As already stated above, what were purchased by the Food Inspector were *laddoos* for which no standard is prescribed under the Act or the Rules. The Food Inspector did not purchase any sample of the medium used for preparation of the *laddoos*. Since no standard was prescribed by the *laddoos*, as stated above, and, the same were not found to be unfit for human consumption, the accused

could not be convicted under the Act.

(7) Reference may be made to the decision of J. B. Garg, J. in *Subhash Chander v. State of Haryana* (1), which was a case of purchase of *namkeen Bhujia*. The report of the Public Analyst related to the medium used in the preparation of *bhujia* i.e. mustard oil which was not upto the standard prescribed. It was held that for sale of *namkeen bhujia* for which no standard was prescribed, conviction could not be made.

For the reasons recorded above, this appeal is dismissed.

R.N.R.

Before : V. K. Jhanji, J.

SUNIL KUMAR,—Petitioner.

versus

S. S. SHARMA,—Respondent.

Civil Revision No. 1824 of 1990.

7th June, 1991.

*East Punjab Urban Rent Restriction Act (III of 1949)—Ss. 13-A & 18-A—Sons of specified landlord in occupation of ground floor—Specified landlord not in occupation of any portion nor having any other suitable accommodation—Eviction of first floor sought—Plea in amended petition not supported by an affidavit—Tenant has no right to contest.*

*Held*, that this ground was taken by the petitioner in his amended petition under S. 18-A of the Act but the petitioner has not filed any affidavit in support of this ground. Sub-section (4) of S. 18 of the Act provides that the tenant on whom the service of summons has been declared to have been validly made under sub-section (3), shall have no right to contest the prayer for eviction from the residential building or scheduled building, as the case may be, unless he filed an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller. Petitioner having failed to file an affidavit in support of the additional ground, the learned Rent Controller was justified in not taking into consideration the said ground.

(Para 9)

(1) 1990(2) F.A.C. 127.