20 of the Act, are, two distinct matters and deal with different eventualities. The right to apply under section 20 accrues to a party to the contract containing arbitration clause on the date when the contract was rescinded by the other party thereto and the limitation of three years has to be counted from that date and not from the date of the notice when the party to the arbitration agreement serves a notice on the other party thereto requiring the appointment of an arbitrator. In *Gurdev Ram's case* (supra), it was held that the right to apply for arbitration accrued when the Corporation failed to pay the amount alleged to be due to the applicant.

(7) In the present case, the right to apply under article 137 of the Limitation Act would accrue to the petitioner from the date when each contract was completed for which the stipulated period was one year only. Thus, for the contract for the year 1973-74, the period would be three years from the date when the contract was completed. Since the application under section 20 of the Act, was filed after more than three years from the completion thereof, it was clearly barred by time. Once it is so held that the application under section 20 of the Act was barred by time, then it becomes immaterial whether any dispute in regard to any claim, existed between the parties or not.

(8) In this view of the matter, this revision petition fails and is dismissed with costs.

N.K.S.

Before D. S. Tewatia and S. S. Sodhi, JJ.

PARMA NAND,—*Petitioner.*

versus

THE STATE OF HARYANA,—*Respondent.*

Criminal Revision No. 1634 *of* 1982

April 24, 1984.

Prevention of Food Adulteration Act (*XXXVII of* 1954)—*Sections* 2(*ia*) (*m*), 2(*xii-a*) *and* 16(1) (*a*) (*i*)—*Prevention of Food Adulteration Rules*, 1955—*Rule* 5 *Paragraph A.* 05.09 *of Appendix*

'B'—Sample of cumin seeds containing edible seeds more than the prescribed limit—Such sample—Whether adulterated—Paragraph A. 05.09 of Appendix 'B'—Interpretation of—Cumin seeds—Whether primary food—Proviso to section 2(ia) (m)—Circumstances which would attract the proviso—Stated.

Held, that the framers of rule 5 Paragraph A. 05.09 of Appendix 'B' of the Prevention of Food Adulteration Rules, 1955, while prescribing the outside limit of 7 per cent for extraneous matter as the permissible limit, had in view the extraneous matter of any kind. When they identify a few items of extraneous matter it does not mean that they exclude any other extraneous matter from its purview. The definition of the expression 'extraneous' is inclusive, that is, that the term 'extraneous matter,' would also include the items of matter enumerated. Hence, the term 'extraneous matter' would refer to anything and everything which is not cumin seed. The framers of the said rule should be taken to have prescribed that the extraneous matter i.e., anything that is not 'cumin seed' shall not exceed 7 per cent. The framers of the said rule when further prescribed that the contents of edible seeds would not exceed 5 per cent, they clearly intended that extraneous matter other than edible seeds would not be permissible beyond 2 per cent. In other words, the permissible limit of the extraneous matter, other than edible seeds, was, by implication, fixed to be 2 per cent and if extraneous matter, other than edible seeds, exceeded 2 per cent, then the sample of cumin seeds would be considered as adulterated. The sample of cumin seeds would also be considered adulterated if edible seeds exceeded 5 per cent in the given sample. The farmers of the said rule were pragmatic in their approach and had in view that cumin seeds could contain edible seeds and alongwith it other extraneous matter as well. Edible seeds and the other extraneous matter put together were not intended to exceed 7 per cent and individually edible seeds were not intended to exceed 5 per cent and extraneous matter other than edible seeds more than 2 per cent. In other words, if the extraneous matter exceeded 2 per cent, then the sample would be considered adulterated even if it did not contain any edible seed at all. The sample should again be considered to be adulterated if it contained more than 5 per cent of the edible seeds, even if it was free of any other extraneous matter. Thus, where a sample of cumin seeds contained edible seeds more than the prescribed limit it would be considered to be adulterated in view of paragraph A. 05.09 of Appendix 'B' of rule 5 of the Prevention of Food Adulteration Rules, 1955.

(Paras 8 and 9).

Held, that cumin seeds which are cultivated and grown on the land, cannot but be considered an agricultural produce in its natural form and, therefore, the same would fall in the category of primary food.

(Para 11).

Held, that the circumstances which would attract the application of the proviso to section 2(ia) (m) of the Prevention of Food Adulteration Act, 1954 would have to be established by the accused and not by the prosecution. The moment the prosecution establishes that the food sample was adulterated, then the onus shifts on the accused to establish that such adulteration was not the handiwork of the human agency. If he does so, then the proviso would be applicable and if he fails to do so, then the proviso would not be attracted and he would be liable to be punished for the offence under section 16 of the Act.

(Para 12).

Corporation of Calcutta *vs.* Algu Show and others, 1978(1) F.A.C. 180.

DISSENTED FROM

Petition for revision under section 401 of Cr. P.C. for the revision of the order of the Court of the Sessions Judge, Gurgaon dated 6th November, 1982 affirming that of Miss Kiran Anand Ch ef Judicial Magistrate Gurgaon, dated 26th February, 1982, convicting and sentencing the petitioner.

H. L. Sibal, Senior Advocate (R. K. Handa, Advocate with him) and Harbans Singh Senior Advocate (M. P. Gupta, Advocate with him), *for the Petitioner.*

Munishwar Puri, Advocate, *for the Respondent.*

JUDGMENT

D. S. Tewatia, J.

(1) The question that falls for consideration in this case is as to whether a sample of cumin seeds, even though contained edible seed more than the prescribed limit, could not be considered to be adulterated in view of paragraph A. 05.09 of Appendix 'B' of rule 5 of the Prevention of Food Adulteration Rules, 1955, hereinafter referred to as the Rules, which prescribes the standard.

(2) Paragraph A. 05. 09 of Appendix 'B' of rule 5, which prescribes the standard, is in the following terms:—

> "A. 05. 09—Cumin (Safed Jeera) Whole means the dried seeds of Cuminum Cyminum (L.). The proportion of extraneous matter including dust, stones, lumps of earth, chaff, stem or straw shall not exceed 7.0 per cent by weight

The proportion of edible seeds other than cumin seeds shall not exceed 5.0 per cent by weight.

* * * * *"

Before proceeding to examine the contention advanced on behalf of the petitioner, facts relevant thereto deserve noticing. A sample of cumin seeds (Jeera) was secured from the petitioner by Government Food Inspector, Gurgaon, Shri S. P. Malik, on 25-9-1978. After complying with due formalities, the sample was sent to the Public Analyst who submitted his report mentioning therein the following data:

(i) 14 living insects;

(ii) two rat droppings;

(iii) 5.2%edible seeds other than cumin seeds against the maximum of 5.0%.

The Public Analyst opined that the sample examined by him was adulterated.

(3) On receipt of the said report, prosecution was launched against the petitioner under section 16 (1) (a) (1) of the Prevention of Food Adulteration Act, hereinafter referred to as the Act. He was found guilty and awarded six months' rigorous imprisonment and a fine of Rs. 1,000/- and in default of payment of fine, to undergo further rigorous imprisonment for six months.

(4) The sessions Judge, Gurgaon, not only sustained the conviction but also maintained the sentence.

(5) The revision petition was admitted to Devision Bench by the motion Bench in view of important question of law being raised therein.

(6) Mr. Hira Lal Sibal, learned counsel for the petitioner, after referring to the following observations of R. K. Sharma, J. of Calcutta High Court in *Corporation of Calcutta* v. *Algu show and other*, others, sought to highlight the anomaly that, according to the aforesaid standard, a given sample of cumin seeds would not be considered

(1) 1978 (1) F. A. C. 180

adulterated if it contained 7 per cent of extraneous matter other than edible seeds which could be stones or dust, yet the cumin seeds would be considered adulterated if it contains even a little over 5 per cent of edible seeds:

> "Reading the rule as it stands. I find that out of 7 per cent the proportion of edible seeds other than cumin black cannot be allowed to exceed 5 per cent by weight; but if the share of the proportion of edible oil seeds other than cumin black is low, still the total permissible amount of extraneous matter such as dust, dirt, stems, stones, chaff etc. can reach as high as 7 per cent. Five per cent limit fixed in the rule as proportion of edible seeds other than cumin black is the maximum limit fixed for such seeds and not for total extraneous matter....."

Such a situation, the learned counsel canvassed, would run counter to common sense. Hence, he urged that so long as the contents of edible seeds in the cumin seeds sample did not exceed 7 per cent, the sample could not be considered, in law, to be adulterated.

(7) With respect, I find myself unable to subscribe to the view expressed by Sharma, J. In my view, there is no merit in the contention advanced by the learned counsel. The aforesaid rule, which prescribes the standard of purity for cumin seeds, can neither be so interpreted as to mean that cumin seeds if contain more than 7 per cent of extraneous matter other than edible seeds and not more than 5 per cent of the edible seeds, would still be a non-adulterated sample, nor, in my opinion, it can be interpreted as to mean that if non-edible seeds exceeded 5 per cent, than too the cumin seeds could not be considered to be adulterated if the percentage of edible seeds did not exceed 7 per cent.

(8) In my view, the framers of the said rule, while prescribing the outside limit of 7 per cent for extraneous matter as the permissible limit, had in view the extraneous matter of any kind. When they identify a few items of extraneous matter it does not mean that they exclude any other extraneous matter from its purview. The definition of the expression 'extraneous' is inclusive, that is, that the term 'extraneous matter' would also include the items of matter enumerated. Hence, the term 'extraneous matter' would refer to anything and everything which is not cumin seed. Hence, the framers of the said rule should be taken to have prescribed that the extraneous matter i.e. "anything that is not 'cumin seed' shall

not exceed 7 per cent. The framers of the said rule when further pres cribed that the contents of edible seeds would not exceed 5 per cent, they clearly intended that extraneous matter other than edible seeds would not be permissible beyond 2 per cent'. In other words, the permissible limit of the extraneous matter, other than edible seeds, was, by implication, fixed to be 2 per cent and if extraneous matter, other than edible seeds, exceeded 2 per cent, then the sample of cumin seeds would be considered as adulterated. The sample of cumin seeds would also be considered adulterated if edible seeds exceeded 5 per cent in the given sample The framers of the said rule were pragmatic in their approach and had in view that cumin seeds could contain edible seeds and alongwith it other extraneous matter as well. Cumin seeds and the other extraneous matter put together were not intended to exceed 7 per cent and individually edible seeds were not intended to exceed 5 per cent and extraneous matter other than edible seeds more than 2 per cent. In other words, if the extraneous matter exceeded 2 per cent, then the sample would be considered adulterated even if it did not contain any edible seed at all. The sample would again be considered to be adulterated if it contained more than 5 per cent of the edible seeds, even if it was altogether free of any other extraneous matter.

(9) In view of the above construction placed upon the rule in question, there is no escape from the conclusion that the cumin seeds' sample in this case was sub-standard and has to be considered as adulterated in terms of section 2(ia) (m) of the Act, which is in the following terms :

"2. In this Act unless the context otherwise requires—

* * * * *

(ia) 'adulterated',—an article of food shall be deemed to be adulterated—

* * * * *

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

* * * * *"

Mr. Sibal, however, contended that since the public analyst's report did not expressly mention that the percentage of the edible seeds was worked out by weight and since the concerned rule required the given percentage by weight of the cumin seeds, so it must be held that in this case it was not established that edible seeds were present in the cumin seeds' sample as 5.2 per cent by weight.

(10) I find no merit in this contention also. The rule in question clearly mentions that the percentage has to be worked out by weight. The public analyst does not have to expressly mention in his report that the percentage was worked out by weight. Their Lordships of the Supreme Court in *Mangaldas Raghvji Ruparel* v. *State of Maharashtra,* (2), have clearly held that the public analyst does not have to mention the method or the chemical test which he employed for arriving at his conclusion or the data.

(11) Mr. Sibal then contended that cumin seeds is a primary food as defined in section 2(xii-a) of the Act and since it had not been established that the same had been adulterated by human agency, so in view of the proviso to section 2(ia) (m) of the Act the petitioner committed no offence.

Proviso to section 2(ia) (m) of the Act is in the following terms :

> "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."

Section 2(xii-a) of the Act defining the primary food reads as under:

> "2. In this Act unless the context otherwise requires—
>
> * * * * *

(2) AIR 1966 S.C. 128.

(xii-a) 'primay food' means any article of food, being a produce of agriculture or horticulture in its natural form."

There cannot be any two opinions that cumin seeds, which are cultivated and grown on the land, cannot but be considered an agricultural produce in its natural form and, therefore, the same would fall in the category of primary food.

(12) Now the next question that falls for consideration is as to whether the said proviso to section 2(ia) (m) of the Act is attracted to the facts of the present case. The circumstances which would attract the application of the said proviso, have to be establihed by the accused and not by the prosecution. The moment the prosecution establishes that the food sample was adulterated, then the onus shifts on the accused to establish that such adulteration was not the handiwork of the human agency. If he does so, then the proviso would be applicable and if he fails to do so, then the proviso would not be attracted and he would be liable to be punished for the offence under section 16 of the Act. In the present case, the petitioner had led no evidence of any kind to show that the edible seeds found present in the sample were of a plant which could grow alongwith the plants of the cumin seeds, as was the case in *Kashmiri Lal* v. *The State of Haryana*, (3), where the Public Analyst was summoned to give evidence that the weeds, of which the edible seeds were the product, naturally grow alongwith the plants of cumin seeds and, therefore, no human hand need have been involved in the presence of the said edible seeds in the sample taken in that case.

(13) As regards the sentence, I do not think there is any scope for reduction therein, as the lower Courts have already taken a lenient view in this regard.

(14) In the result, conviction and sentence of the petitioner are maintained and the revision petition is dismissed.

N.K.S.

(3) 1982(1) FAC 312.