

in *Bhaiya Ram v. Mahavir Parshad* (12). To my mind this is a consideration which does not arise in this revision application. The applicant has been evicted from the demised property and in this revision application, assuming that he has an indefeasible right with regard to the six rooms that he himself constructed on the demised property, no relief can be given to him. If he has a right to any relief in this respect and is so advised, he may seek such relief in a proper forum. This revision application is dismissed with costs, counsel's fee being Rs. 100.

K.S.K.

REVISIONAL CRIMINAL

Before Gopal Singh, J.

MANOHAR LAL,—Petitioner

versus

STATE,—Respondent.

Criminal Revision 1132 of 1967

December 13, 1968.

Prevention of Food Adulteration Act (XXXVII of 1954)—Sections 2(v)a and 16(1) (a)—Turmeric powder—Whether an article of “food”—Determination of an article as “food”—Whether its normal use only may be taken into consideration—Sale of turmeric powder for external use—Whether takes it out of the scope of the definition of “food”.

Held, that the word, “ordinarily” used in the definition of the word, “food” as given in section 2(v)(a) of Prevention of Food Adulteration Act refers to the usual and normal purpose of use of that article as distinguished from its abnormal or extraordinary purpose. Turmeric powder is an article, which ordinarily enters into and is used in the composition or preparation of human food. Its ordinary use is to use it in eatable used as articles of diet for human consumption. As distinguished from that ordinary and common mode of its use in eatables, it is also used for external application to injuries or wounds because of its curative effect. Turmeric powder is thus an article, which ordinarily enters into and is used in the composition of preparation of human food and it falls within the scope of the extended definition of the word, ‘food’ given in sub-clause (a) of clause (v) of Section 2 of the Act. (Para 10)

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Held, that considering the advance of scientific knowledge and increasing human experience, the number of other purposes for which an article of food is utilized, may be more than one. It is the normal purpose of an article being used as an article of food, which will determine the fate of its being an article of food and not its occasional or exceptional use for which it may be availed. If an article is essentially meant to be used as an article of food, it will nonetheless retain its character of being an article of food, even though, it may, at times and additionally be used for a purpose different from its being used as an article of food. (Para 11)

Held, that turmeric powder sold for the extraordinary purpose for external application to the wounds will, all the same fall within the scope of the word, "food" as defined in the Act, because of the principal purpose of its tending into the composition or preparation of human food. (Para 12)

Petition under Section 439 of the Code of Criminal Procedure for revision of the order of Shri Kartar Singh, Sessions Judge, Kapurthala, dated 16th November, 1967, affirming that of Shri R. L. Anand, Judicial Magistrate, 1st Class, Phagwara, dated 28th October, convicting the petitioner.

Charge.—Under Section 16(1) (a) read with Section 7 of Prevention of Food Adulteration Act.

Sentence.—One year Rigorous Imprisonment and a fine of Rs. 1,000 or in default six months Rigorous Imprisonment.

HAR PARSHAD, ADVOCATE, for the Petitioner.

D. C. AHLUWALIA, ADVOCATE for ADVOCATE-GENERAL (PUNJAB), for the Respondent.

JUDGMENT

GOPAL SINGH, J.—This is a petition for revision by Manohar Lal. It arises out of judgment of Shri R. L. Anand, Judicial Magistrate, 1st Class, Phagwara, dated October 28, 1967, convicting the petitioner under Section 16(1) (a) read with Section 7 of the Prevention of Food Adulteration Act, 1967, hereinafter called the Act and sentencing him to rigorous imprisonment for one year and to pay fine of Rs. 1,000.00 or in default of payment of fine to suffer further rigorous imprisonment for six months. On appeal, Shri Kartar Singh, Sessions Judge, Kapurthala, by his judgment, dated November 16, 1967, disallowed the appeal and confirmed the conviction and sentence of the petitioner.

(2) The petitioner runs a karyana shop in village Narur in the district of Kapurthala. On October 24, 1966, Dr. R. P. Gulati, Food

Inspector along with Kishan Singh and Puran Chand visited the shop of the petitioner. The petitioner had exposed in his shop for sale four kilograms of turmeric powder. The petitioner was served with notice Exhibit P.A. showing the intention of the Food Inspector to purchase turmeric powder for analysis, under the provisions of the Act and the Rules made thereunder. The petitioner signed that notice in token of its service. The petitioner noted on Exhibit P.A. that the turmeric powder was meant for external application to wounds. He sold 450 grams of turmeric powder for 72 paise and signed receipt Exhibit P.B. in token of receipt of the price of the powder sold. The Food Inspector divided into three lots the turmeric powder purchased and separately labelled and sealed the same into three bottles. Recovery memo pertaining to the sample taken from the shop of the petitioner is Exhibit P.C. These documents are signed by the Food Inspector and also by Kishan Singh and Puran Chand as attesting witnesses. Out of the three sample bottles prepared, one was given to the petitioner, one was retained by the Food Inspector and the third was sent to the Public Analyst for examination. By his report Exhibit P.D., the Public Analyst found that the sample was highly infested with insects and was an adulterated article.

(3) Complaint was filed by the Food Inspector against the petitioner for offence under Section 16(1)(a) read with Section 7 of the Act. The prosecution produced Dr. R. P. Gulati, P.W. 1, Kishan Singh, P.W. 2, and Puran Chand, P.W. 3, in support of the recovery of turmeric powder from the shop of the petitioner. The recovery has been proved by Dr. R. P. Gulati, P.W. The fact of the recovery of turmeric powder has also been admitted by the petitioner. He has, however, contended that the turmeric powder was exposed in his shop for sale not for human consumption as an article of food but was meant for use for external application to wounds. Thus, there is no controversy about the factum of recovery of turmeric powder from the shop of the petitioner. There is no doubt that Kishan Singh and Puran Chand P.Ws. did not support the prosecution case of the recovery of the turmeric powder having been made from the shop of the petitioner. They alleged that they arrived after the recovery had been made and they appended their signatures to the above referred to documents, which had been prepared by Dr. R. P. Gulati, P.W., prior to their arrival at the shop. This, failure on the part of these two witnesses to support the case of prosecution pertaining to the recovery of turmeric

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powder from the shop is inconsequential. The recovery having been admitted by the petitioner himself, their evidence in no way adversely affects the factum of recovery of the turmeric powder. On the basis of these facts, the trial Court took the view that as turmeric powder ordinarily enters into or is used in the composition or preparation of human food and was 'food' within the meaning of the term defined in section 2(v) of the Act, the stand taken by the petitioner could not take the article out of the scope of definition of that term. The petitioner in defence led the evidence of Mehar Chand, D.W. 1, and Balam Singh, D.W. 2, to show that the petitioner was selling turmeric powder for application to wounds. The evidence of both these witnesses is to the effect that when they arrived, sample of the turmeric powder had already been taken. Balam Singh, D.W. 2 stated that the petitioner does not sell turmeric powder at all. Thus, Balam Singh, D.W., who arrived along with Mehar Chand, D.W., not only cuts the latter but goes counter to the stand taken by the petitioner, namely, that he sells the turmeric powder not for human consumption but for treatment of wounds. Mehar Chand, D.W., however, supports the defence of the petitioner that at the time the turmeric powder was recovered, he told the Food Inspector that he sold turmeric for application to wounds.

(4) The trial Court negatived the contention of the defence. believed the prosecution evidence and convicted and sentenced the petitioner as detailed above.

(5) The question, which has been raised by Shri Har Parshad, Counsel for the petitioner, is that the turmeric powder recovered from the shop of the petitioner is not 'food' within the meaning of Section 16(1) (a), under which the petitioner has been convicted.

(6) Turmeric powder is used as an article of food. It is used in the composition of certain eatables. It is used as a flavour or colour-giving agent in the eatables. Its use is considered good for purification of blood. Section 16(1)(a), which is a penalty Section and under which the petitioner was charged and has been convicted runs as follows:—

"16. (1) If any person—

(a) whether by himself or by any other person on his behalf imports into India or manufactures for sale, or stores, sells or distributes any article of food—

(i) which is adulterated or misbranded or the sale of which is prohibited by the Food (Health) authority in the interest of public health ;

(ii) other than an article of food referred to in sub-clause (i), in contravention of any of the provisions of this Act or of any rule made thereunder ; or

he shall, in addition to penalty to which he may be liable under the provisions of Section 6, be punishable with imprisonment for a term which shall not be less than six months but which may extend to six years and with fine, which shall not be less than one thousand rupees."

(7) Under this Section, a person can be convicted if he manufactures for the sale or stores or sells or distributes any article of food, which is adulterated or misbranded or the sale of which is prohibited or its sale is in contravention of the provisions of the Act or of any rule made thereunder. In other words, a person will be liable only to be punished under Section 16(1) (a) of the Act, if it is shown that the article recovered from that person is an article of food, apart from the article being adulterated or misbranded or its sale being in contravention of the provisions of the Act or the rules made thereunder.

(8) The word 'food' is defined in Section 2(v) of the Act. The definition of the word runs as follows:—

"2(v) 'food' means any article used as food or drink for human consumption other than drugs and water and includes—

- (a) any article which *ordinarily* enters into, or is used in the composition or preparation of human food; and
- (b) any flavouring matter or condiments."

(9) According to Oxford Dictionary, the word, 'ordinarily' means not exceptional, as a matter of regular occurrence, in most cases usual.

(10) The word, 'ordinarily' used in the definition of the word, 'food' refers to the usual and normal purpose of use of that article as distinguished from its abnormal or extraordinary purpose. Turmeric powder is an article which ordinarily enters into and is used in the composition or preparation of human food. Its ordinary use is to use it in eatables used as articles of diet for human consumption. As distinguished from that ordinary and common mode of its use in eatables, it is also used for external application to injuries or wounds because of its curative effect. Turmeric powder is thus an article, which ordinarily enters into and is used in the composition or preparation of human food and it falls within the scope of the extended definition of the word, 'food' given in sub-clause (a)

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of clause (v) of Section 2. It is the ordinary use, which has to be taken into consideration to bring an article within the definition of the word, 'food'. It is the ordinary use, which has to be taken into account for determination of the question whether an article falls within the scope of the word, 'food' and not the uncommon or unusual purpose to which the article can be put. In other words, it is the usual purpose for which the article is meant, which determines the question whether the article is ordinarily used for preparation of human food. The purpose of its being used for application to the injuries or wounds for its medicinal effect is incidental and casual.

(11) Considering the advance of scientific knowledge and increasing human experience, the number of other purposes for which an article of food may be utilized, may be more than one. It is the normal purpose of an article being used as an article of food, which will determine the fate of its being an article of food and not its occasional or exceptional use for which it may be availed. If an article is essentially meant to be used as an article of food, it will nonetheless retain its character of being an article of food, even though, it may, at times and additionally be used for a purpose different from its being used as an article of food.

(12) Turmeric powder as recovered from the shop of the petitioner does fall within the definition of the word, 'food' given in sub-clause (a) of clause (v) of Section 2 of the Act. It is of no consequence, if the petitioner at the time its sample was purchased by the Food Inspector, claimed it to be an article meant not for sale in general to the public for consumption as human food but as he noted on the notice of intimation Exhibit P.A., it was meant for application to the wounds. In the first place, it is very difficult to accept the stand in defence taken by the petitioner that he was not selling the turmeric powder for human consumption as an article of food but was selling it for application to the wounds. The container, which contained four kilograms of turmeric powder; did not bear any label to the effect that the turmeric powder contained therein was being sold as claimed. Even if the stand taken by the petitioner of its sale being for the extraordinary purpose for external application to the wounds is taken as correct, the turmeric powder will all the same fall within the scope of the word, 'food' referred to above. Turmeric powder is ordinarily used for human consumption by its use in articles of food prepared for meals or used as snacks. It is from the point of view of the essential purpose of turmeric being

used in eatables for human consumption that the Court is to determine whether that article is covered by the definition of the word, 'food' and not from the point of view of its extraordinary, unusual and occasional purpose to which that article can be put. The defence, which the petitioner has taken, refers to the latter type of purpose and not to the former. There is no gainsaying the fact that the turmeric powder sold by a grocer for use in eatables may be used by anyone for application to wounds. Even if the stand of the petitioner is taken as correct, which is hard to accept, that he was selling turmeric powder for external application to wounds, that article would nonetheless fall within the scope of the word, 'food' because of its principal purpose for which it is used, namely, the purpose of its entering into the composition or preparation of human food. Thus, the point raised has no substance.

(13) The Counsel for the petitioner relied in supporting his point of view on *The Public Prosecutor v. Samundrala Satyanarayana* reported in (1). While considering the language of Section 16(1) (a), a Single Bench of the Andhra Pradesh High Court took the view that if turmeric powder is sold for external use, the accused person, who sells turmeric powder for external use, will not be guilty of offence under Section 16(1) (a) as the article sold will not be food. The definition of the word, 'food' as given in Section 2(v) (a) has not at all been considered. Had that definition been referred to and the effect of the word, 'ordinarily' occurring in sub-clause (a) of clause (v) of Section 2 of the Act been considered, the view taken might have been different. Moreover, in that case, the Food Inspector admitted that turmeric powder used for external use is not an article of food.

(14) In a Full Bench case decided by the Allahabad High Court entitled as *Municipal Board, Kanpur v. Janki Prasad and another* reported in (2), a question arose as to whether linseed oil, which is used both for preparation of human food and making varnishes and paints could be regarded as 'food' within the meaning of Section 2(v) (a) of the Act. It is in the sense of usual purpose that the word, 'ordinarily' in that provision has been interpreted. The linseed was held to be an article of food. While interpreting the said provision, the Full Bench observed as follows:—

"In our opinion, it is in the sense of non-exceptional or usual that the word 'ordinarily' has been used in Section 2(v)

(1) A.I.R. 1958 A.P. 681.

(2) A.I.R. 1963 All. 433.

of the Act. The word 'ordinarily' does not mean 'primarily' nor does it mean 'universally.' It does not also mean 'generally'. By the use of the word 'ordinarily' the legislature intended to provide that if an article enters into or is used in the composition or preparation of human food even by some people usually and not as exception it would be deemed to be 'food'

".....Inasmuch as linseed oil is used in some parts of the country in the preparation of human food would be 'food' within the meaning of Section 2(v) of the Act. In our opinion, however, the question whether the word 'ordinarily' only qualifies the words 'enters into' and not the words 'is used' is not material because the use of linseed oil as a cooking medium will be fully covered even by the expression 'any article which ordinarily enters into preparation of human food'. For these reasons there is no difficulty in holding that linseed oil is comprehended by the definition of 'food' given in Section 2(v) of the Act."

"It was contended that the main use to which linseed oil is put is the preparation of paints and varnishes. An article may have more than one use and it may ordinarily be used for more than one purpose. The mere fact that linseed oil is also used for making varnishes and paints would not make it any the less an article of food as defined in Section 2(v) of the Act."

(15) The Single Bench judgment of the Andhra Pradesh High Court referred to above was not cited at the bar before the learned Judges constituting the Full Bench. They, however, took a view just contrary to the above case decided by the learned Single Judge of the Andhra Pradesh High Court.

(16) A learned Single Judge of this Court had the opportunity of considering the scope of Section 2(v) (a) of the Act and the meaning to be given to the word, 'ordinarily' in relation to *hing* in *Leela Ram v. The State and another* reported in (3). The contention of the Counsel appearing on behalf of the petitioner in that case was that the *hing* sold was meant for agricultural purposes and was not fit for human consumption and consequently not an article of food and did not fall within the scope of Section 16 of the Act. While referring to the definition of the word, 'food' as given in Section 2(v),

(3) 1964 P.L.R. 871.

Khanna, J., repelled the contention by observing at page 872 as follows:—

“The definition shows that any article, which ordinarily is used in the composition or preparation of human food would answer to the description of food. The word ‘ordinarily’ indicates that it is not essential that the article should be exclusively and invariably used in the composition or preparation of human food because such a view would render the word ‘ordinarily’ meaningless. On the contrary, the language used clearly goes to show that it is quite enough if the article in question is ordinarily used in the composition or preparation of human food and its occasional use for other purposes would not take it out of the definition of food. So far as *hing*, i.e., *Asafoetida* is concerned, it cannot be disputed that it is ordinarily used in the preparation of human food.”

(17) By virtue of Rule 44 clause (h) of the Prevention of Food Adulteration Rules, 1967, the sale of turmeric containing foreign substance is specifically prohibited. As enjoined by Rule 43(2), if an article of food is to be sold not as pure by reason of any addition, admixture or deficiency, every package containing it shall be labelled with an adhesive label to that effect. The Food Inspector has specifically stated that when he checked the sample, there was no such label affixed to the container in which the turmeric powder was lying for sale. The petitioner took up the plea at the trial that there was a label on the container. Had it been so, he must have pointed out that fact to the Food Inspector and invited his attention to the label and noted as he did in respect of his other plea of turmeric powder being meant for external application to the wounds only. **The two Courts below have rightly repelled that contention** of the petitioner and held that there was no such label on the container. Thus, the petitioner has contravened Rule 43 of the Rules and is also guilty by virtue of that violation under Section 16(i) (a) (ii) of the Act. The article had to be labelled within the definition of the word, ‘misbranded’ given in clause (ix) read in conjunction with sub-clause (k) of Section 2 of the Act. The container was not labelled in accordance with the requirements of Rule 43 of the Rules.

(18) In the light of the above discussion, the revision petition fails and is dismissed.

K.S.K.