

Before S. C. Mital, J.

ISHWAR DASS,—Petitioner.

versus

STATE OF HARYANA,—Respondent.

Criminal Misc. No. 1820-M of 1977

November 15, 1977.

Prevention of Food Adulteration Act (XXXVII of 1954)—Section 2(1) (a) and (b)—Extraneous matter mixed up in food stuff (Gond Khanewala)—No demand by Food Inspector for purchase of any particular kind of the Gond—Accused—Whether guilty of misrepresentation—Section 2(1) (b)—Whether attracted—Word ‘injuriously’ in section 2(1) (b)—Whether governs first part of the clause as well.

Held that a bare reading of clause (a) of sub-section (1) of section 2 of the Prevention of Food Adulteration Act 1954 shows that it has been enacted to cover cases of fraud or misrepresentation. In such cases the accused is assumed to have given an implied warranty to the effect that the article of food which is offered for sale is in fact what it purports to be. The quality of Gond has a wide range and unless the Food Inspector makes a demand for any particular kind of food stuff, the accused cannot be said to have made a misrepresentation. (Para 5).

Corporation of Calcutta vs. Shanker Trading Co. and others 1968 (2) Cr. L. J. 1532 DISSENTED FROM.

Held that merely because an impurity is found in an article of food it cannot be deemed to be adulterated. If such were the intention of the Legislature there was no need either for prescribing the standard of quality or purity of an article of food or enacting clauses (a) to (k) in section 2(1). The framing of certain rules under the Act is a clear example indicating tolerance of impurities in an article of food to some extent. In clause (b) of section 2(1) of the Act the bare existence of any extraneous substance in an article of food will not make it adulterated. The other essential ingredient in clause (b) is that the extraneous substance affects injuriously the nature, the substance or quality of the article of food. The argument that clause (b) of section 2(1) of the Act envisages two contingencies, namely (i) the article per se contained any other substance which affects its substance or quality (ii) if the article is so processed as to affect injuriously the nature, substance or quality thereof the same is said to be adulterated, is not tenable. In section 2(1)(b) the comma proceeds the word “injuriously”. The placing of a comma as it is, makes it clear that the word injuriously goes not only with the second part but also with the first part of the clause. The prosecution

having failed to show that the existence of organic and inorganic matters injuriously affected the nature, substance or quality of food stuff, section 2(1) (b) would not be attracted.

(Paras 7 and 8).

Ram Murti vs. Municipal Corporation Delhi 1975(1) All India Prevention of Food Adulteration Cases 149. **DISSENTED FROM.**

Petition under Section 482 of the Code of Criminal Procedure praying that the complaint, the order dated 22nd April, 1977 (passed by Shri V. P. Chaudhary, Judicial Magistrate 1st Class, Narwana) and the proceedings (under Section 7(1) read with Section 16(1) (a) (i) of the (Prevention of Food Adulteration Act) being carried on against the petitioner in the Court of the Judicial Magistrate 1st Class, Narwana be quashed.

R. S. Mittal, Advocate, for the Petitioner.

H. S. Gill, D. A. Haryana, for the Respondent.

JUDGMENT

S. C. Mital, J.—

(1) On 31st May, 1976, Food Inspector Megh Nath visited the shop of Ishwar Dass in Narwana. Two kilograms of "Gond Khanewala" was found for sale. Sample thereof was allegedly taken. In due course, the sample was sent to the Public Analyst who found 5.04 per cent organic extraneous matter present. Considering the Gond to be adulterated, prosecution was launched against Ishwar Dass. The trial Magistrate recorded preliminary evidence consisting of the statement of the Food Inspector. By the impugned order he framed charge under section 7(1) read with section 16(1) (a) of the Prevention of Food Adulteration Act, 1954, hereinafter referred to as the Act. Ishwar Dass has filed this petition under section 482 of the Code of Criminal Procedure for quashing the charge and also the proceedings.

(2) Learned counsel for the parties referred to the following provisions of section 2 of the Act :—

"1(a) "adulterated"—an article of food shall be deemed to be adulterated

(a) if the article sold by a vendor is not of the nature, substance or quality demanded by the purchaser and is

Ishwar Dass v. State of Haryana (S. C. Mital, J.)

to his prejudice, or is not of the nature, substance or quality which it purports or is represented to be :

(b) if the article contains any other substance which affects, or if the article is so processed as to affect, injuriously the nature, substance or quality thereof;

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(1) 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.

(3) Admittedly, with respect to the quality or purity of the *Gond* in question, no standard has been prescribed. Hence, the case does not fall within the purview of clause (1) of section 2(1) of the Act. Learned counsel for the petitioner cited *M. V. Krishnan Nambissan v. State of Kerala*, (1) in which the conviction under the Act was set aside because no standard for the contents of the butter milk was prescribed. In para 5 of the report, their Lordships observed:—

“We should not be understood to have expressed any view on the question whether a prosecution could be launched for adulteration of butter-milk under some other clauses of definition of “adulterated” in section 2 of the Act, for, in the present case the prosecution was only for not maintaining the standard.”

Thus, it is clear that non-prescription of the standard for the quality of *Gond* cannot be construed to mean that the *Gond* cannot be held to be ‘adulterated’. Now the question is, whether this case falls within the purview of clause (a) or clause (b) of section 2(1) of the Act.

It may be pointed out at the outset that in his report the Public Analyst observed as under :—

1. Physical Examination:	Characteristic of eatable gond and no infestation.
2. Organic Ext. matter:	5.04%
3. Inorganic Ext. matters:	0.86%

(1) AIR. 1966 S.C. 1676.

Below this is the column in which the Public Analyst expressed his opinion as under:—

“The sample contains 5.04 per cent organic extraneous matter”.

In his report, the Public Analyst has not opined that the sample of *Gond* was ‘adulterated’. Learned counsel for the State rightly urged that omission on the part of the Public Analyst to declare the sample as ‘adulterated’ will not debar the Court from finding whether it is so or not. Conversely, in *Public Prosecutor v. Kanumarlapudi Ramalingaiah*, (2) the learned Judge observed :—

“Further I am of opinion that once the Public Analyst who is an expert has found that the article is adulterated, his opinion has to be accepted unless it is shown that his opinion is based on a misreading of facts, or is superseded.”

(4) Learned counsel for the State urged that the case fell within the ambit of clause (a) of sub-section (1) of section 2 of the Act. A bare reading of this clause shows that it has been enacted to cover cases of fraud or misrepresentation. In such cases, the accused is assumed to have given an implied warranty to the effect that the article of food which is offered for sale is, in fact, what it purports to be. It would be of advantage to cite here *Murlidhar Meghraj Loya etc. v. State of Maharashtra*, (3) wherein the Food Inspector demanded Khurasani oil from the accused and then accused sold it as such. Upon analysis of the sample of the oil, it was found to be mixed with 30 per cent of groundnut oil. Their Lordships upheld the conviction under clause (a). Another similar illustration is to be found in *Public Prosecutor v. Kanumarlapudi Ramalingaiah*, 2(supra). In that case, the accused represented that he was selling groundnut oil, but the sample was found to consist of a mixture of 82 per cent of groundnut oil and 18 per cent of coconut oil. In these circumstances the case was held to be of adulteration under clause (a) of section 2(1) of the Act.

(5) Adverting to the facts of the present case, learned counsel for the petitioner contended that the quality of *Gond* has a very wide range—the finest in crystallized form is completely free from

(2) AIR 1969 Andra Pradesh 445.

(3) AIR 1976 S.C. 1929.

Ishwar Dass v. State of Haryana (S. C. Mital, J.)

even a particle of dust. Reference was then made to the following statement of the Food Inspector, PW. 1:—

“I disclosed my identity and inspected the shop of the accused where he had in his possession about 2 kilograms *Gond Khanewala* for public sale. I served the notice Ex. PA for taking of sample for analysis and purchased 600 grams *gond*

No where did the Food Inspector, in his statement, urged the learned counsel for the petitioner, make demand for any particular kind of *gond*. The kind of the *gond* available in the shop of the petitioner was construed to be *gond khanewala*. Furthermore, impurity, i.e., the existence of earth, would have been visible to the naked eye. It is not a case in which the extraneous organic matter was mixed in the *gond* in such a way that it could escape detection by the naked eye, especially of the Food Inspector. In this view of the matter, the contention of the learned counsel for the petitioner, that the petitioner cannot be accused of any misrepresentation, appears to have merit.

(6) All the same, to bring this case within the ambit of clause (a) of section 2(1) of the Act learned counsel for the State relied upon *Corporation of Calcutta v. Sankar Trading Co. and another* (4) wherein *Ajowan* was found mixed with sand dirt. The learned Judge found that there was no evidence showing that the mode of adulteration affected injuriously the nature, substance or quality of *Ajowan*. But the data furnished by the Public Analyst brought the case within the mischief of clause (a) of section 2(1) of the Act. Plainly the learned Judge gave his decision upon the merits of the case. Nevertheless, reference was made to the following observations:—

“Dirt and sand are not constituents of *Ajowan* as it cannot be. Either they get mixed up when collected on the ground or they are deliberately mixed with *Ajowan* subsequently. Even if they get mixed up with *Ajowan* when collected on the ground, a vendor has no right to sell *Ajowan* mixed with dirt and sand when a purchaser asks for *Ajowan*. That would be selling something not of the nature, substance or quality of the article that is demanded

by the purchaser. Asking for *Ajowan* is not the same thing as asking for *Ajowan* mixed with dirt and sand. In such circumstances *Ajowan* would be deemed to be adulterated. It is not necessary under section 2(1) (a) that it should be proved that any poisonous matter or any matter which adversely affects the human system, directly or indirectly, due to the taking of the sample was present in the sample."

Accordingly learned counsel for the State urged before me that if any impurity is found in an article of food it should be deemed to be adulterated. This, to my mind, is too wide a proposition to be accepted, the simple reason being that if such were the intention of the Legislature there was no need either for prescribing the standard of quality or purity of an article of food or enacting clauses (a) to (k) in section 2(1) of the Act. It will be pertinent to refer here a case of *Ajowan* decided by this Court *vide*,—*Amar Singh v. The State of Punjab*, (5). In that case when the sample of *Ajowan* was taken in the year 1970, no standard of its purity was prescribed. Later, in February, 1973 Rule A. 05.23 was added laying down that "the proportion of organic and inorganic extraneous matter shall not exceed 3 per cent, and 2 per cent respectively. The seeds shall be free from living insects, insect fragments and rodent contamination visible to the eyes." Following (1) (*supra*) (*M. V. Krishnan Nambissan v. State of Kerala*), Mr. Justice Pritam Singh Pattar, J. set aside the conviction and acquitted the accused. Framing of above said rule A. 05.23 is a clear example indicating tolerance of impurities in an article of food to some extent. That explains why in clause (b) of section 2(1) of the Act, the bare existence of any extraneous substance in an article of food will not make it 'adulterated'. The other essential ingredient in clause (b) is that the extraneous substance affects injuriously the nature, substance or quality of the article of food. For the foregoing reasons, with due respect, I am unable to agree with the above quoted observations of the learned Judge in the case of the Corporation of Calcutta. This leads me to the conclusion that the case in hand is not covered by clause (a) of section 2(1) of the Act. It deserves particular mention here that even the trial Magistrate did not rely on this clause for framing the charge against the petitioner.

Ishwar Dass v. State of Haryana (S. C. Mital, J.)

(7) To bring the case within the ambit of clause (b) of section 2(1) of the Act learned counsel for the State placed reliance on a Division Bench decision of Delhi High Court in *Ram Murti v. Municipal Corporation of Delhi*, (6). In that case *Sabat Amchoor*, containing extraneous matter to the extent of 0.79 per cent, was declared 'adulterated' under section 2(1) (b) of the Act. Jagjit Singh, J. speaking for the Bench observed that "clause (b) of section 2(1) of the Act envisages two contingencies, namely, (i) the article *per se* contained any other substance which affects its substance or quality or (ii) if the article is so "processed as to affect injuriously the nature, substance or quality thereof" the same is said to be adulterated. The words 'affect injuriously the nature' do not go with the earlier words of the sub-clause, namely, "if the article contains any other substance" but clearly go with the words "if the article is so processed."

(8) For facility, clause (b) of section 2(1) of the Act may again be quoted:—

"(b) if the article contains any other substance which affects, or if the article is so processed as to affect, injuriously the nature, substance or quality thereof."

It will be noticed that the comma precedes the word "injuriously". If it were not so, then I would have agreed with the view expressed by the learned Judges. The placing of the comma as it is, makes me think that the word "injuriously" goes not only with the second part but also the first part of the clause.

(9) Thus, there is no escape from the conclusion that the prosecution, in the present case as required, has failed to show that the existence of organic and inorganic matters injuriously affected the nature, substance or quality of the gond. Their Lordships of the Supreme Court in *R. P. Kapur v. State of Punjab*, (7) laid down that where the evidence adduced clearly or manifestly fails to prove the charge, inherent powers of the High Court to quash the proceedings at an interlocutory stage can be invoked.

(10) In the result, I allow this petition and quash the proceedings.

H.S.B.

(6) 1975(1) All India Prevention of Food Adulteration cases 149.

(7) A.I.R. 1960 S.C. 866.