

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

C R I M I N A L A P P E A L N O (S) . 1 1 6 8 O F 2 0 1 0

VINOD

Appellant(s)

VERSUS

STATE OF M.P.

Respondents(s)

Date : 27/05/2014 This appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN
HON'BLE MR. JUSTICE A. K. SIKRI
(VACATION BENCH)

For Appellant(s)

Mr. Nitesh K. Rana, Adv.
Mr. Vishnu Sharma, Adv.

For Respondent(s)

Ms. Sakshi Kakkar, Adv.
Mr. C.D. Singh, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is dismissed, in terms of the signed order.

(O. P. SHARMA)
COURT MASTER

(M. S. NEGI)
ASSISTANT REGISTRAR

(Signed order is placed on the file)

Signature Not Verified

Digitally signed by
Om Parkash Sharma
Date: 2014.05.30
16:12:59 IST
Reason:

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I N T H E S U P R E M E C O U R T O F I N D I A

C R I M I N A L A P P E L L A T E J U R I S D I C T I O N

C R I M I N A L A P P E A L N O (S) . 1 1 6 8 O F 2 0 1 0

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O R D E R

The Food Inspector inspected the shop of the appellant which is situated at Karera, District Shivpuri, Madhya Pradesh on 9.11.1990 and found a packed bag of rice in the shop. The Food Inspector purchased 750 gms. of rice for sample and issued notice in Form No.6 attached with the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'PFA Act'). This sample was sent to the Public Analyst, Bhopal for examination on very next date, that is 10.11.1999. The Food Inspector received the report of the Public Analyst on 28.12.1990 to the effect that the said rice sample was found to be adulterated as there were dead insects in the rice. On this basis, the appellant was prosecuted and after the trial, the Chief Judicial Magistrate, Shivpuri, Madhya Pradesh vide order dated 28.7.2000 convicted the appellant under Section 7(1) read with Section 16(1)(a)(i) of Prevention of Food Adulteration Act,

1954. He awarded the sentence of one year imprisonment alongwith fine of Rs.1000/-. On appeal this conviction and sentence was upheld by the First Additional Sessions Judge, Shivpuri. In further appeal to the High Court, the High Court vide impugned judgment and order dated 22.3.2007 has also maintained the conviction but reduced the sentence to the minimum prescribed under the PFA Act, namely, six months.

Against that judgment, present appeal is filed.

It is not in dispute that in the rice, dead insects were found when the sample was examined by the Public Analyst. The definition of "Adulterated" as contained in Section 2(i)(a) of the Act reads as under:

"[(ia)] "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 to his prejudice, or is not of the nature, substance or quality which it purpots 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;

(c) if any inferior or cheaper substance has been substituted wholly or in part for the article so as to affect injuriously the nature, substance or quality thereof;

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(d) if any constituent of the article has been wholly or in part abstracted so as to affect injuriously the nature, substance or quality thereof;

(e) if the article had been prepared, packed or kept under insanitary conditions whereby it has become contaminated or injurious to health;

(f) if the article consists wholly or in part of any filthy, putrid, rotten, decomposed or diseased animal or vegetable substance or is insect-infested or is otherwise unfit for human consumption;

(g) if the article is obtained from a diseased animal;

(h) if the article contains any poisonous or other ingredient which renders it injurious to health;

(i) if the container of the article is composed, whether wholly or in part, of any poisonous or deleterious substance which renders its contents injurious to health;

(j) if any colouring matter other than that prescribed in respect thereof is present in the article, or if the amounts of the prescribed colouring matter which is present in the article are not within the prescribed limits of variability;

(k) if the article contains any prohibited preservative or permitted preservative in excess of the prescribed limits;

(l) 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 renders it injurious to health;

(m) if the quality or purity of the article falls below the prescribed standard or its constituents

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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 primary 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."

As per clause (f) of the aforesaid definition, the product would be treated as 'adulterated' if it is "insect infested". Based on that, the submission made by learned counsel for the appellant is that the Public Analyst nowhere found the sample to be "insect infested" as the report merely was that dead insects were found. The submission was that by mere presence of dead insects, it is not necessary that the food would be insect infested as well. For the purpose of holding that the food is insect infested, the whole food must be infested due to the presence of dead insects. In support of his submission, learned

counsel for the appellant has referred to few judgments of this Court.

The enumeration of the expression 'insect infested' is not in doubt. However, we find from the report of Public Analyst that after stating that the sample contained dead insects, the Public Analyst has particularly mentioned that the sample is adulterated vide Section 2(ia)clause (b) as per standards of provisions laid down under the Prevention of Food Adulteration Rules. It is thus clear from the above that as a matter of fact, the presence of dead insects was found to have adulterated the food by making it insect infested. The said report was produced as Exhibit P.11 in the trial Court. Significantly, there is no cross-examination by the counsel for

defence on this aspect and no question was put to him as to how the Public Analyst came to the conclusion that dead insect made the food adulterated by making it insect infested. In the absence of such cross-examination, the court below rightly relied upon the report of the Public Analyst which findings recorded was that food has been found to be adulterated within the meaning of the aforesaid provisions. This finding of fact is recorded by the three courts below. There is no reason to interfere with these findings which are not perverse. We thus, do not find any merit in the appeal. It is accordingly dismissed.

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During the pendency of this appeal, the appellant was enlarged on bail. The appellant is directed to surrender within six weeks, to serve out the remaining sentence failing which the Chief Judicial Magistrate, District Shivpuri, Madhya Pradesh, shall take the appellant into custody and send him to jail to serve out the remaining sentence.

.....J.
[DR. B.S. CHAUHAN]

NEW DELHI
MAY 27, 2014

.....J.
[A.K. SIKRI]

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