

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.384 OF 2007

RANBIR ARYA

..APPELLANT(S)

VERSUS

THE STATE (U.T. OF CHANDIGARH)

..RESPONDENT(S)

O R D E R

1. This appeal is directed against the judgment and order passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Revision No.1217 of 2006, dated 05.06.2006. By the impugned judgment and order, the High Court has dismissed the Revision Petition filed by the appellant and upheld the order of conviction and sentence passed by the Trial Court.

2. Brief facts of the prosecution case are: On 06.11.1992, Food Inspector, M.K Sharma, inspected the premises of the Hotel Regency where the appellant was present being the General Manager of the Hotel and found 5 kg of tomato soup for sale. The food inspector purchased a sample of the soup measuring 1500 ml for the purpose of analysis of the same. In furtherance of the above, one part of the sample was sent to the Public Analyst,

Chandigarh.

3. As per the report of the Public Analyst, the sample was found to be containing colour with added S.S.Y Coaltar Dye. Since the sample was found to be adulterated, a complaint was filed before the Chief Judicial Magistrate and notice in accordance with the provisions of Section 13(2) of the Prevention of Food Adulteration Act (for short, "the Act") was issued to the appellant. The appellant was charge-sheeted under Section 16(1)(a)(i) read with Section 7 of the Act. The charge was read over and explained to the appellant to which he pleaded not guilty and the case was committed to trial. The appellant was examined under Section 313 of the Code of Criminal Procedure, 1973 and he stated that tomato juice was added in the tomato soup along with the colour but the tests conducted by the Public Analyst are not sufficient to detect the colour.

4. The prosecution relied on the evidence adduced by the Food Inspector who was present at the hotel and took the sample of the soup and the report of the Public Analyst in order to substantiate its case. The counsel for the appellant would contend therein that there was no

complaint from any of the customers of the hotel who were present while the Food Inspector carried out his visit. He further contended that the appellant has not sent the copy of the report of the Public Analyst.

5. The learned Magistrate rejected the aforesaid contentions raised by the counsel for the appellants observing that it is not necessary that there must be a complaint from any customer regarding adulteration in the food article and held that the Health Authority is duly competent to conduct a raid and take sample. Further, as per the evidence on record it is clear that the appellant has indeed sent a copy of the report of the Public Analyst. After appreciating the evidence on record, the learned Magistrate convicted the appellant for the offence under Section 16(1)(a)(i) read with Section 7 of the Act and sentenced the appellant to rigorous imprisonment for a period of six months and imposed a fine of Rs.1,000/-, in default of payment of fine, to further rigorous imprisonment for a period of two months, by order dated 03.11.2000.

6. Aggrieved by the order passed by the learned Magistrate the appellants preferred an appeal before the

Sessions Court.

7. The counsel for the appellant would submit that there is no standard provided for the quality of the tomato soup in the Act and the sample cannot be termed as adulterated. Further, the finding in the Public Analyst report is not conclusive on the basis of the tests conducted by the Public Analyst.

8. The counsel for the respondent would submit that as per the definition of adulteration under Section 2(ia), the sample in question was found to be containing non-permitted colour and accordingly, the learned Magistrate has rightly convicted the appellant.

9. The learned Sessions Judge, after hearing the parties to the *lis*, rejected the contentions of the appellant and observed that as per Section 7 of the Act a person can be held liable for adulteration or misbranding of food for the purpose of sale, storage or distribution in contravention of the Act or the Rules made thereunder. As far as the standard of quality of food is concerned various rules have been framed, Appendix-B of the Prevention of Food Adulteration Rules (for short, "the Rules"), definition of food and standard of quality of

some food items is mentioned, although tomato soup and standard of quality of the same is not mentioned in Appendix-A, notwithstanding, as per Rule 23 of the Rules addition of any colouring matter to any article of food is prohibited unless such an addition is specifically permitted in the Rules. Rule 28 provides a list of permitted synthetic food colours and Rule 29 provides the list of the food articles in which such an addition of synthetic food colours is permitted. Rule 29(g) does permit addition of permitted synthetic food colours to flavouring agents and soup powder for the period upto 31.12.1977, however, the said rule will not come in rescue of the appellant since it is clear from his statements under Section 313 of the Code of Criminal Procedure, 1973 that the soup was not prepared from soup powder but from tomato juice and colour was added to it.

10. The Trial Court further rejected the plea of the appellant regarding the report of the Public Analyst being inconclusive on the ground that it is an undisputed and admitted fact by the appellant that colour was added to the soup as is also found in the Public Analyst report and as such no further evidence is required to prove the same.

The Trial Court thus rejected the contentions raised by the appellant and upheld the order of the Chief Judicial Magistrate by its order dated 01.06.2006.

11. Aggrieved by the aforesaid order, the appellant filed Criminal Revision before the High Court.

12. The counsel for the appellant would submit before the High Court that as per Rule 29 usage of synthetic food colours is permitted in so far as canned tomato juice is concerned. The High Court rejected the aforesaid contention observing that the tomato juice was prepared in the restaurant itself and it was not the case that the canned tomato juice was being served. The High Court observed that there is no infirmity in the order of conviction and sentence passed by the Trial Court and accordingly dismissed the revision by order dated 05.06.2006.

13. Aggrieved by the order so passed by the High Court, the appellant is before us in this appeal.

14. We have heard Shri N.Hariharan, learned senior counsel for the appellant and learned counsel for the respondent.

15. The learned senior counsel for the appellant would

submit that as per Section 17 of the Act, the person who has been nominated under Section 17(2) to be in charge of and responsible to the company and not the General Manager of the Company shall be liable to be proceeded against. He would further submit that mixing the additive such as in the present case is allowed under the Rules in so far as canned tomato juice is concerned and therefore by adding the same additive to tomato soup does not amount to adulteration.

16. In so far as the contention raised by the learned senior counsel for the appellant regarding the General Manager not being liable to be proceeded against is concerned, the same has not been canvassed before any of the forums below and it cannot be permitted to be taken for the first time at this appellate stage.

17. Further, the contention with respect to mixing of the additive being permissible in tomato juice is concerned, the legislature has made the distinction between tomato soup and tomato juice in the Rules wherein the use of permitted synthetic food colours is restricted to the articles enumerated in the Rules. Rule 23 clearly provides that addition of a colour to any article of food except as

specifically permitted by the Rules is prohibited. It is clear that tomato soup is not included in the list of food articles in which usage of such synthetic food colours is permitted and therefore addition of colour in the present case to the tomato soup was not permissible under the Act. Hence, in view of the above, we reject the contentions raised by the learned senior counsel for the appellant.

18. In light of the aforesaid, we are of the considered opinion that the order passed by the Trial Court as upheld by the High Court needs no interference by this Court. Accordingly, the appeal is dismissed.

19. However, the appellant is granted 45 days time from today to surrender before the jurisdictional police authorities to serve out the remaining period of sentence.

Ordered accordingly.

.....CJI
(H.L. DATTU)

.....J.
(ARUN MISHRA)

NEW DELHI,
SEPTEMBER 09, 2015.

ITEM NO.7

COURT NO.1

SECTION IIB

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

Criminal Appeal No(s). 384/2007

RANBIR ARYA

Appellant(s)

VERSUS

THE STATE (U.T. OF CHANDIGARH)

Respondent(s)

(with office report)

Date : 09/09/2015 This appeal was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN MISHRAFor Appellant(s) Mr.N.Hariharan, Sr.Adv.
Mr.Vaibhav Sharma, Adv.
Mr. Rajeev Sharma,Adv.

For Respondent(s) Mr. Jatinder Kumar Bhatia,Adv.

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

The appeal is dismissed and the appellant is granted 45 days' time from the date of the order to surrender before the jurisdictional police authorities to serve out the remaining period of sentence, in terms of the signed order.

(G.V.Ramana)
AR-cum-PS
(Signed order is placed on the file)

(Charanjeet Kaur)
AR -cum - PS