

Municipal Corporation of Delhi

Vs

Kacheroo Mal

Criminal Appeal No. 174 of 1971

(R.S. Sarkaria, A.C. Gupta JJ)

29.09.1975

JUDGMENT

SARKARIA, J. -

1. This appeal by special leave is directed against a judgment of a learned Single Judge of the High Court of Delhi. It arises out of these circumstances.

2. On January 8, 1969, B. R. Kochhar, Food Inspector, purchased 600 grams of kaju-tukra (cashewnut pieces) as sample for analysis from the grocery shop of Kacheroo Mal, respondent in Khari Baoli, Delhi. The sample was divided into three equal parts and sealed into three bottles. An inventory was prepared which was read over and explained to the respondent, who thereafter signed it. One of these bottles was given to the respondent, one was retained by the Inspector, while the third was handed over to the Public Analyst on the following day for examination.

The Public Analyst has reported :

Date of Analysis : 10-1-1969.

Insect-infested pieces of kaju : 21.9% and I am of the opinion that the same is adulterated due to insect-infested pieces of kaju to the extent of 21.9%.

3. On the preceding facts, the Food Inspector filed a complaint for prosecution of the respondent in respect of an offence under Section 7 read with Section 16 of the Prevention of Food Adulteration Act, 1954 (hereinafter called the Act). The trial Magistrate convicted and sentenced him for six months' rigorous imprisonment with a fine of Rs. 1,000. Kacheroo Mal's appeal before the Additional District and Sessions Judge, failed. Against the order of the Additional Sessions Judge, he preferred a revision to the High Court. The revision was heard by a learned Judge who held that since to living insect was found in the sample pieces examined by the analyst, the same could not be called "insect-infested" with the contemplation of Section 2 (i)(f) of the Act. The learned Judge was of the opinion "that the presence of living insects is necessary before an article could be called "insect-infested". According to him,

the intention of the legislature by using this word in Section 2(i)(f) in the sentence 'if the article . . . is insect-infested' clearly is that at the time of analysis infestation by insects should be present.

It was further observed that if only dead insects were present, the sample could be called 'insect-damaged' and not 'insect-infested'. Since the report of the Public Analyst did not show the presence

of living insects in the kaju sample pieces, it was concluded that the same could not be said to be 'adulterated'. On this reasoning, the revision-petitioner was allowed and the conviction of Kacheroo Mal was set aside. Hence this appeal, by the Municipal corporation of Delhi.

4. Having heard the learned Counsel on both sides, we are of opinion that the construction put by the learned Judge of the High Court is manifestly erroneous. It has been disapproved by a Division Bench of the same High Court in *Dhanraj v. Municipal Corporation of Delhi* (ILR (1970) 2 Delhi 681). Indeed, Mr. D Mukherji, the learned Counsel for Kacheroo Mal has not tried to support it.

5. The Act has been enacted to curb and remedy the widespread evil of food adulteration, and to ensure the sale of wholesome food to the people. It is well-settled that wherever possible, without unreasonable stretching or straining, the language of such a statute should be construed in a manner which would suppress the mischief, advance the remedy, promote its object, prevent its subtle evasion and foil its artful circumvention. The construction adopted by the learned Judge is repugnant to this cardinal rule of interpretation. With respect, it is less rational, but too literal, narrow and pedantic. It would be straining one's common sense to say that an article of food which is infested with living insects and is consequently unwholesome for human consumption, ceases to be so and becomes wholesome, when these insects die out and the 'infestation' turns into an infestation by dead insects. The expression 'insect-infested' is to be construed in the context of an article of food meant for human consumption. It takes its hue from the phrase 'unfit for human consumption' occurring at the end of the sub-clause. Thus construed, it means that the article so abounds in insects, dead or living, that it is rendered unfit for human consumption. We need not labour the point further. It has been lucidly brought out by Jagjit Singh, J. who spoke for the Bench of the High Court in *Dhanraj's* case (*supra*), at page 688 of the report. We fully approve that reasoning and would extract it here :

The expression 'insect-infested' was not defined in the Prevention of Food Adulteration Act and has, therefore, to be given its ordinary meaning. The word 'infest' appears to have been derived from the latin word 'infestate' which meant 'to assail or molest'. According to the Oxford English Dictionary (Volume V at page 259) the word 'infest' means "To attack assail, annoy or trouble (a person or thing) in a persistent manner", "to visit persistently or in large number for purposes of destruction or plunder", "to swarm in or about, so as to be troublesome". In the same dictionary the word 'infestation' is stated to mean : "The action of infesting, assailing, harassing, or molesting". It is also mentioned that the word is now used especially for "insects which attack plants, grain, etc. in large swarms". Thus an article of food would be "insect-infested", if it has been attacked by insects in swarms or numbers. It however seems to us that there is no justification for the view that insect-infestation would only continue so long as the insects continue to be alive. If an article of food is attacked by insects in large swarms or numbers and for some reason those insects die, the mere fact that the article of food has no longer living insects but has dead insects will not change its character of being insect-infested.

6. In view of the construction that the expression 'insect-infested', includes infestation even by dead insects, the further point to be considered is, whether mere insect-infestation, without more, would be sufficient to hold the article to be 'adulterated' within the meaning of sub-clause (f) of clause (i) of Section 2 of the Act.

7. Mr. D. Mukherji, learned Counsel for the respondent submits that mere proof of the fact that a certain number of pieces of the sample sent to the Public Analyst were found to be insect-infested, could not make the article "adulterated" in terms of the aforesaid sub-clause (f) unless it was proved

further that the article was unfit for human consumption. It is stressed there is no proof of that essential fact on the record. It is pointed out that in his report, the Public Analyst has not said that the insect-infestation found by him had rendered the article unfit for human consumption. In this connection, Counsel has invited attention to an application which was made by Kacheroo Mal in the first appellate Court, praying that the Public Analyst be summoned and examined as a witness. HE has further drawn our attention to an order, dated December 17, 1970 of the High Court which shows that on the request of Mr. Bishamber Dayal, Counsel for the Municipal Corporation, the Court summoned Mr. Sudama Roy and Mr. P. P. Bhatnagar, Public Analysts, for December 21, 1970. The point sought to be made out is that in this case, the prosecution, the defence and the High Court all felt that the report of the Public Analyst was vague, inadequate and deficient, and in the absence of clear proof of the sample, being unfit for human consumption, it could not constitute a valid basis for holding the article to be 'adulterated' within the meaning of Section 2(i)(f).

8. As against the above, Mr. F. S. Nariman, the learned Counsel for the appellant corporation submits that in the case of food articles for which no minimum standard of purity is prescribed, the moment it is proved at a proportion or percentage of the article - not being a proportion or percentage as would be covered by the rule, *de minimis non curat lex* - is putrid, filthy, disgusting, decomposed or insect-infested, it would be deemed to be unfit for human consumption and, therefore, adulterated within the contemplation of Section 2(i)(f). In any case, proceeds the argument, it is implicit in the report of the Public Analyst that the article in question was found unfit for human consumption. This implication, according to the learned Counsel, flows from the Analyst's conclusion that the article was "adulterated." Counsel has criticised the view taken by the Bench in Dhanraj's case (*supra*), that if for an article of food, no standard of quality or purity has been prescribed or no limits have been prescribed for the validity of its constituents, then sub-clause (1) of clause (f) of Section 2 will not apply, and that the Public Analyst is not competent to say as to what extent of insect-infestation would make the article "adulterated" .

9. The relevant part of Section 2 reads as under :

(i) "adulterated" - an article of food shall be deemed to be adulterated -

##(a) to (e) * * * *##

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

10. The phrase "or is otherwise unfit for human consumption" can be read conjunctively as well as disjunctively. If it is read conjunctively, that is, in association with what precedes it, sub-clause (f) with slight consequent rearrangement and parenthesis would read like this :

If the article is unfit for human consumption on account of (a) its consisting wholly or in part of any filthy, putrid, disgusting, rotten, decomposed or diseased animal or vegetable substance or being insect-infested, (b) or on account of any other cause.

If this view of the sub-clause, proof of "unfitness of the article for human consumption", is a must for bringing the case within its purview.

11. If the phrase is to be read disjunctively, the mere proof of the whole or any part of the article being "filthy, putrid, disgusting, rotten . . . or insect-infested" would be conclusive to bring the case

within the mischief of this sub-clause, and it would not be necessary in such a case, to prove further that the article was unfit for human consumption.

12. We would prefer the first construction as it comports best with reason, common sense, realities, the tenor of this provision and the main purpose and scheme of the Act. The adjective "filthy", "putrid", "disgusting", "decomposed", "rotten". . "insect-infested" refer to the quality of the article and furnish the indicia for presuming the article to be unfit for human consumption. But the presumption may not be conclusive in all cases, irrespective of the character of the article, and the nature and extent of the vice afflicting it. This is particularly so, where an article is found to be 'insect-infested'. There are some article of food in respect of which the Rules framed under the Act lay down the minimum proportion of insect-infestation or insect damage which is not deemed to make the articles unfit for human consumption. For instance, in the case of nutmeg (jaiphal) the proportion of extraneous matter and infestation shall not exceed 3.0 per cent by weight (Item A. 05.16 of the Prevention of Food Adulteration Rules, 1955). In the case of coriander (dhania) the proportion of extraneous matter including dirt and insect-damaged seeds shall not exceed 8.0 per cent by weight (Item A. 05.08). Similarly, in the case of foodgrains, the proportion of 20 milligrams of insect-damaged grain per 100 milligrams sample of the grain, and 5 per cent by weight of fungus - damaged grain is not considered enough to treat it as adulterated either under sub-clause (f), or any of the other sub-clauses of Section 2(i).

13. These illustrations unmistakably show that the mere fact that any part of an article was insect-infested may not be conclusive proof of its being 'adulterated' under sub-clause (f). In order words, all the adjectives used in the sub-clause are a presumptive and not an absolute test of the quality of the article being unfit for human consumption. To be more particular, in the case of an article in respect of which the Rules do not prescribe any minimum standard or purity of any minimum proportion of insect-infestation that would exclude it from the definition of 'adulterated article', it will be a mixed question of law and fact, whether the insect-infestation is of such a nature, degree and extent as renders the article unfit for human consumption. The opinion of the Public Analyst who examines and analyses the sample, as to the fitness or otherwise of the sample for human consumption, would constitute legal evidence. A Public Analyst is supposed to be specially skilled in the science of dietetics. As an expert in the science, he is competent to opine and testify about this fact.

14. The report of the Public Analyst, including his opinion on this point, is per se evidence by virtue of Section 13 of the Act. But this does not mean that his ipse dixit would be conclusive and binding on the court. To treat it so would be to leave the determination of the guilt of the accused to the whims and fancies of the Public Analyst. The Act would not countenance such abdication of its judicial function by the court, leaving the case - as it were - to be tried by the analyst. It is for the Court to weigh his opinion and reach it own finding.

15. In Dhanraj's case (supra), the High Court construed this sub-clause thus :

The word 'otherwise' in sub-clause (f) of clause (i) of Section 2 does suggest that all the adjectives used earlier refer to the quality of the article being unfit for human consumption. To fall under that sub-clause an article of food must be unfit for human consumption because it consists wholly or in part of any filthy, putrid, disgusting, rotten, decomposed or diseased animal or vegetable substance or because it is insect-infested or on account of any other cause.

16. If we may say so with respect, this is a correct exposition of the law embodied in Section 2(i)(f). We need only add for the sake of elucidation, that these adjectives indicate presumptive but not absolute criteria as to the quality of the article. In each case it must be proved that the article was unfit human consumption. In the case of articles for which the Rules lay down any minimum standard of purity with reference to any of the vices specified in this sub-clause; mere proof of the fact that the impurity was in excess of that countenanced by the prescribed standard would be conclusive to show that the article was unfit for human consumption.

17. In regard to cashewnuts, there is no statutory provision prescribing any minimum standard of purity with reference to the vice of 'insect-infestation' of other adjectives used in this sub-clause. It will therefore, be for the judge of fact to decide upon the evidence in the case, whether the insect-infestation found was of such a nature and extent as to make it unfit for human consumption. We have already pointed out that the report of the Public Analyst, is admissible in proof of this fact.

18. In Dhanraj's case (supra), the High Court after holding that in order to bring a case within the purview of the said sub-clause (c), it must be proved that the article is unfit for human consumption, proceeded to say something - which in our opinion is not correct - as to the proof of this issue, as under :

By referring to Appendix B to the Prevention of Food Adulteration Rules, 1955 the learned Counsel for the petitioners also urged that as for purposes of sub-clause (1) of clause (i) of Section 2 no standard or quality had been prescribed for kaju the Public Analysts were not justified in treating the samples found insect-infested above 5% to be adulterated. There can hardly be any doubt that if for an article of food no standard of quality or purity has been prescribed or no limits have been prescribed for the variability of its constituents then sub-clause (f) of clause (i) of Section 2 will not apply and for considering whether or not the article is adulterated it will have to be seen if any other portion of the definition of "adulterated" is applicable. Of course as no standard or quality of purity was prescribed for kaju it was not competent for any Public Analyst to himself fix any such standard and to say that he will not treat kaju which is insect-infested to the extent of 5% as not adulterated but will regard any higher percentage of insect-infestation to make the article adulterated. In the case of Jagdish Prasad alias Jagdish Prasad Gupta v. State of West Bengal ((1972) 1 SCC 326 : 1972 SCC (Cri) 63), it was held by their Lordships of the Supreme Court that the standards of quality and limits of variability fixed by Government are not even subject to alteration or variation by courts.

19. We are unable to agree with the proposition propounded by the High Court that if for any article of food no standard of quality or purity has been prescribed or no limits have been prescribed for the variability of its constituents, then sub-clause (f) of clause (i) of Section 2 will not apply.

20. As already discussed, the governing ingredient of sub-clause (f) is the quality of the article being unfit for human consumption. If the quality of the article suffers from any of the vices, i.e. filthiness, putrefaction, insect-infestation etc. this sub-clause would be inexorably attracted and on proof of the article being unfit for human consumption, the requirements of the clause would be completely satisfied. Such proof may consist of the report of the Public Analyst. The value of his report however would depend on its being self-contained, and comprising the necessary data and reasons for his opinion. It is desirable that the Public Analyst should express his opinion on all the relevant point with reference to the particular sub-clause or sub-clauses of Section 2(i) of the Act.

This will not only enhance the value of his report but also facilitate the task of the court. If it is merely dogmatic, that would be circumstances detracting from its evidential value, though it may not render it inadmissible. Ultimately the decision rests with the court which would take into account all the circumstances of the case including the character of the article, the nature and the extent of the insect-infestation and other relevant factors. If the Public Analyst says 'that since the insect-infestation in the kaju pieces is less than 5 per cent, the sample, in his opinion, is adulterated' then all that can be said about it is that the opinion is dogmatic. He should say with particularity as to how and why the percentage of insect-infestation found by him renders the sample unfit for human consumption. The additional reasons which he might give, in addition to a certain proportion of the sample being insect-infested, would enhance the value of his report still further. It is not possible for us to speculate the reasons which the Public Analyst as an expert in the science might advance in support of his opinion. By giving the opinion that if the insect-infestation is above 5 per cent, the sample of kaju pieces would be unfit for human consumption, the expert would not be laying down any standard or quality or limits of variability which the legislature in its wisdom has not prescribed. His opinion would be just a piece of evidence which has to be evaluated by the court in the circumstances of a particular case to reach a finding as to the unfitness or otherwise of the sample for human consumption. The question of varying any standard of quality or limits of variability in the case of kaju pieces does not arise because no such standard has been fixed either in the Act or in the rule framed thereunder. Reference to what this Court said in Jagdish Prasad Gupta's (supra), made by the High Court was thus not in point.

21. In the instant case the report of the Public Analyst is silent as to whether on account of the insect-infestation found by him in the sample of kaju pieces, the article was unfit for human consumption. The respondent, as already noticed, has made an application to the Additional Sessions Judge, in appeal, for summoning the Public Analysts. His request was however declined. When the case was in the High Court, Counsel for the Municipal Corporation, also, left that the report was vague, incomplete and deficient, and, on his request, the High Court actually summoned the Public Analysts, M/s. Sudama Roy and P. P. Bhatnagar, as witnesses, for December 21, 1970, for evidence. Despite the adjournment granted by us, the learned Counsel for the parties have not been able to throw light as to what had happened in the High Court on December 21, 1970.

22. The Public Analysts, as is apparent from the judgment of the learned Single Judge of the High Court have been expressing different opinions on different occasions as to when an article can be said to be 'insect-infested'. In the circumstances of this case therefore, it had become necessary to call the Public Analysts as witnesses to enable them to elucidate their opinion and amplify report and to allow the parties to test it by cross-examination. For this purpose, on our first reaction, we were inclined to remit the case to the High Court for redicision. But the learned Counsel for the Municipal Corporation has brought to our notice that the Public Analyst, Mr. Sudama Roy whose report is in question - is no longer in the service of the corporation and is not residing at Delhi. It is obvious that it will not be possible to procure Mr. Roy's attendance in court without an amount of delay and inconvenience which will be unreasonable in the circumstances of the case and will cause undue hardship to the respondent who has has mere than his normal share of the mental suffering, harassment and expense which go together with protracted criminal proceedings, extending in the present case over 81 months. No useful purpose will therefore be served by remanding the case for a fresh decision. Taking into consideration all the circumstances of the case, we do not think it proper to disturb the acquittal of the respondent.

23. Subject to the clarification of the points of law and the reversal of the view taken by the High Court as to the meaning and scope of Section 2(i)(f), the appeal is dismissed.

</html