

Municipal Corporation of Delhi

Vs

Tek Chand Bhatia

Criminal Appeal No. 195 of 1973

(Syed M. Fazal Ali, A.P. Sen JJ)

11.10.1979

JUDGMENT

SEN, J. –

1. In this appeal, on certificate, from a judgment of the Delhi High Court, by which it acquitted the respondent of an offence punishable under Section 16(1)(a) of the Prevention of Food Adulteration Act, 1954, for the alleged contravention of Section 7(1) thereof, two questions arise, namely, (1) whether even though the Public Analyst found in one of the reports, Ex. PE that a particular sample of cashew nuts purchased from the respondent's shop was 'insect-infested' to the extent of 20.6 per cent and that it contained living insects, that circumstances by itself was not sufficient to warrant a conviction, and (2) whether the respondent was protected by sub-section (2) of Section 19 of the Act inasmuch as he had purchased the cashew nuts in sealed tins from a dealer in cashew nuts under the invoice Ex. DW 3/A, which contained a description of the goods as 'SW Best Borma'.

2. The facts of the prosecution case are these. The respondent is a partner of the firm M/s. Narain Dass Tek Chand, Khari Baoli, Delhi. The firm is engaged in wholesale business in dry fruits including a cashew nuts which it gets from different manufacturers. On August 1, 1968 three samples of cashew nuts were taken from its shop by the two Food Inspectors, S. L. Mehta, PW 1 and H. K. Bhanot, PW 3 from three sealed tins supplied by Sri Venkateswara Cashews, Panruti. These samples were duly forwarded to the public Analyst, Delhi who by his three reports dated August 3, 1968 in Form III, Exs. PE, PE/1 and PE/2 found that all the three samples taken were 'insect-infested'. Of these, two were insect-infested to the extent of 20.6 and 20.7 per cent and the third to the extent of 5.63 per cent.

3. The Magistrate Ist Class, Delhi acquitted the respondent holding (1) that the respondent was a sleeping partner residing at Kanpur, and that there was nothing to show that he was in charge of an was responsible for the conduct of the business which was carried on at the shop of the firm at Khari Baoli, Delhi; (2) that, alternatively, the invoice Ex. DW 3/A produced by the respondent contained a warranty which absolved him from liability; and (3) that the ratio of living insects to dead insects not having been given in the Public Analyst's report, there being no evidence to show that the cashew nuts in question were deleterious to health, and if so, how much harmful effect it would have upon the health of a person consuming them, the mere fact of the cashew nuts being insect-infested was not sufficient to bring home the charges.

4. The Delhi High Court without going into the question as to whether the respondent was protected under sub-section (2) of Section 19, maintained the order of acquittal, holding that merely because an article of food is insect-infested, it cannot be treated as 'adulterated' within the meaning of

Section (2)(i)(f) if the Act unless it is further proved to be 'otherwise unfit for human consumption' within the meaning of the Section following its decision in *Dhanraj v. Municipal Corporation of Delhi* (ILR (1970) 2 Delhi 681). In that view, it did not touch upon the other question namely, whether the invoice Ex. DW 3/A was sufficient warranty in law as to the purity of the article of food sold.

5. The term 'adulterated' as defined in Section 2(i)(f) reads :

(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.

6. In *Dhanraj* case (ILR (1970) 2 Delhi 681) the High Court construed sub-clause (f) 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.

7. We are of the opinion that the High Court was clearly wrong in its interpretation of Section 2(i)(f). On the plain language of the definition section, it is quite apparent that the words 'or is otherwise unfit for human consumption' are disjunctive of the rest of the words preceding them. It relates to a distinct and separate class altogether. It seems to us that the last clause 'or is otherwise unfit for human consumption' is residuary provision which would apply to a case not covered by or falling squarely within the clauses preceding it. If the phrase is to be read disjunctively the mere proof of the article of food being 'filthy, putrid, rotten, decomposed ... or insect-infested' would be per se sufficient to bring the case within the purview of the word 'adulterated' as defined in sub-clause (f) and it would not be necessary in such a case to prove further that the article of food was unfit for human consumption.

8. It is, however, pointed out that the construction placed by the High Court in *Dhanraj* case ILR (1970) 2 Delhi 681 upon Section 2(i)(f) of the Act has been received with approval by this Court in *Municipal Corporation of Delhi v. Kacheroo Mal* ((1976) 2 SCR 1, 6 : (1976) 412, 417 : 1976 SCC (Cri) 30) where it is observed that 'the construction placed by the High Court in *Dhanraj* case ILR (1970) 2 Delhi 681 is the correct exposition of the law embodied in Section 2(i)(f)'. It is added for the sake of elucidation that the adjectives which precede the phrase 'or is otherwise unfit for human consumption' indicates presumptive but not absolute criteria as to the quality of article of food. If we may say so with respect, we have reservations about the correctness of this decision, but it is not necessary to refer the case to a larger Bench.

9. In *Kacheroo Mal* case it is observed : (SCC p. 417, para 9)

The phrase "or is otherwise unfit for human consumption" can be read conjunctively, 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.

In 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.

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 be necessary in such case to prove further that the article was unfit for human consumption.

We would prefer construction as it comports best with reason, commonsense, realities, the tenor of this provision and the main purpose and scheme of the Act. The adjectives "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'.

With utmost respect, we are not able to share this view and would hold that the observations made in the judgment should be confined to the particular facts of that case.

10. The decision in Kacheroo Mal Case ((1976) 2 SCR 1, 6 : (1976) 1 SCC 412, 417 : 1976 SCC (Cri) 30) was largely based on the circumstances that the standard of quality and purity was not prescribed in respect of cashew nuts. Now that Rule 48-B of the Prevention of Food Adulteration Rules, 1955 has been framed, the decision in Kacheroo Mal case ((1976) 2 SCR 1, 6 : (1976) 1 SCC 412, 417 : 1976 (Cri) 30) is rendered inapplicable.

11. In the definition clause, the collection of words 'filthy, putrid, rotten, decomposed and insect-infested' which are adjectives qualifying the term 'an article of food', show that it is not of the nature, substance and quality fit for human consumption. It will be noticed that there is a comma after each of the first three words. It should also be noted that these qualifying adjectives cannot be read into the last portion of the definition i.e., the words 'or is otherwise unfit for human consumption', which is quite separate and distinct from others. The word 'otherwise' signifies unfitness for human consumption due to other causes. If the last portion is meant to mean something different, it becomes difficult to understand how the word 'or' as used in the definition of 'adulterated' in Section 2(i)(f) between 'filthy, putrid, rotten etc.' and 'otherwise unfit for human consumption' could have been intended to be used conjunctively. It would be more appropriate in the context to read it disjunctively. It Stroud's Judicial Dictionary, 3rd Edn, Vol. 1, it is stated at p. 135 :

"And" has generally a cumulative sense, requiring the fulfilment of all the conditions that it joins together, and herein it is the antithesis of "or". Sometimes, however, even in such a connection, it is, by force of a context, read as "or".

While dealing with the topic 'OR is read as AND, and vice versa', Stroud says in Vol. 3. at p. 2009 :

You will find it said in some cases that 'or' means 'and'; but 'or' never does mean 'and'.

Similarly, in Maxwell on Interpretation of Statutes, 11th Edn., pp. 229-30, it has been accepted that

"to carry out the intention of the legislature it is occasionally found necessary to read the conjunction 'or' and 'and' is normally conjunctive, but at times they are read as vice versa. As Scrutton, L.J. said in *Green v. Premier Glynrhonwy State Co.* LR (1928) 1 KB 561, 568) : "You do sometimes read 'or' as 'and' in a statute ... But you do not do it unless you are obliged, because 'or' does not generally mean 'and' and 'and' does not generally mean 'or'". As Lord Halsbury L. C. observed in *Mersey Docks & Harbour Board v. Henderson* LR (1888) 13 AC 603 the reading of 'or' as 'and' is not to be resorted to "unless some other part of the same statute or the clear intention of it requires that to be done". The substitution of conjunctions, however, has been sometimes made without sufficient reasons, and it has been doubted whether some of the cases of turning 'or' into 'and' and vice versa have not gone to the extreme limit of interpretation.

12. Various categories of 'adulterated food' mentioned in Section 2(i)(f) broadly fall into two kinds of adulteration; firstly, where the constituent elements make the food obnoxious to human health or the existence of the particular composition of it, itself makes the food 'adulterated, and secondly, where the adulteration is constituted by the fact that the prescribed standard was not been observed in selling what purports to be a food of that standard or quality.

13. We really fail comprehend why the mere proof of an article of food like decomposed or diseased meat or rotten fish or putrid fruits and vegetables by the condition of the article itself should not be sufficient to attract the definition of 'adulterated' contained in Section 2(i)(f) and further proof of 'unfitness of the article for human consumption' is still necessary for bringing home the guilt.

14. The decision in *Kacheroo Mal case* ((1976) 2 SCR 1, 6 : (1976) 1 SCC 412, 417 : 1976 SCC (Cri) 30) is, however, distinguishable inasmuch as there was in that case no evidence that the cashew nuts, which were insect-infested to the extent of 21.9 per cent, were unfit for human consumption.

15. In regard to cashew nuts there was, at the material time, no statutory provision prescribing any minimum standards of purity. It is, therefore, for the Court to decide upon the evidence in the case, whether the insect infestation found was of such nature and extent as to make it unfit for human consumption. Assuming the test in *Kacheroo Mal case* ((1976) 2 SCR 1, 6 : (1976) 1 SCC 412, 417 : 1976 SCC (Cri) 30) to be correct, and the report of the Public Analyst to be just a piece of evidence which has to be evaluated by the Court in the facts and circumstances of each particular case to reach a finding as to the unfitness or otherwise of the sample for human consumption, there is in the present case such evidence. Dr. B. D. Narang, DW 1, examined by the respondent, is an expert on the subject, being a member of the Central Committee of Food Standards, besides holding Ph.D. degree in Chemistry from the University of Texas. He unequivocally states that although in regard to cashew nuts, there was at that time no statutory provision prescribing any minimum standard of purity, the Committee had recommended to allow a 10 per cent insect infestation as it was of the view that this infestation should not be taken as an act of adulteration since it was not harmful to human consumption. In view of this clear evidence, two of the samples of cashew nuts purchased from the respondent, which were found to be insect-infested to the extent of 20.6 and 20.7 per cent, must be held to be 'adulterated' within the meaning of Section 2(i)(f). There is no reason, for us not to act upon the testimony of Dr. Narang, who is respondent's own witness.

16. That takes us to the next ground namely whether the respondent having sold cashew nuts from sealed tins purchased from the supplier Sri Venkateswara Cashews, Panruti under the invoice Ex. DW 3/A bearing the description that they were 'SW Best Borma' cashew nuts, was protected under Section 19(2) of the Act which reads :

19(2). A vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves -

(a) that he purchased the article of food -

(i) in a case where a licence is prescribed for the sale thereof, from a duly licensed manufacturer, distributor or dealer;

(ii) in any other case, from any manufacturer, distributor or dealer, with a written warranty in the prescribed form; and

(b) that the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it.

17. There can be no doubt that M/s. Narain Dass Tek Chand had purchased the cashew nuts in question from Sri Venkateswara Cashews. Ramesh Chand, DW 3, manager of the firm states that the goods are purchased and sold by the firm in wholesale at its shop at Khari Baoli, Delhi. According to this witness, all the three partners of the firm reside at Kanpur. They come to Delhi in a month or two for scrutinising the accounts. He states that the cashew nuts were purchased under the invoice Ex. DW 3/A and they were of 'SW' mark. We are left to guess what the letters 'SW Best Borma' signify.

18. It is however, strenuously urged that the invoice describes the cashew nuts to be 'SW Best Borma' and this amounts to a warranty as to quality. Strong reliance is placed on the decision of this Court in Ranganatha Reddiar v. State of Kerala ((1970) 1 SCR 864, 867 : (1969) 2 SCC 457, 459) and Andhra Pradesh Grain & Seed Merchants' Association v. Union of India ((1971) 1 SCR 166, 173 : (1970) 2 SCC 71, 78) for the contention that if an article of food is sold in the same condition in which it was purchased from the manufacturer or dealer, the vendor i.e., the retailer, like the respondent will not lose the protection of sub-section (2) of Section 19, particularly when it is certified to be of good quality. We are afraid we cannot appreciate this line of reasoning. The two decisions in Ranganatha Reddiar case ((1970) 1 SCR 864, 867 : (1969) 2 SCC 457, 459) and in Andhra Pradesh Grain & Seed Merchants' case ((1971) 1 SCR 166, 173 : (1970) 2 SCC 71, 78) are clearly distinguishable. In the former case, the cash memo contained the words 'quality is up to the mark' which meant that the quality of the article supplied was up to the standard required by the Act and the vendee. It was observed : (SCC p. 459, para 8)

It must be remembered that it is not a document drafted by a solicitor; it is a document using the language of a tradesman. Any tradesman, when he is assured that the quality of the article is up to the mark will readily conclude that he is being assured that the article is not adulterated.

In the latter case, it was branded article of food, and it was said : (SCC p. 78, para 9)

If the article of food is sold in the same condition in which was purchased from a licensed manufacturer or dealer, or was purchased with a warranty, the vendor will not lose the protection if sub-section (2) of section 19 merely because he opened the container. If the vendor has obtained the article from a licensed manufacturer, distributor or dealer or from manufacturer, distributor or dealer with a warranty he is protected, provided he has properly stored the article and sells it in the same state as he purchased the article, even if it turns out the article was adulterated or

misbranded.

In the absence of any evidence that the respondent had purchased the cashew nuts under warranty, these authorities are of no avail.

19. Part IX of the Prevention of Food Adulteration Rules, 1955 deal with the conditions of sale and licence. Rule 50 states that no person shall manufacture, sell, stock, distribute or exhibit for sale the articles of food mentioned therein except under a licence. 'Nuts' is one of the article mentioned therein. It is wide enough to include cashew nuts. Originally the rules did not prescribe the standards of quality or purity in relation to dry fruits. That lacuna has, however, now been removed by the insertion of Rule 48-B, which is in these terms :

48-B Sale of insect-damaged dry fruits and nuts. - The dry fruits and nuts like raisins, currants, figs, cashew nuts, apricots, almonds may contains not more than 5 per cent of insect-damaged fruits and nuts, by count.

20. Rule 12-A which deals with warranty reads thus :

Rule 12-A. Warranty - Even trader selling an article of food to a vendor shall, if the vendor so requires, deliver to the vendor a warranty in Form VI-A :

Provided that no warranty in such form shall be necessary if the label on the article of food or the cash memo delivered by the trader to the vendor in respect of that article contains a warranty certifying that the food contained in the package or container or mentioned in the cash memo is the same in nature, substance and quality as demanded by the vendor.

Explanation :- The term 'trader' Shall mean an importer, manufacturer, wholesale dealer or an authorised agent of such importer, manufacturer or wholesale dealer.

Admittedly, there was no warranty in the prescribed form in the instant case. The testimony of the two Food Inspectors, S. L. Mehta, PW 1, and H. K. Bhanot, PW 3, no doubt show that they bought the samples out of the sealed tins, but there is nothing to show that they were tines bearing the manufacturer's label guaranteeing purity.

21. In R. G. Pamanani v. State of Maharashtra ((1975) 2 SCR 886, 889 : (1975) 3 SCC 375, 378) this Court distinguishing Andhra Pradesh Grain & Seed Merchant' ((1971) 1 SCR 166, 173 : (1970) 2 SCC 71, 78) case observed : (SCC p. 378, para 15)

The reason why a warranty is required in both the cases contemplated in Section 19(2)(a)(i) and (ii) is that if warranty were not to be insisted upon by the statute and if a vendor would be permitted to have a defence merely by stating that the vendor purchased the goods from a licensed manufacturer, distributor or dealer, adulterated or misbranded articles would be marketed by manufacturers, distributors, dealers as well as purchasers from them with impunity. That is why a written warranty is enjoined in both the cases in Section 19(2)(a)(i) and (ii). Section 19(2)(a) of the Act will provide a defence where a vendor purchases articles of food from a licensed manufacturer, distributor or a dealer with a written warranty in the prescribed form. Again, a vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves that he purchased

the article from any manufacturer, distributor or dealer with a written warranty in the prescribed form. These salutary provision are designed for the health of the nation. Therefore, a warranty is enjoined. No laxity should be permitted.

22. That, in our opinion, really concludes the matter. In the instant case, there is no proof that the samples were taken from tins bearing the manufacturer's label guaranteeing purity of goods, nor is there any such warranty in the invoice Ex. DW 3/A. It is, however, urged that the tins bore the imprint "good". There is nothing to substantiate this fact, and even if it were so, it is of little consequence. The word 'Good' on which great emphasis is placed merely contains a description of the goods. At the most it amounts to 'puffing of goods'. The word 'Good' is not warranty as to quality. The respondent is, therefore, not protected under Section 19(2) of the Prevention of Food Adulteration Act, 1954 read with Rule 12-A of the rules framed under the Act.

23. The result, therefore, is that the appeal succeeds and is allowed. The order of acquittal of the respondent is set aside, and he is convicted for having committed an offence punishable under Section 16(1)(a) read with Section 7(1) of the Prevention of Food Adulteration Act, 1954.

24. The contention that the respondent should be released on probation of good conduct under Section 4 of the Probation of Offenders Acts, 1958 cannot be accepted. The provision of Section 20-AA inserted by Act 34 of 1976 interdicts the Court from applying the provisions of that Act to a prosecution under the Prevention of Food Adulteration Act, 1954.

25. While we agree that adulteration of an article of food is a serious anti-social offence which must be visited with exemplary punishment, it will be rather harsh to pass a sentence of imprisonment in the facts and circumstances of this case. Under Section 16 of the Prevention of Food Adulteration Act, 1954, as in force at the material time, the Court had the discretion for special and adequate reasons under proviso to sub-section (1) not to pass a sentence of imprisonment. In the instant case, the respondent is a man aged 75 years. The offence was committed on August 1, 1968 i.e., more than eleven year ago. The order of acquittal was based on the decision of the Delhi High Court in Dhanraj case ILR (1970) 2 Delhi 681). The samples were taken from sealed tins. These are all mitigating circumstances. We accordingly refrain from passing a substantive sentence of imprisonment and instead sentence the respondent to the period already undergone and to pay a fine of Rs. 2000 or in default to undergo rigorous imprisonment for a period of three months.

</html