

Chetumal

Vs

State of Madhya Pradesh and Another

Criminal Appeal No. 279 of 1976

(O. Chinnappa Reddy, A.P. Sen, Baharul Islam JJ)

24.04.1981

JUDGMENT

CHINNAPPA REDDY, J. –

1. Part of the sample of ground-nut oil purchased by the Food Inspector from the appellant was found to be adulterated by the Public Analyst. According to the report of the Public Analyst the Butyro-refractometer reading at 40 Degree C was 57.5 instead of the prescribed standard, "54.0 to 57.1". The appellant challenged the opinion of the Analyst and requested the court to send the part of the sample kept with the local authority to the Director, Central Food Laboratory for analysis. The certificate of the Director, Central Food Laboratory was that the article of food was adulterated as Bellier test (turbidity temperature-acetic acid method) revealed 37.90 Degree C whereas the standard was 39 Degree C to 41 Degree C. Butyrorefratometer reading at 40 Degree C, however, was 56.0 Degree C, which was within the prescribed limits. In the trial Court, an objection was taken that the certificate of the Director, Central Food Laboratory should be excluded from consideration as the Director had reported that 'the specimen impression seal' sent to him did not tally with the seal of the container in which the sample of oil was sent to him. The trial Court sustained the objection and held that the report of the Director should not be taken into account. The trial Court, however, relied upon the report of the Public Analyst and convicted the appellant, sentencing him to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs. 1000. The conviction and sentence were confirmed by the District and Sessions Judge on appeal and by the High Court in revision.

2. It is clear that the conviction cannot stand. Under Section 13(3) of the Prevention of Food Adulteration Act, the report of the Public Analyst stood superseded by the certificate issued by the Director of the Central Food Laboratory. Having been so superseded, the report of the Public Analyst could not, therefore, be relied upon to base a conviction. The certificate of the Director of the Central Food Laboratory having been excluded from consideration because of the tampering of the seals, there was really no evidence before the court on the basis of which the appellant could be convicted. The court could not fall back on the report of Public Analyst as it had been superseded. The only method of challenging the report of the Public Analyst was by having the sample tested by the Director of the Central Food Laboratory. In the present case the appellant was deprived of the opportunity to which he was entitled for no fault of his. It was not, therefore, open to the court to fall back upon the report of the Public Analyst to convict the appellant. The appeal is allowed the conviction and sentence are set aside.

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