

Paramjit Singh

Vs

Municipal Corporation of Delhi and Another

Civil Appeal No. 712 of 1979

(CJI Y.V. Chandrachud, A. Varadarajan JJ)

15.09.1981

JUDGMENT

CHANDRACHUD, C.J. -

1. On November 13, 1968 a sample of broken cashew-nut was taken from the shop of the appellant Paramjit Singh. The sample was analysed three days later. The report of the Public Analyst dated November 21, 1981 shows that the sample was 'insect-infested' to the extent of 6.93 per cent. On these facts the appellant was tried for an offence under Section 7(1) read with Section 16 of the Prevention of Food Adulteration Act, 1954 ('the Act'). The trial court by its judgment dated September 25, 1972 acquitted the appellant but in appeal the High Court of Delhi by its judgment dated October 11, 1979 convicted the appellant and sentenced him to suffer rigorous imprisonment for a period of six months and to pay a fine of Rs 2000. Being aggrieved by that judgment, the appellant has filed this appeal by special leave.

2. Section 2(ia)(f) of the Act provides that an article of food shall be deemed to be adulterated "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". Mr V.S. Desai who appears on behalf of the appellant contends that there is no evidence in this case to show that the presence of insects in the cashew-nuts was of such an order or to such an extent that by reason thereof, the cashew-nuts could be said to be unfit for human consumption. He urges that the words 'insect-infested' cannot be understood to mean merely that the presence of insects was found in the article of food. The word 'infested', according to the learned counsel, connotes the presence of insects of a magnitude or extent which makes the article unfit for human consumption. In support of this submission reliance is placed on a two-Judge bench judgment of this Court in Municipal Corporation of Delhi v. Kacheroo Mal ((1976) 2 SCR 1 : (1976) 1 SCC 412 : 1976 SCC (Cri) 30 : AIR 1976 SC 394).

3. Mr Prem Malhotra who appears on behalf of the Municipal Corporation of Delhi has, on the other hand drawn our attention to another judgment of this Court in Municipal Corporation of Delhi v. Ram Sarup (AIR 1980 SC 174 : (1980) 1 SCC 580 : 1980 SCC (Cri) 137), which was by a three-Judge Bench. The learned Judges, in that case, expressed their "reservations about the correctness" of the decision on which Mr Desai relies, but they distinguished it.

4. In the ordinary course, we would have referred this matter to a larger Bench in order that the true legal position may be pronounced so as to avoid doubt in a matter which arises frequently for consideration. In the circumstances of this case, however, we do not propose to adopt that course. The offence was committed as long back as in November 1968 and nearly 13 years have gone by

since then. The infestation of insects was not of such an extent as to necessitate the passing of a sentence of imprisonment upon the appellant. In 1968, when the offence was committed the legislature had prescribed a minimum sentence but the courts were allowed the discretion to impose either a sentence of imprisonment or a sentence of fine. Not only that, but courts had then the power, in appropriate cases, to release an offender on probation. Taking these aspects of the matter into consideration, we are of the view that the appellant should be released on probation of good conduct. Accordingly, while confirming the conviction of the appellant we set aside the sentence imposed upon him on his executing a bond of good behaviour for a period of one year in the sum of Rs 2000.

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