

State of Maharashtra

Vs

Baburao Ravaji Mharulkar and Others

Criminal Appeal No. 460 of 1984, arising out of Special Leave Petition (Criminal) No. 895 of 1983

(O. Chinnappa Reddy, A. P. Sen, E. S. Venkataramiah JJ)

26.10.1984

JUDGMENT

O. CHINNAPPA REDDY, J. -

1. Special leave granted.

2. The Food Inspector, 'E' Ward, Rajarampuri, purchased a sample of ice-cream from the shop of the fourth respondent-firm, the partners of which were respondents 1 to 3. After following the procedure prescribed by statute, one part of the sample was sent to the Public Analyst for analysis. The report of the Public Analyst showed that the sample of ice-cream contained 5.95% of milk fat as against the minimum of 10% prescribed by paragraph A. 11.02.08 of Appendix B of the Prevention of Food Adulteration Rules, 1955. The learned Chief Judicial Magistrate of Kolhapur thought that it was impossible to attain the standard of purity prescribed by paragraph A. 11.02.08 of Appendix B of the Prevention of Food Adulteration Rules, 1955, as ice-cream was but a preparation of milk and the standard of purity prescribed for buffalo milk was but a minimum of 5% milk fat. The learned Magistrate was, therefore, of the view that Rule 5 read with paragraph A. 11.02.08 of Appendix B was impossible of compliance and, therefore, bad in law. On appeal by the State, a learned Single Judge of the High Court of Bombay dismissed the appeal in limine. The State has preferred an appeal to this Court under Article 136 of the Constitution. We do not have the slightest hesitation in allowing the appeal. We are unable to appreciate why the circumstance that the standard of milk fat for buffalo milk is 5% should render it impossible for ice-cream to contain a minimum percentage of 10% milk fat. There are several ways by which the higher percentage of milk fat in ice-cream can be attained. The most elementary method is to heat the milk sufficiently to reduce the percentage of water and increase the percentage of milk fat. Another obvious method is to add cream containing a high percentage of milk fat separately to the milk before making ice-cream out of it. We do not have to advise caterers and restaurateurs about how ice-cream containing the minimum prescribed percentage of milk fat should be prepared. Section 2(ia)(1) of the Prevention of Food Adulteration Act, 1954 provides that an article of food shall be deemed to be adulterated if the quality or purity of the article of food falls below the prescribed standard, which renders it injurious to health. Section 2(ia)(m) provides that an article of food shall be deemed to be adulterated if the quality or purity of the article falls below the prescribed standard, but which does not render it injurious to health. In the case before us, there is nothing to show that the low percentage of milk fat renders the ice-cream injurious to health. Rule 5 of the Prevention of Food Adulteration Rules, 1955 provides that standard of quality of the various articles of food specified in Appendix B to these rules are to be defined in that Appendix. Paragraph A. 11.02.08 of Appendix B prescribed a minimum standard of 10% milk fat in the case of ice-cream, kulfi and chocolate ice-cream. There cannot be the least doubt that the ice-cream sold by the first respondent was

adulterated within the meaning of Section 2(ia)(m) of the Prevention of Food Adulteration Act, 1954. The first and the fourth respondents are, therefore, liable to be convicted under Section 16(1)(a)(ii) of the Food Adulteration Act, 1954. So far as respondents 2 and 3 are concerned, there is nothing to indicate that they were in charge of or were in any way responsible for the conduct of the business of the firm. Their acquittal is confirmed. Respondents 1 and 4 are convicted under Section 16(1)(a)(ii) of the Prevention of Food Adulteration Act, 1954 and each of them is sentenced to suffer imprisonment for period of three months and a fine of Rs. 2000 each. In default of payment of fine they shall suffer an imprisonment for a further term of one month. We are imposing the minimum sentence of imprisonment prescribed by the proviso to Section 16(1) as the offence was committed quite some years ago and we are now interfering with an order of acquittal and this appears to be a first offence.

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