

Municipal Corporation of Delhi

Vs

New Kwality Sweet House and Others

Criminal Appeal No. 114 of 1979

(CJI Y. V. Chandrachud, R. S. Pathak JJ)

05.12.1984

ORDER

1. As long back as on August 1, 1975 a Food Inspector purchased a sample of suji (Semolina) from the respondent-accused, which was found to contain excessive moisture and ash. The learned Metropolitan Magistrate, Delhi, acquitted the accused by his judgment dated July 19, 1977 on the ground that the Food Inspector did not send the required quantity of the adulterated article to the Public Analyst for analysis. The Rules required the Food Inspector to send 250 gms. of suji for analysis, whereas he sent only 200 gms. The High Court of Delhi dismissed the revision application filed by the Municipal Corporation of Delhi summarily.

2. The learned Metropolitan Magistrate is clearly wrong in the view taken by him, from which it must follow that the High Court was not justified in dismissing the revision application summarily. The fact that a lesser quantity than that prescribed by the Rules is sent for analysis cannot constitute an impediment in the conviction of a person accused of selling adulterated food, so long as the quantity sent for analysis is sufficient to enable the Analyst to make satisfactory analysis according to accepted tests. We do not, however, propose to interfere with the order of acquittal since, this appeal was filed not so much for the purpose of securing the conviction of the accused but for the purpose of obtaining a decision from this Court on the question whether a conviction could be recorded under Section 7 read with Section 16 of the Prevention of Food Adulteration Act even if, a quantity smaller than that required by the Rules to be sent for analysis is sent for the purpose of analysis to the Public Analyst. The question was decided long back in State of Kerala v. Alassery Mohammed ((1978) 2 SCR 820 : (1978) 2 SCC 386 : 1978 SCC (Cri) 198 : 1978 Cri LJ 925). Therefore, though the view taken by the courts below is unsupportable, we do not propose to interfere with the ultimate order passed by them.

3. The appeal is accordingly dismissed.

</html