

State (Delhi Administration)

Vs

Puran Mal

Criminal Appeal No. 539 of 1984

(CJI Y. V. Chandrachud, D. A. Desai, O. Chinnappa Reddy, E. S. Venkataramiah, Ranganath Misra JJ)

(Ranganath Misra, A. Varadarajan JJ)

26.03.1985

JUDGMENT

A. VARADARAJAN, J. -

1. This appeal by special leave is by the Delhi Administration and directed against the judgment of a learned Single Judge of the Delhi High Court dismissing Criminal Revision No. 268 of 1982 in limine. That criminal revision was filed against the acquittal of the respondent by the learned Metropolitan Magistrate, Delhi in Case No. 11 of 1982, which the respondent was tried for an offence under Section 7 read with Section 16 of the Prevention of Food Adulteration Act, (hereinafter referred to as 'the Act').

2. The Food Inspector, PW 4 took a sample of lal mirchi powder from the grocery shop of the respondent. On analysis by the Public Analyst it was found in Ex. PW 1/C that the sample contained nine living meal worms. There was no other evidence in support of the case of the prosecution that the lal mirchi powder was adulterated. It was contended before the learned Magistrate that the evidence by way of the Public Analyst's report does not satisfy the requirement of the definition of 'adulterated article' of food contained in the Section 2(1)(f) of the Act. The learned Magistrate accepted this contention and found that the prosecution has failed to prove that the lal mirchi powder was adulterated and he accordingly acquitted the respondent.

3. The Calcutta High Court in *Narkekklange Roller Flour Mills v. Corporation of Calcutta* (1973 FAC 257) has observed :

.... clause (f) of Section 2 defines the word 'adulterated' and an article of food is said to be adulterated if it is insect-infested. By physical examination the Public Analyst found blackish worms and the sample there is at best worm-infested. Is the word 'worm' synonymous with insect ? Did the Legislature intend to condemn wheat products due to presence of seasonal worms ? The word "insect" is defined in the Oxford Dictionary as "small invertebrate segmented animal having head, thorax, abdomen, and three pairs of thoracic legs, usually with one or two pairs of thoracic wings". The word 'worm' in the same dictionary is defined as "kinds of invertebrate limbless or apparently limbless creeping animal, such as are segmented in rings or are parasite in the intestines or tissues". There is therefore, a good deal of difference between worms and insects and a sample of food becomes adulterated only when it is

insect-infested. In the present sample, however, worms were found to be present and that in our view, does not satisfy the requirements of the definition 'adulterated' under Section 2 of the Act.

4. According to the Webster's New World Dictionary (1962 edition), 'worm' means "any of many long, slender, soft-bodied creeping animals, some segmented, that live by burrowing underground or as parasites, as the earthworm, tapeworm". According to Webster's New World Dictionary 'infest' means "to overrun or inhabit in large numbers, usually so as to be harmful or bothersome, swarm in or about". According to that dictionary an 'insect' means "any of a large group of small invertebrate animals characterized, in the adult state, by division of the body into head, thorax, and abdomen, three pairs of membranous wings : beetles, bees, flies, wasps, mosquitoes, etc. are insects".

5. According to the Shorter Oxford English Dictionary, 'worm' means "a slender, creeping, naked, limbless animal usually brown or reddish with a soft body divided into a series of segments; an earthworm". According to that dictionary an 'insect' means "a small invertebrate animal, usually having a body divided into segments, and several pairs of legs, and often winged".

6. Therefore it is not possible to hold that a worm and an insect are the same.

7. Even if worms and insects are the same the appellant is not out of difficulty in this case. As already stated the Public Analyst has found in the sample only nine living meal worms and he has neither stated that it is insect-infested nor that it is unfit for human consumption on account of the presence of the meal worms nor that it is otherwise unfit for human consumption.

8. According to Webster's Illustrated Contemporary Dictionary (Encyclopedic Edition), 'infest' means "to overrun or spread in large numbers so as to be unpleasant or unsafe".

9. In *Municipal Corporation of Delhi v. Kacheroo Mal* ((1976) 2 SCR 1 : (1976) 1 SCC 412 : 1976 SCC (Cri) 30), the Public Analyst had reported : (SCC p. 415, para 2)

Date of Analysis : January 10, 1969. Insect-infested pieces of Kajus : 21.9% and I am of the opinion that the same is adulterated due to insect-infested pieces of kajus to the extent of 21.9%.

Sarkaria, J. speaking for himself and Gupta, J. has observed in that case : (SCC p. 416, paras 6 to 12, 15)

In view of the construction that the expression 'insect-infested, includes infestation even by dead insects, the further point to be considered is, whether mere insect-infestation, without more, would be sufficient to hold the article to be 'adulterated' within the meaning of sub-clause (f) of clause (i) of Section 2 of the Act .... The point sought to be made out is that in this case, the prosecution, the defence and the High Court all felt that the report of the Public Analyst was vague, inadequate and deficient, and in the absence of clear proof of the sample, being unfit for human consumption, it could not constitute a valid basis for holding the article to be 'adulterated' within the meaning of Section 2(i)(f).

As against the above, Mr F. S. Nariman, the learned counsel for the appellant corporation submits that in the case of food articles for which no minimum standard of purity is prescribed, the moment it is proved that a proportion or percentage of the article - not being a proportion or percentage as would be covered by the rule, *de minimis non curat lex* - is putrid, filthy, disgusting, decomposed or insect-infested, it would be deemed to be unfit for human consumption and, therefore, adulterated

within the contemplation of Section 2(i)(f). In any case, proceeds the argument, it is implicit in the report of the Public Analyst that the article in question was found unfit for human consumption. This implication, according to the learned counsel, flows from the Analyst's conclusion that he article was 'adulterated'. Counsel has criticised the view taken by the Bench in Dhanraj case (ILR (1970) 2 Del 681), that if for an article of food, no standard of quality or purity has been prescribed or no limits have been prescribed for the validity of its constituents, then sub-clause (1) of clause (f) of Section 2 will not apply, and that the Public Analyst is not competent to say as to what extent of insect-infestation would make the article 'adulterated'.

The relevant part of Section 2 reads as under :

(i) "adulterated" - an article of food shall be deemed to be adulterated -

#(a) to (e) \* \* \*##

(f) if the article consists wholly or in part of any filthy, putrid, disgusting, rotten, decomposed or diseased animal or vegetable substance or is insect-infested or is otherwise unfit for human consumption.

The phrase "or is otherwise unfit for human consumption" can be read conjunctival as well as disjunctively. 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 not be necessary in such a case, to prove further that the article was unfit for human consumption.

We would prefer the first 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 ....

In Dhanraj case (ILR (1970) 2 Del 681) the High Court construed this sub-clause 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.

10. On the basis of that decision it is stated as follows in the Prevention of Food Adulteration Act, published by the Eastern Book Company, seventh edition, (page 73) with reference to Section 2(1)(f) of that Act thus :

The phrase "or otherwise unfit for human consumption" can be read conjunctively as well as disjunctively. If it is read conjunctively, that is, in association with what precedes it. This 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. *Municipal Corporation, Delhi v. Kacheroo Mal* ((1976) 2 SCR 1 : (1976) 1 SCC 412 : 1976 SCC (Cri) 30)

All the adjectives used in this sub-clause are presumptive and not an absolute test of the quality of the article being unfit for human consumption. To be more precise, in the case of an article in respect of which the Rules do not prescribe any minimum standard of purity or any minimum proportion of insect-infestation that would exclude it from the definition of "adulterated article", it will be a mixed question of law and fact whether the insect-infestation is of such a nature, degree and extent as renders the article unfit for human consumption. The opinion of the public analyst who examines and analyses the sample would constitute legal evidence. As an expert in the science he is competent to opine and testify about this fact. *Municipal Corporation, Delhi v. Kacheroo Mal* ((1976) 2 SCR 1 : (1976) 1 SCC 412 : 1976 SCC (Cri) 30).

11. An equally strong Bench of this Court has taken a different view in regard to Section 2(1)(f) of the Act in *Municipal Corporation of Delhi v. Tek Chand Bhatia* ((1980) 1 SCR 910 : (1980) 1 SCC 158 : 1980 SCC (Cri) 87), where A. P. Sen, J. speaking for himself and Murtaza Fazal Ali, J. has observed : (SCC p. 161, paras 6 to 10)

In *Dhanraj* case (ILR (1970) 2 Del 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 the 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.

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.

It is, however, pointed out that the construction placed by the High Court in *Dhanraj* case (ILR

(1970) 2 Del 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 : (1976) 1 SCC 412 : 1976 SCC (Cri) 30) where it is observed that "the construction placed by the High Court in *Dhanraj* case (ILR (1970) 2 Del 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" indicate presumptive but not absolute criteria as to the quality of the 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.

In *Kacheroo Mal* case ((1976) 2 SCR 1 : (1976) 1 SCC 412 : 1976 SCC (Cri) 30) it is observed :

The phrase "or is otherwise unfit for human consumption" can be read conjunctively as well as disjunctively. 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 not be necessary in such a case to prove further that the article was unfit for human consumption.

We would prefer the first 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.

The decision in *Kacheroo Mal* case ((1976) 2 SCR 1 : (1976) 1 SCC 412 : 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 : (1976) 1 SCC 412 : 1976 SCC (Cri) 30) is rendered inapplicable.

12. We also constitute a Bench of equal strength. Therefore, I refrain from expressing any opinion as to which of the two aforesaid views is correct. Nor is it necessary for me to do so having regard to the facts of this case.

13. Even if the nine worms found by the Public Analyst in the sample are considered to be insects, the certificate of the Public Analyst does not support the case of the prosecution that the *lal mirchi* powder was adulterated, for the Public Analyst has not expressed his opinion that the *lal mirchi* powder was either worm-infested or insect-infested or that on account of the presence of the meal

worms the sample was unfit for human consumption. Therefore, I am of the opinion that the prosecution has not established by any satisfactory evidence the requirement of Section 2(i)(f) of the Act. Consequently, no interference is called for with the judgment of the High Court which, as stated above, has dismissed the criminal revision in limine. The appeal is accordingly dismissed.

## JUDGMENT

RANGANATH MISRA, J. ♦

In my opinion, the true meaning of Section 2(ia)(f) has been brought out in *Municipal Corporation Delhi v. Tek Chand Bhatia* ((1980) 1 SCR 910 : (1980) 1 SCC 158 : 1980 SCC (Cri) 87) and the conclusion that "it would not be necessary in such a case to prove further that the article of food was unfit for human consumption" is a correct statement of the law.

15. I agree with my learned brother that the evidence led by the prosecution is inadequate to warrant interference with the judgment of acquittal passed by the trying Magistrate and upheld by the High Court.

16. I, therefore, agree that the appeal has to be dismissed.

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