

ALLAHABAD HIGH COURT

Nagar Swastha Adhikari

Vs.

Ant Ram

Criminal Appeal No. 1321 of 1963

(S.N. Katju, J.)

10.10.1964

JUDGMENT

S.N. Katju, J.

1. The respondent was charged for the offence of selling or exposing Jalebi prepared in hydrogenated vegetable oil for sale which was found to be colored with a coal-tar-dye, namely Orange II, which is not one of the coal-tar-dyes permitted for use in food stuffs. It was alleged that the respondent was liable for punishment under Section 7/16 of the Prevention of Food Adulteration Act of 1954. The Food Inspector had purchased a sample from the respondent and divided it into three parts, out of which one part was given to the respondent and one part was sent to the Public Analyst who found that it was colored with coal-tar-dye Orange II. It was admitted that the quantity of the sample which was sent to the Public Analyst was 2 ounces. It was contended on behalf of the respondent that there was non-compliance of Rule 20 of the Rules framed under the Prevention of Food Adulteration Act which under item (14) required that the approximate quantity to be taken should be 16 ounces. The Court below expressed the view that since the quantity of the sample was less than 16 ounces, therefore, an illegality had been committed and the respondent was entitled to get the benefit of the breach of the aforesaid Rule by the Food Inspector. It, therefore, acquitted the respondent. Aggrieved from the aforesaid decision the appellant Nagar Swastha Adhikari of the Nagar Mahapalika, Agra, has come in appeal before this Court.

2. The question whether the quantity of the sample was less than the precise quantity

prescribed under the Rule and it was sufficient for purposes of examination by the Public Analyst and it did not result in any breach of the Rule was considered by Hon'ble Tripathi, J. in *Nagar Swasth Adhikari, Nagar Mahapalika, Agra v. Babu Lal*,¹ In the aforesaid case the quantity of Jalebi which was sent as sample to the public analyst was only 8 ounces. Mr. Justice Tripathi observed as follows :-

"There can be no doubt that the primary object of prescribing standard quantity of sample of various articles of food was to ensure its dispatch in sufficient quantity to the Public Analyst to enable him to analyze it in a proper manner. If the sample sent, though not in requisite quantity, is found sufficient by the Analyst for his purposes, I see no reason why his report should not be taken into account and why the prosecution should suffer on account of this discrepancy. No doubt, if the evidence and circumstances appearing on the record indicate that on account of deficiency in quantity of the sample the accused has been prejudiced in any manner, the prosecution must be thrown out on that ground. But in the absence of any such prejudice, such minor laches should not be allowed to override the major consideration of holding the scales even between the parties and of bringing ante-social elements to book."

3. I respectfully agree with the aforesaid view. In the present case the quantity was 2 ounces of Jalebi and it could not be said that the Public Analyst had felt any difficulty in analyzing the contents of the Jalebi or the respondent was prejudiced in any way because of the fact that the quantity of Jalebi sent to the Analyst was only 3 ounces and not 16 ounces. It does not appear from the report of the Analyst that he felt any difficulty in analyzing the contents of the Jalebi from the quantity of the sample which was sent to him. Under these circumstances it must be held that the mere fact that the quantity of Jalebi sent to the Public Analyst was 2 ounces did not by itself constitute any breach of a mandatory provision of the Prevention of Food Adulteration Act or its Rules. The Public Analyst found that the sample was colored with a coal-tar-dye Orange II which is not permitted for use in food stuffs under Rule No. 28 of the Prevention of Food Adulteration Rules, 1955. I am satisfied that the color which was put in the Jalebi prepared by the respondent was a coal-tar-dye which is not permitted to be used by the provisions of the Rules and consequently the appellant was guilty of violating the aforesaid provision and is thus liable to punishment.

4. It was contended by the learned counsel for the appellant that it was admitted by the

respondent himself that he had been convicted earlier under the Prevention of Food Adulteration Act on a charge that he had mixed a color in Barfi which was not permissible and was sentenced to a fine of Rs. 150. Learned counsel, therefore, contended that the respondent was liable to enhanced punishment under Section 16(1)(ii) of the Act. Learned counsel for the respondent contended that the report of the Public Analyst was not fully reliable. The Public Analyst Dr. R.S. Srivastava was produced by the defense and in his deposition he stated that even in the non-permissible colors the columns index and the common name should also be mentioned otherwise the exact color would not be known. In his cross-examination he, however, stated that only those colors of coal-tar-dyes which are mentioned in Rule 28 are permissible and the other are not permissible. It was contended by learned counsel for the appellant that admittedly in the present case the color used was Orange II and since Orange II is not one of the colors mentioned in Rule 28, therefore, it was not necessary to mention the common name and the columns index. I agree with the learned counsel for the appellant that since Orange II is not one of the permissible colors it was not necessary to give further details in his report by the Analyst. There certainly is a lacuna in the report and the report could have been fuller if the columns index and the common name had also been mentioned. There is also the fact that the quantity of Jalebi sent to the Public Analyst was less than 16 ounces even though it did not affect the result of the analysis by the Public Analyst. These are, however, circumstances to be taken into consideration in giving a lesser sentence other than the one prescribed in the proviso to the aforesaid section mentioned by the learned counsel for the appellant.

5. I, therefore, convict the respondent and sentence him to pay a fine of Rs. 300, in default six months R. I. The fine shall be paid within one month from today. If the fine is realized Rs. 150 shall be paid to the appellant. The appeal is allowed.

Appeal allowed.

Cases Referred.

1. Criminal Appeal No. 605 of 1963, dated 12-5-1964 (All)