

# **CALCUTTA HIGH COURT**

Narkeldanga Roller Flour Mills

Vs.

Corporation of Calcutta

Criminal Appeal No. 605 of 1963

(A.K. Das and K.K. Mitra, JJ.)

22.08.1969

## **JUDGMENT**

**Das, J.**

1. This is an appeal against conviction under Sections 7 (i), 16 (1) (a) (i) of the Prevention of Food Adulteration Act. The appellant, mill, was sentenced to pay a fine of Rs. 2,000/- and the Manager, S. K. Biswas, was sentenced to rigorous imprisonment for six months and to pay a fine of Rs. 2,000/-, in default, to rigorous imprisonment for a further period of six months.

2. Prosecution case is as follows:- The Food Inspector of the Calcutta Corporation visited Narkeldanga Roller Flour Mills Ltd. at 17/4, Canal West Road, Calcutta on May, 8, 1959 and took samples from stocks of wheat in the godown of the mill. Three samples were taken from three bags and one of these samples was later found to be worm infested and not conforming to the standard in respect of alcoholic acidity. Sanction was obtained and this prosecution was started. The other two samples were found by the analyst to be good.

3. The defense is a plea of innocence and a further plea that stock accumulated due to fall in demand and failure of food department, Government of West Bengal, to issue quotas. They were informed and thereafter, quotas were issued and the mill was advised to recondition the flour and release the stock. Reconditioning is a recognised process for removal of disparity with standard and it is permitted by the Government and no offence was, therefore, committed.

4. The learned Magistrate found on the basis of the public Analyst's report that these samples were insect infested and also that the alcoholic acidity was higher than the permissible limit. He, therefore, convicted the appellants.

5. Mr. Banerjee challenged the manner in which samples were taken, but we do not propose to go

into that question in view of the order that we propose to make.

Relevant portion of the Analyst's report is as follows:-

"Microscopical Examination: Wheat starch only. Physical Examination:- White and blackish worms present.

Ash .. 2.1%

Cluten .. 7.5%

Alcoholic acidity with 90% alcohol - 0.16%.

The public Analyst therefore declares that the sample of atta does not conform to the standard in respect of alcoholic acidity and moreover it is worm infested and therefore adulterated.

The public Analyst's opinion is based upon two deficiencies,

(1) insect infested,

(2) higher alcoholic acidity.

Mr. S. D. Banerjee, learned Counsel for the appellants, has submitted that the opinion on point No. 2 is at variance with the result of physical examination. The analyst found that white and blackish worms are present in the sample but that is inconsistent with the opinion that it is insect infested. The public Analyst did not point out the extent of the white and blackish worms or their percentage; what he saw does not disclose that there was an abundance of such worms and therefore, the opinion is unreliable. For being 'in fested' there must be an abundance of it, without which no offence would be committed.

6. There is some force in the contention but there are larger questions to be considered in this connection. 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. This may also explain why the stock was later advised by the Government to be reconditioned, obviously because wheat products, in which worms appear due to seasonal action, need not necessarily be condemned but may be used as food after reconditioning. There is no evidence that excess of

alcoholic acidity will not disappear with reconditioning and the sample therefore cannot be called adulterated.

7. Admittedly, due to shortfall of demand due to seasonal variation considerable stock accumulated in the godown. The mill could not sell unless quota was issued by the Government and thus stock accumulated. The mill could not sell it in the open market and had to wait for the quota. There is no dispute that the stocks of atta are subject to seasonal effect when worm may grow inside the bags. The mill wrote to Government and Government permitted them to recondition the stock forthwith by sieving before disposing of Exts. 'C' and 'C1' are relevant letters from the Deputy Director of Food to the mill, where Government took notice of the fact that stocks accumulated due to shortfall in demand and a huge stock was found in the godown. Government also accepted by letter Ext. 'C' that due to seasonal variation in demand, consumption of atta had gone down appreciably during the summer season with the result that the percentage of extraction of atta by flour mills in Calcutta was reduced and that many of the flour mills in Calcutta were caught with stocks of atta and the price of atta in the Calcutta market had gone down. This letter then points out that the flour mills approached the Government in the Food Department for permission to recondition the stock and the stocks were thereafter sampled and the flour mill was advised to recondition the same before disposal. From this correspondence it appears that the stocks often accumulate for no fault of the millers and that Government recognizes that these stocks may be issued to the people for food after reconditioning, obviously thereby accepting that it no longer remains adulterated after being reconditioned. This particular mill also similarly applied and was permitted to recondition and offer for sale and quotas were also issued to them. The godown stock from which sample was taken was not therefore food, for it could be issued only after quotas are issued by Government and Government directed reconditioning before issue. Sample taken after reconditioning, if found adulterated, makes the persons liable. We do not know the result after reconditioning and without reconditions, the stock would not go out as food and the sample from godown, even if found adulterated, does not make the owner liable. We may however point out that two of the three samples were found good.

8. Mr. Basu argued that the sample was found adulterated owing to excess of alcoholic content also and that we should take no notice of what might happen after reconditioning. We may, however, point out that the sample must be taken from food for human consumption. But if the stock cannot be sold without quota and if the recognised practice is to recondition before issue, it is difficult to say that this sample was taken from a stock which is food within the meaning of the Food Adulteration Act. Apart from that, these worms grow speedily due to seasonal variation and if a huge stock in bags accumulate in the godown, we do not know how the Mill can check up each and every bag for these seasonal growth and this explains why two out of the three samples were found good. The obvious course is to check before issue to quota holders and recondition such bags as found necessary and samples found adulterated after such reconditioning may alone make the owner liable.

9. In that view of the matter, we do not think that the sample found adulterated was sample taken from food so as to be punishable within the Prevention of Food Adulteration Act.

10. In the result, therefore, we allow this appeal, set aside the order of conviction and the sentence and acquit the appellants. Appellant No. 2 is discharged from the bail bond.

**K.K. Mitra, J.**

11. I agree.

Appeal allowed.