
Before V.M. Jain, J

RAJBIR SINGH SEKHON—*Petitioner*

versus

STATE OF PUNJAB—*Respondent*

CrI. M. No. 18716/M of 2000

5th February, 2001

Prevention of Food Adulteration Act, 1954—Ss. 7 and 16—Prevention of Food Adulteration Rules, 1955—Rl. 49(24)—Sample of red chilly powder from a Restaurant—After applying all tests, adulteration found in the sample—Red chilly powder also not in packed condition as required under rule 49(24) of the 1955 Rule—Accused not selling red chilly powder and using the same for preparation of food articles for consumption of customers—No ground to quash the criminal complaint—Petition dismissed.

Held, that the public Analyst had given the opinion that the sample of red chillies powder contained non-permitted red oil soluble synthetic colour, which was detected by applying the tests of wool Dyeing, Silk Dyeing and paper Chromatography. At this stage, it could not be said that the sample of red chillies powder was not adulterated. The complaint cannot be quashed only on the ground that the accused was running a restaurant and had kept the red chillies powder for being used in the preparations to be sold/served to the customers.

(Paras 9 & 12)

H.S. Giani, Advocate for the Petitioner

G.S. Gilly, DAG for State of Punjab.

JUDGMENT

V.M. Jain, J

(1) This is a petition under Section 482, CrPC, filed by the accused-petitioner, seeking quashment of the criminal complaint under Sections 7/16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the Act), and under Rules 49(24) and 50 of the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as the Rules).

(2) In the petition under Section 482, CrPC, it was alleged by the accused-petitioner that on 9th August, 1999, he was present at Sekhon Grand Hotel and Restaurant, Jalandhar City when Sukhrao Singh, Government Food Inspector, Jalandhar, approached him. It was further alleged that since the petitioner was running the business of restaurant, said Sukhrao Singh took sample of Red Chillies, which were available at the "petitioner's abovesaid premises of the restaurant." It was alleged that even though the petitioner had told the said Food Inspector that the Chillies were not being kept for sale to any customer, yet he insisted and forcibly took sample of Chillies and got the signatures of the petitioner on various documents. It was alleged that lateron, the petitioner came to know that the sample, taken from him, had been got analysed from the Public Analyst, who had given his report dated 13th September, 1999 and had declared the sample to be not conforming to the standards of purity. It was alleged that on the basis of the said report of the Public Analyst, Sukhrao Singh, Govt. Food Inspector, had lodged criminal complaint against the petitioner. It was alleged that the criminal complaint, in question, was liable to be quashed, firstly on the ground that as per the report of the Public Analyst, the sample of Chillies was found to be adulterated because of the presence of the colouring material of red shade, which had been found on the basis of paper chromatography. It was alleged that the test of paper chromatography was not enough for holding the sample to be adulterated. Secondly, it was alleged that since the red chillies were not kept for sale, as the petitioner was running a restaurant, it could not be said that the petitioner had committed any offence. It was alleged that on these grounds, the criminal complaint, filed by the Govt. Food Inspector, against the petitioner, was liable to be quashed.

(3) The said petition was contested by the Govt. Food Inspector, on behalf of the State, by filing written reply, alleging therein that he along with Dr. Rajiv Sharma, under the supervision of Dr. H.S. Minhas, had inspected/visited the premises of Sekhon Grand Hotel and Restaurant, Jalandhar, where Rajbir Singh, petitioner, was found present and he had disclosed that he was the Managing Director of the said Hotel. It was alleged that the accused-petitioner was having about 3 kgs of Lal Mirch Powder (red chillies powder) contained in a steel bowl in the kitchen of the Hotel premises, for preparation of various food articles to be served to the customers/public, for human consumption. It was alleged that after disclosing his identity, the deponent had shown his intention to taken sample of Lal Mirch Powder for analysis and hence, necessary notice was served, which was received and signed by the accused-petitioner and thereafter the deponent had purchased 600 gms of Lal Mirch Powder from the accused-petitioner

against payment of Rs. 36 under a valid receipt, which was duly signed by the accused-petitioner. It was alleged that after receipt of the report of the Public Analyst that the Lal Mirch Powder was adulterated, the prosecution was launched against the accused petitioner by filing a criminal complaint. It was alleged that as per the report of the Public Analyst, the Public Analyst had applied all the three tests, i.e. Wool Dyeing, Silk Dyeing and paper chromatography test for detection of added colour (synthetic added colours) and had opined that the contents of the sample were found adulterated. It was alleged that the Lal Mirch Powder was being used for the preparation of various items/articles in the Hotel kitchen for consumption of Public/customers.

(4) I have heard learned counsel for the parties and perused the record carefully.

(5) Learned counsel for the accused-petitioner firstly submitted before me that the Lal Mirch Powder was stated to be adulterated by the Public Analyst in his report, copy annexure P1, on the ground that non-permitted red oil soluble synthetic colour was detected in the sample of Lal Mirch. It was submitted that the Public Analyst had come to this conclusion on the basis of the test of paper chromatography. It was submitted that in *Maya Ram v. State of Punjab (1)* and *Satish Kumar v. State of Punjab (2)* it had been held by this Court that where the test was only by paper chromatography, it could not be said that non-permissible coal tar dye had been used. It was submitted that on this ground alone, it could not be said that sample of Lal Mirch Powder was adulterated and as such the criminal complaint was liable to be quashed.

(6) However, I find no force in this submission of the learned counsel for the accused-petitioner. Annexure P1 is the copy of the report of the Public Analyst dated 13th September, 1999. A perusal thereof would show that the Public Analyst had applied all the three tests namely (i) Wool Dyeing, (ii) Silk Dyeing and (iii) paper chromatography, and after applying these three tests, he had come to the conclusion that non-permitted red oil soluble synthetic colour was found in the sample of red chillies powder and since the chillies powder should be free from added colouring material, the contents of the sample were adulterated. From a perusal of the said report of the Public Analyst, it would be clear that he had applied all the three tests, referred to above, before he came to the conclusion that non-permitted red oil soluble synthetic colour was there in the sample of the red chillies powder which was analysed by him.

(1) 1987 (2) FAC 320 (P&H)

(2) 1992 (2) FAC 214 (P&H)

(7) The two authorities, referred to above and relied upon by learned counsel for the accused-petitioner, would have no application to the facts of the present case. In 1987(2) FAC, 320 (supra), the Public Analyst had analysed the sample of Bufri. When the Wool Double Dyeing test was applied, the result was negative in acid bath, but positive in basic bath. The result was positive when acetic acid test was applied. When the test of paper chromatography was applied, it was found that the sample contained "a red non-permitted basic coal tar dye", While the result was negative when the test for oil soluble coal tar dye was applied. The Public Analyst was of the opinion that the sample contained red non-permitted basic coal tar dye. This was on the basis of the paper chromatography test, conducted by the Public Analyst, while analysing the sample. It was under those circumstances that it was held by this Court that as a result of the paper chromatography test, it could be said that there was present food colouring on coal tar dye, but on that test, it could not be concluded where it was permitted or non-permitted. Under those circumstances, it was held that the report of the Public Analyst could not be taken as the gospel truth. Resultantly, the accused was acquitted by this Court.

(8) In 1992(2) FAC, 214 (supra), again the Public Analyst had found that the sample of Lal Mirch Powder contained wheat starch and non-permitted oil soluble coal tar dye of red shade as an admixture, whereas the chillies powder should be free from extraneous matter and added colouring material. The Public Analyst had detected red oil soluble coal tar dye by Wool Dyeing, Silk Dyeing and by paper chromatography. The criminal complaint, filed against the accused-petitioner, was quashed by this Court, Placing reliance on the law laid down in the case Maya Ram v. State (supra), referring only to the paper chromatography test as the test for coming to the conclusion that the sample contained non-permitted oil soluble coal tar dye of red shade. Under these circumstances, this judgment cannot be taken as an authority on the point that where the Public Analyst had come to the opinion, after applying the 3 tests i.e. Wool Dyeing, Silk Dyeing and paper chromatography, still the opinion, of the Public Analyst could not be made the basis for holding that the sample was adulterated. this judgment thus, can be taken to have been rendered on the facts of the case.

(9) As referred to above, in the present case, the Public Analyst had given the opinion, that the sample contained non-permitted red oil soluble synthetic colour, which was detected by applying the tests of Wool Dyeing, Silk Dyeing and paper chromatography. Under these circumstances, in my opinion, at this stage, the complaint cannot be

points before the Full Bench of Delhi High Court was as to whether the Food Inspector was competent to take sample of Atta, considering that the accused had not stored it for sale as such. After considering various provisions and various authorities on the point, it was held by the Full Bench that "the Food Inspector had the power to take a sample under Section 10 of the said Act from a person, who either sells the article as such or uses that article in the preparation of another article of food, which he sells as such."

(12) In view of the law laid down by the Hon'ble Supreme Court and Delhi High Court, in the abovementioned authorities, in my opinion, it could not be said that the criminal complaint, filed against the accused-petitioner, was liable to be quashed, only on the ground that the accused was running a restaurant and had kept the red chillies powder for being used in the preparations to be sold/served to the customers.

(13) The authority 1999(2) PLR, 446 (supra) relied upon by learned counsel for the petitioner, in my opinion, cannot be made the basis of quashing the criminal complaint, in view of the law laid down by their Lordship's of Supreme Court, in the various authorities referred to above.

(14) There is another aspect of the matter. The criminal complaint filed by the Food Inspector against the accused-petitioner, is not only under Sections 7/16 of the Act, but also under Rules 49 (24) and 50 of the Rules. Rule 49 (24) of the Rules requires, that no person should sell powder/spices except under packed condition. In this case, it is not the case of the accused-petitioner that the red chillies powder was in packed condition, when the Food Inspector had taken a sample thereof. In this view of the matter, the criminal complaint as such, cannot be quashed.

(15) No other point has been urged before me in this petition.

(16) For the reasons recorded above, there is no merit in this petition and the same is hereby dismissed.

R. N. R.