

Jagdish Chandra vs State Of Uttar Pradesh on 7 August, 1980

Equivalent citations: AIR1981SC1233, 1981CRILJ739, (1982)1SCC350, AIR 1981 SUPREME COURT 1233, 1981 FAJ 240, 1981 SCC (SUPP) 1, 1981 (1) FAC 33, 1981 CRI APP R (SC) 187, 1981 SCC(CRI) 610, 1981 CRILR(SC MAH GUJ) 198, (1981) FJR 240, (1981) 1 FACLR 33

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Bench: A.C. Gupta, R.S. Sarkaria

JUDGMENT

R.S. Sarkaria, J.

1. We have heard the learned Counsel on both sides. The trial court convicted the appellant under Section 7/16(1)(a)(i) of the Prevention of Food Adulteration Act and sentenced him to six months rigorous imprisonment and a fine of Rs. 1,000 on a charge that he sold 450 grams of Dalchini for Rs. 2.25 to the Food Inspector, R. S. Kushwaha. The samples taken were sent to the Public Analyst for analysis. The Public Analyst performed only microscopic test and opined that the sample examined by him was not cinnamon at all but contained cent per cent foreign bark.

2. As before the courts below, here also the contention advanced on behalf of the defence is that the article was not sold as cinnamon *zeaylanicum* knees but as Chini Dalchini or cassia lignea which, it is common ground between the counsel, is not cinnamon. We find basis for this contention in the telling circumstance that the appellant charged Rs. 2.25 only for 450 grams of this article from the Food Inspector; while the market price of Dalchini properly so-called, would have been more than ten times of the price charged by the appellant. The meagre price charged is a pointer to the fact that the article sold was in all possibility Chini Dalchini which is only bark of cassia lignea. Even the Food Inspector who purchased the sample, admitted that he did not know the distinction between Dalchini proper and Chini Dalchini so-called. No less a person than the Public Analyst himself, admitted in the witness-stand before the High Court. "There should be considerable difference in the price between Cinnamon and cassia, perhaps, the price of cinnamon would be ranging between 50 to 100 rupees per kg. Cassia would be much cheaper, the price may be 5 to 10 rupees per kg".

3. Another lethal snag in the prosecution case was that the Public Analyst did not perform the chemical test prescribed by the Rules for analysing an alleged sample of Dalchini (*Cinnamomum Zeaylanicum* Knees). In his testimony, S. B. Singh, Public Analyst stated that the only test performed to identify the sample, in his Laboratory was microscopic examination of the sample. He frankly conceded: "We do not have any procedure of subjecting the sample of Dalchini to a micro-chemical test.

4. Rules (Items) A.05.06 and A.05.06.01 of the Prevention of Food Adulteration Rules provide as under:

A.05.06. Cinnamom (Dalchini) whole means the dried pieces of the inner bark of Cinnamomum Zeaylanicum. It shall not contain Chinese cassia (Chini Dalchini) or any other foreign vegetable matter. It shall contain not less than 0.5 per cent (v/w) of volatile oil.

The amount of insect damaged matter shall not exceed 5 per cent by weight.

Explanation- The term insect damaged matter means spices that are partially or wholly bored by insects.

A 05.06.01. Cinnamom (Dalchini) powder means the powder obtained by grinding the dried inner bark of Cinnamomum Zeaylanicum Knees. The cinnamom powder shall conform to the following standards:

Moisture ...Not more than 12.0 per cent by weight. Total ash....Not more than 8.0 per cent by weight. Ash insoluble in dilute HCl....Not more than 2.0 per cent by weight. Volatile oil...Not less than 0.5 per cent (v/w).

A glance at the above Rules would show that the percentage of the various ingredients such as ash, insoluble in Hcl, or volatile oil or moisture in the sample in question, cannot be ascertained with any degree of accuracy by mere ocular examination under a microscope. Chemical tests, including treatment of the ash in the sample with Hydrochloric Acid would be a must. Since in the instant case, the sample was not subjected to any chemical test or analytical process, the opinion of the Public Analyst was not entitled to any weight whatever.

5. Furthermore, the Public Analyst revealed in his testimony that on the date when the sample was examined, there was no standard prescribed for Chini Dalchini. Such a standard was prescribed for Chini Dalchini (Cassia lignea) by a Government notification, with effect from July 1, 1979, only. In the face of the serious flaws and snags, there is no escape from the conclusions that the prosecution had failed to prove beyond reasonable doubt that the article in question sold by the appellant to the Food Inspector was Dalchini (Cinnamon Zeaylanicum knees). On this short ground, the appeal must succeed. Accordingly, we allow this appeal, set aside the conviction and sentence of the appellant and acquit him. Fine, if paid, shall be refunded to him. His bail bond is discharged.