Nebh Raj vs State (Delhi Administration) And Anr. on 24 October, 1980

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Bench: O. Chinnappa Reddy, R.S. Sarkaria

JUDGMENT

O. Chinnappa Reddy, J.

1. On October 17, 1970, a Food Inspector of the Delhi Municipal Corporation purchased a sample of Dal Biji from the shop of the appellant. One part of the sample was sent to the Public Analyst for analysis. The Public Analyst reported on October 27, 1970 that the sample was adulterated because of the presence of unpermitted coal tar dye. Thereafter there was a stale-mate for about two years. A complaint was finally filed against the appellant on November 13, 1972. On April 17, 1973, the appellant moved the Trial Court to send another part of the sample for analysis to the Director of the Central Food Laboratory. This was accordingly done. A sample was received by the Director, Central Food Laboratory, Calcutta on May 2, 1973. After analysis the Director, Central Food Laboratory sent his report on October 26, 1973. The precise date of analysis by the Director, Central Food Laboratory is not evident from the record. According to the report the sample was adulterated as the vanaspati used in the sample of Dal Biji contained 42. 2% of free fatty acid as oleic acid" as against the permissible 25%. The report also mentioned that "added coal tar dyes" were absent. The appellant was convicted by the Metropolitan Magistrate, Delhi, under Section 16 read with Section 7 of the Prevention of Food Adulteration Act, 1954, and sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs. 1000/-, The conviction and sentence were confirmed, on appeal, by the learned Additional Sessions Judge, Delhi. A revision preferred to the High Court of Delhi was dismissed in limine. One of the submissions made before the lower courts and the only submission now made before us is that the analysis by the Director, Central Food Laboratory, Calcutta was made nearly three years after the sample was taken. There was every possibility of the free fatty acid content of the sample having increased enormously by oxidation during storage. We are afraid that on the facts of this particular case we have to accept the submission made on behalf of the appellant. The report of the Director, Central Food Laboratory, Calcutta having superseded

the report of the Public Analyst, the prosecution must stand or foil on the report of the Director, Central Food Laboratory. The report shows that there was 42.2% of "free fatty acid as oleic acid" as against the permissible 25%. Primafacie the sample was adulterated. The burden of proving that the free fatty acid content of the vanaspati had increased due to natural causes was upon the appellant. But, in the present case the burden is sufficiently discharged by the very passage of so long a time as three years from the date of taking the sample to the date of the analysis by the Director Central Food Laboratory. That oxidation due to exposure to air has the effect of increasing the free fatty acid content of edible fats and oil cannot be disputed. Woodman in his Food Analysis 4th Edn. p. 170 Points Out: When acted on by the oxygen of the air, especially in the presence of light and moisture, free fatty acids are liberated and altered with the accompanying production of various aldehydes and acids of lower molecular weight having a disagreeable odour and acrid taste, the fat or oil than being termed 'ran???i.

David Pearson in his Chemical Analysis of Foods 7th Edition, page 494, says:

> Fats undergo changes during storage which result in the production of an unpleasant teste and odour, which is commonly referred to as rancidity. Rancidity is brought about by the action of air or by mioro-organisms. Oxidative rancidity is accelerated by exposure to heat and light, by moisture and by the presence of traces of certain metels (e.g. copper, nickel, iron).... With most oils and fats the free acidity increases during storage....

> In State of Tamil Nadu v. S. Shanumugham Chettiar and Anr. Criminal Appeal No. 115 of 1975, decided on 22-9-1980 which was decided a few weeks ago there was a time-gap of three months and five days between the taking of the sample and the analysis by the Director Central Food Laboratory. The free fatty acid as olaic acid" content of the gingelly oil was found by the Director, Central Food Laboratory to be 6.2% as against the permissible 3%. We held that the time gap was not such as to justify an inference that the free fatty acid content of the gingelly oil had increased during storage. We therefore, convicted the accused in that case. But, in the present case the time gap is so wide that we cannot but hold that the free fatty acid content of the sample which was sent to the Director, Central Food Laboratory might have well increased during storage and that it is a possibility which is so probable as to be incapable of being ruled out. We, therefore, allow the appeal and set aside the conviction and sentence passed on the appellant. The bail bonds will stand discharged. The fine if paid will be refunded. We desire to add that there was no justification whatever for launching the prosecution more than two years after the sample was taken and after obtaining the report of the Public Analyst. To launch a prosecution at such a belated stage may result in causing harrassment to the accused in some cases and may also result in genuine offenders escaping punishment. We are unable to see why simple cases under the Prevention of Food Adulteration Act should be launched so late. Tardiness in these matters is inexcusable.