Municipal Corporation Of Delhi vs Ram Sarup on 1 August, 1979

Equivalent citations: AIR1980SC174, 1980CRILJ216, (1980)1SCC580, 1979(11)UJ688(SC), AIR 1980 SUPREME COURT 174, 1979 UJ (SC) 688, 1980 CRI APP R (SC) 325, 1980 SCC(CRI) 137, 1979 (2) FAC 143, 1979 ALLCRIR 430, 1979 FAJ 460, 1980 (1) SCC 580, (1979) ALL WC 652, (1979) 2 FAC 143

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Bench: O. Chinnappa Reddy, P.N. Shinghal, R.S. Sarkaria

JUDGMENT

P.N. Shinghal, J.

1. This appeal by special leave is directed against the judgment of the Delhi High Court dated September 4, 1972 dismissing the appeal of the Municipal Corporation of Delhi against the acquittal of respondent Ram Sarup and upholding his acquittal by the appellate judgment of the Additional Sessions Judge of Delhi for an offence under Section 7 read with Section 16 of the Prevention of Food Adulteration Act, 1954, hereinafter referred to as the Act It is not disputed that a sample of 'beasen" was taken by the Food Inspector from the respondent's shop on October 3,1970 and the Public Analyst reported that it was "very highly insect infected". The trial magistrate had found him guilty of the offence under Section 7 read with Section 16 of the Act and sentenced him to rigorous imprisonment for six months and a fine of Rs. 1000/ .

2. The High Court took note of the following standard of quality of 'besan' prescribed in the Prevention of Food Adulteration Rules, 1955, appendix B, item A 18.04,- Besan means the product obtained by grinding denusked Bengal gram (cicer arietinum) and shall not contain any added colouring matter or any other foreign ingredient.

It was argued there on behalf of the appellant Corporation that even though it was the requirement of the Rules that 'besan' shall not contain any "foreign ingredient", the report of the Public Analyst showed that it was insect infested and was therefore found to contain a "foreign ingredient" The High Court made a reference to the statement of the Public Analyst that he had used the expression "very highly insect infested" in his report because "there must have been dead or living insects in the instant sample in great number". It also read that part of the statement of the Public Analyst where he had stated that there must have been at least 9 or 10 insect "living" in the whole sample before he declared it insect infested and that by living insect was meant fully grown insects and not larvae. Even so, the High Court upheld the argument that the words 'very highly insect infested were relative words" and that the report did not state specifically and with scientific precision the "foreign ingredient" in the sample and whether living or dead insects or larvae or eggs were found in it. In

taking that view, the High Court made a reference to some decided cases and held that the Public Analyst's report suffered from weakness as it did not supply the "data on which a correct conclusion can be reached by the Court."

3. It is true that the report of the Public Analyst did not state the extent of the insect infestation or whether the insects were living or dead, but the High Court failed to take into consideration the fact that he had categorically deposed that there must have been dead or living insects in the sample in "great number", that there were white living insects in the sample, that there were at least 9 or 10 such insects in it, and that they were fully grown live insects and not larvae. As nothing to the contrary was elicited inspite of the length cross examination on behalf of the respondent, these facts had been amply established by the statement of the Public Analyst and were sufficient to prove that the sample of 'besan' was "adulterated". The High Court did not take into consideration the provision of Section 2(f) of the Act according to which an article of food is Section 2(f) of the Act according to which an article of food is deemed to be adulterated if, inter alia, it is wholly or in part insect infected. So when it had been proved that this was so, the only possible conclusion was that the respondent had committed an offence under Section 7 read with Section 16 of the Act for that reason and there was no occasion to examine the standard of quality of 'besan' specified under Rule 5 of the Rules.

4. In the view we have taken we would have set aside the acquittal of the respondent and restored the judgment of the trial court, but we are inclined to think that it will not be proper to do so in the facts and circumstances of this case. There is nothing in the three judgments on record, and more particularly in the impugned judgment of the High Court, to show whether the respondent was put on trial for selling an adulterated article of food within the meaning of Clause (f) of Section 2 of the act, or whether he was tried for selling, within the meaning of Clause (1) of that section, an article of food of which the quality or purity fell below the standard prescribed by the Rules. The possibility that the respondent was prejudiced in his defence because of the ambiguity cannot therefore be ruled out. In this view of the matter, we are not inclined to allow the appeal and set aside the respondent's acquittal.

5. The appeal is dismissed.