Braham Dass vs State Of Himachal Pradesh on 2 August, 1988

Equivalent citations: AIR1988SC1789, 1988(36)BLJR590, 1988CRILJ1816, JT1988(3)SC184, 1988(2)SCALE308, (1988)4SCC130, 1988(2)UJ598(SC), AIR 1988 SUPREME COURT 1789, 1988 (4) SCC 130, 1988 (3) JT 184, 1988 (17) IJR (SC) 376, 1988 (2) FAC 13, 1988 FAJ 453, 1988 ALL WC 1026, 1988 BLJR 590, (1988) EFR 559, (1988) 2 FAC 13, (1988) 2 RECCRIR 184, (1988) ALLCRIR 528, (1988) ALLCRIC 337

Bench: Ranganath Misra, M.N. Venkatachaliah

ORDER

1. This appeal by special leave is directed against the appellate judgment of the Himachal Pradesh High Court reversing the appellate judgment of acquittal of the Sessions Judge and convicting the appellant under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act and the sentence of six months rigorous imprisonment and a fine of Rs. 1,000/-.

2. The appellant was called upon to face the following charge:

> That on 9.7.1980, in the area of Bijhri, you were found in possession of 4 Kgs. of 'Masur Whole' for sale kept in your shop out of which the complainant purchased from you a sample weighing 600 grams for the purposes of analysis against cash payment of Rs. 1. 68, which on analysis by the Public Analyst Punjab was found to contain living and dead insects alongwith fragments of dead insects in abundance and about one fourth of the sample contains larva inside the grains, and the sample contained 36.0 per cent insect damaged grains against the 1 maximum prescribed standard of 10. 0 per cent and you thereby committed an offence punishable under Section 16(i)(a) read with section 7 of the Prevention of Food Adulteration Act and within the cognizance of this court.

3. The High Court found:

> Clause (m) of Section 2(i-a) and the proviso thereto, however, would be attracted only in case the sample in question even of primary food with quality or purity thereof falling below the prescribed standard or its constituents being present in quantities not within the prescribed limits of variability, does not render it injurious to health.... Thus in the instant case the court is required to see whether the adulteration present in the sample in question renders it injurious to health or unfit for human consumption within the meaning of Clause (f) of Section 2(i-a) of the Act. The finding already extracted above of the Public Analyst would show that, 'it contained living and dead insects alongwith fragments of dead insects in abundance and about 1/4th of the sample contained larva inside the grains. Besides this, it also

> contained 36 per cent in Sect damaged grains against the maximum prescribed standard of 10 per cent.' No doubt, the Public Analyst has not opined whether or not on account of these findings the article of food in question had become unfit for human consumption or had been rendered injurious to health but this is of no consequence and the court is not debarred from coming to its own conclusion on the basis of the findings recorded by the Public Analyst.... I have no doubt that these findings of the Public Analyst clearly make out a case that the article of food in question was not only insect infested but was also insect damaged to the extent of 36 per cent against the maximum prescribed standard of 10 per cent and was thus unfit for human consumption and also injurious to health.... A Division Bench of this Court in Crl. Revision No. 100 of 1983, Banarsi Dass vs The State of H.P., decided on August 8, 1986, has held that the Clauses (f) and (m) of Section 2(i-a) are independent of each other and mutually exclusive and thus in case the article of food is found to be insect infested under Clause (f) it would not have the benefit of the proviso to clause (m) and the article of food even if it be primary food must be held to be adulterated. Further as I have already observed, the law requires that even under Clause (m) the deficiencies or variabilities beyond the prescribed standard should not render the article of food as injurious to health and in case the court comes to the conclusion that these factors have rendered the article of food, though primary food, as injurious to health, no benefit of the proviso to Clause (m) of the Act can be extended to the accused and it would rather fall within the mischief of clause (1).

4. The difference between Clauses (f) and (m) may now be noticed. Section 2(i-a) defines 'adulterated' and in the Clauses (a) to (m) different situations have been indicated. These two clauses provide:

> adulterated'-an article of food shall be deemed to be adulterated-
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> (f) if the article consists wholly or in part of any, filthy, putrid, rotten, decomposed or diseased animal or vegetable substance or is insect-infested or is otherwise unfit for human consumption.
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> (m) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability but which does not render it injurious to health:
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> Provided that, where the quality or purity of the article, being primary food, has fallen below the prescribed standards or its constituents are present in quantities not within the prescribed limits of variability in either case, solely due to natural causes and beyond the control of human agency, then, such article shall not be deemed to be adulterated within the meaning of this sub-clause.

5. Appellant's counsel maintained in this Court that there is no statutory prescription for 'Masur', the article of food in question. Respondent's counsel was given the opportunity to meet this

argument. He has not been able to show any notification, prescribing the standard for 'Masur'. Clause (m) of the definition, therefore, would not apply.

6. The point next for consideration is as to whether the conviction can be sustained with reference to Clause (f). While reversing the acquittal, the High Court no where specified that the case was covered either by Clause (f) or Clause (m) but the discussion in its judgment, however, indicates that the Court did consider the provisions of Clause (f). In the charge sheet, there was no mention of either of the clauses though at one place reference was made to the prescribed standard of 10 per cent. The High Court has not clearly referred to Clause (f) of the definition and has come to the conclusion that the article was insect infested. It has also recorded a finding that on account of the presence of the contents indicated in the Public Analyst's Report, the article was otherwise unfit for human consumption. Seeing the extent of contents of adulterating materials, as noticed in the Report, we do not think there is any justification to take a view different from the High Court. Even if there be no prescription of standard for 'Masur' and the definition in Clause (m) is not attracted, the situation squarely comes under Clause (f) and we agree with the view taken by the High Court. Therefore, the appellant's conviction is not open to attack.

7. Coming to the question of sentence, we find that the appellant had been acquitted by the trial court and the High Court while reversing the judgment of acquittal made by the appellate Judge has not made clear reference to Clause (f). The occurrence took place about more than 8 years back. Records show that the appellant has already suffered a part of the imprisonment. We do not find any useful purpose would be served in sending the appellant to jail at this point of time for undergoing the remaining period of the sentence, though ordinarily in an anti-social offence punishable under the Prevention of Food Adulteration Act the Court should take strict view of such matter.

7. While dismissing the appeal, we would, however, limit the sentence of imprisonment to the period already undergone and sustain the fine along with the default sentence.