

Municipal Corporation Of Delhi vs Man Mohan Lal And Anr. on 17 November, 1982

Equivalent citations: AIR1983SC506, 1983CRILJ855, 1982(2)SCALE1190, (1984)1SCC670, 1983 CRI. L. J. 855, 1984 (1) SCC 670, 1983 CRILR(SC MAH GUJ) 146, 1983 RAJLR 639, (1983) KER LT 13, 1983 (2) FAC 376, 1984 SCC (CRI) 160, (1983) EFR 290, (1983) ALLCRIC 156, AIR 1983 SUPREME COURT 506, 1982 (2) FAC 376, 1983 CRIAPPR(SC) 54, 1983 ALLCRIC 156, 1983 EFR 290, 1983 FAJ 234, (1982) 2 FAC 376, (1983) MAD LJ(CRI) 528, 1983 CHANDLR(CIV&CRI) 272, (1983) 2 SCJ 32

Bench: A. Varadarajan, P.N. Bhagwati

JUDGMENT

1. This is an appeal against an order passed by the Additional Sessions Judge and confirmed by the High Court of Delhi acquitting the first respondent of the offence under Section 16 read with Section 7 of the Prevention of Food Adulteration Act. The first respondent was charged with the offence of selling adulterated besan and the, contention of the prosecution was that the besan sold by the first respondent was insect infested and was, therefore, unfit for human consumption and was accordingly adulterated within the meaning of Section 2(1)(a)(f) of the Act. The learned Magistrate who tried the first respondent took the view that the besan was insect infested and must therefore be taken to be unfit for human consumption and he accordingly convicted the first respondent of the offence under Section 16 read with Section 7 and sentenced him to suffer rigorous imprisonment for a period of six months and to pay a fine of Rs. 1,000/- or in default, to suffer rigorous imprisonment for a further period of three months. He also convicted the first respondent for selling besan without a licence and sentenced him to pay a fine of Rs. 500/- or in default to undergo rigorous imprisonment for one month. The first respondent preferred an appeal to the Sessions Court and the learned Additional Sessions Judge who heard the appeal confirmed the conviction and sentence passed upon the first respondent for the offence of selling besan without licence, but, so far as the conviction under Section 16 read with Section 7 of the Act was concerned, he took the view that though the besan sold by the first respondent was insect-infested there was not sufficient evidence to show that it was unfit for human consumption and on this view, he acquitted the first respondent in respect of that charge. The appellant applied to the High Court for leave to appeal against the acquittal of the first respondent under Section 378 of the CrPC 1973 but the High Court agreed with the view taken by the learned Additional Sessions Judge and declined to grant leave to the appellant. The appellant thereupon preferred the present appeal with Special Leave obtained from this Court.

2. The principal argument advanced before us on behalf of the appellant was that, on a proper interpretation of Section 2(1)(a)(f) of the Act, it was enough to show that the besan sold by the first respondent, was insect infested and it was not necessary further to establish that it was unfit for human consumption in order to bring it within the definition of "adulterated." The appellant

conceded that in *Municipal Corporation of Delhi vs Kachcheru Mail* 1976 (2) SCR 1 this Court took the view that the words "or is otherwise unfit for human consumption" in Section 2(1)(a)(f) must be read conjunctively with the preceding words and that even though an article of food is insect infested, it would not fall within the definition given in that section unless it is also shown to be unfit for human consumption but this view, contended the appellant, was not correct and in fact a subsequent decision of this Court in *Municipal Corporation of Delhi vs Tek Chand Bhatia* 1980 (Vol. 1) SCR 910 adopted a diametrically Doorsite view. Now, there can be no doubt that there is a clear conflict between these two decisions and if we had to examine this question we might perhaps have been constrained to refer this question to a larger bench for resolving this controversy, but it is not necessary to do so, since it is clear from the evidence of Dr. S. P. Pinele an expert examined, on behalf of the Corporation that the besan sold by the first respondent was not only insect infested but the infestation was of such a serious character that it rendered the besan unfit for human consumption and thus in any view of the matter, the requirement of the offence under Section 2(1)(a)(f) was satisfied. We accept the testimony of Dr. Pingle and on the basis of that testimony we hold that the besan sold by the first respondent was adulterated within the meaning of Section 2(1)(a)(f) and the first respondent was guilty of the offence under Section 16 read with Section 7 of the Act.

3. That takes us to the question of sentence to be imposed on the first respondent for the offence proved against him. Since the offence was committed at a time when Section 20AA was not on the Statute Book and there was no prohibition against given benefit of Probation of Offenders Act to a person convicted of an offence under the Prevention of Food Adulteration Act, we would not be unjustified, on the facts and circumstances of the present case, in releasing the first respondent on probation. It appears from the judgment of the High Court that certain observations have been made suggesting that the appellant was not justified in asking for leave to prefer an appeal and that public funds were being frittered away in pursuing frivolous litigation. We do not think that these observations were justified in the present case because it cannot be said that there was no justification for the appellant to prosecute the first respondent and pursue the matter further in view of the fact that Dr. Pingle had given evidence that the besan sold by the first respondent was unfit for human consumption.

4. We accordingly allow the appeal, set aside the order of acquittal passed by the Additional Sessions Judge and confirmed by the High Court and after convicting the first respondent of the offence under 5 16 read with Section 7 of the Prevention of Food Adulteration Act, we direct that the first respondent be released on entering into a bond for one thousand rupees with one surety, to appear and receive sentence when called upon during a period of six months and in the meantime to keep the peace and be of good behaviour. The bond may be executed before the Chief Metropolitan Magistrate within four weeks from today.