

Municipal Committee Vs. Arjan Singh

LegalCrystal Citation : legalcrystal.com/620889

Court : Punjab and Haryana

Decided On : May-15-1972

Reported in : 1973CriLJ721

Judge : A.D. Koshal and; Manmohan Singh Gujral, JJ.

Appellant : Municipal Committee

Respondent : Arjan Singh

Judgement :

Manmohan Singh Gujral, J.

1. On 11th March 1968 Ram Parkash. Food Inspector, Municipal Committee, Amritsar. went to the shop of Arjan Singh in Dhab Wasti Ram, Amritsar, and found 70 Kgs. of edible oil for sale in a drum. After disclosing his identity. Ram Parkash took a sample of the oil for analysis in the presence of Kala Mal and Jassa Singh after fully complying with the requirements of law. The sample was put in three dry and clean bottles and the bottles were then stoppered and sealed. One of the bottles was given to the accused, the second was retained by the Municipal Committee and the third was sent to the Public Analyst. On receipt of the report of the public Analyst that the sample of toria was adulterated as it contained a mixture of til oil, a complaint was filed against the accused. On the basis of this complaint, the accused was tried but was acquitted by the judicial Magistrate First Class. Amritsar, by order dated 27th September, 1968, for the reason that the quantity of til oil present in the sample was not shown in the report. Being aggrieved the Municipal Committee has challenged this order in appeal by special leave in which a notice was issued to the accused.

2. Rule 44 of the Prevention of Food Adulteration Rules, 1955, which, prohibits sale of certain admixtures provides that no person shall sell a mixture of two or more edible oils as an edible oil. Item A-23 of Appendix B to the Rules defines mustard seed and reads as under:

Mustard seed means the dried, ripe seed of Brassica nigra, Brassica Juncea and other allied cultivated varieties of the species belonging to the natural order Cruciferae and to the genus Sinapis or Brassica. The common species are black or brown mustard (B. nigra), brown or serepta mustard (B. besseriana), white or yellow mustard (S. alba) and Indian mustard (B. juncea).

It shall not contain:

(a) more than 5 per cent, of foreign organic matter, and deteriorated or other seeds and shall be free from insect pests. It shall be free from argemone seeds;

(b) more than 5 per cent, of total ash;

(c) more than 1.5 per cent, of ash insoluble in hydrochloric acid;

(d) less than 0.6 per cent, of volatile essential oil.

Item A. 17.06 of Appendix B to the Rules, which defines 'mustard oil', is as under:

Mustard oil (Sarson-ka-tel) means the oil expressed from clean and sound mustard seeds, belonging to compestris, juncea or napus varieties of Brassica. It shall be clear, free from rancidity, suspended, or foreign matter separated water, added colouring or flavouring substances or mineral oil. It shall conform to the following standards:

(a) Butyro-refractometerreading at 40C ... 38.0 to 60.5
(b) Saponification value... 168 to 176
(c) Iodine value... 96 to 108
(d) Unsaponifiable matter... Not more than 1.2 per cent.
(e) free fatty acid as Oleicacid.. .. Not more than 3.0 per cent.
(f) Bellier test (Turbiditytemperature Acetic acidMethod Not more than 26.5C.
The test for argemone oil should be negative.

3. From the fact that mustard seed is allowed to contain 5 per cent, of foreign organic matter and other seeds excepting argemone seeds, the learned trial Court concluded that the mere presence of any other edible oil in minor traces did not make the mustard oil a mixture of two oils. In this view of the matter, it was held that in the absence of the data in the report of the Public Analyst as to the quantity of til oil in the sample analysed, the sample could not be considered adulterated. A possibility of negligible quantity of til oil having got mixed accidentally could not be ruled out. The view taken by the learned trial Court was that as long as the test for argemone oil was negative, the presence of minor traces of any other oil would not make it a mixture of two edible oils especially in view of the meaning given to mustard seeds in the Rules.

4. On behalf of the appellant, it was contended that the sale of a mixture of two edible oils being totally prohibited, it was not necessary for the Public Analyst to have stated the quantity of foreign substance in the sample sent to him. Support for this view was sought from the following observations in Municipal Corporation of Delhi v. Sat Pal Kapoor 1962 (64) Puni LR 799 : 1962 (2) Cri LJ 778.

It is not necessary, in every case, for the Public Analyst to state the exact quantity of foreign substance present in the sample sent to him. When the foreign substance happens to be one the presence of which is absolutely prohibited in that particular article of food, it would be unnecessary to state the quantity. But where the foreign substance is not injurious to human health or its presence is not absolutely prohibited, the question of quantity of the foreign substance would be a relevant factor, and if the report of the Public Analyst does not specify the quantity, it may be treated as an incomplete document.

The above observations, instead of advancing the case of the appellant, supports the respondent's contention having regard to the facts of the present case. The ratio of the above decision is that, where the foreign substance is not injurious to human health or its presence is not absolutely prohibited in a particular article of food, it will be necessary for the Public Analyst to state the quantity of foreign substance present in the sample. On the other hand, if the foreign substance is dangerous for human

health or its presence is specifically prohibited in respect of a particular article of food, it will be wholly unnecessary to determine the exact quantity of foreign matter. In the case of mustard oil, only the test for argemone oil has to be negative. It is not disputed that in this case the other tests were fully complied with and no argemone oil was detected regarding which there was specific prohibition. It was also not disputed that til oil is not injurious to human health and in Item A. 17.06 there is no specific prohibition in respect of the presence of til oil in the sample of mustard oil. In view of this, even though Baudouin's test, was positive regarding the presence of til oil, it was necessary that the Public Analyst should have given data to show the quantity of til oil present in the sample.

5. There is also another aspect of the matter. It is not disputed that til oil is far more expensive than toria oil, and whatever mixture there was. could have been introduced accidentally and not intentionally. The explanation of the respondent that a few traces may have been introduced by the use of the same pali for drawing oil from the tin or because of the failure to clean the crusher at the time the oil was extracted, appears to be highly probable in the circumstances of the case. The presence of minor traces of til oil in the sample would be protected by Section 95 of the Indian Penal Code as til oil is also an oil used for human consumption. This provision reads as under:

95. Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

The expression 'offence' occurring in this provision includes an offence under a local or special law as defined under Section 40 of the Indian Penal Code. In view of this definition of the expression 'offence', Section 95 of the Indian Penal Code will be attracted even in respect of the cases under the Prevention of Food Adulteration Act. In order to find out whether the mixture was only in traces or was substantial, it would be necessary to know the quantity of the foreign matter present in the sample. If the quantity is very negligible. Section 95 of the Indian Penal Code would come into play and the act of the accused would not be an offence. As this data is not available there is no escape from the conclusion that the report is not, a complete document and cannot form the basis of finding the case Proved against the accused. In fact, it appears that the til oil being far more expensive, the mixture could only be accidental and the presence of the til oil could not be more than mere traces. Section 95 of the Indian Penal Code would, therefore, afford protection to the accused in this case and the act of the accused would not amount to an Offence.

6. For the reasons recorded above, I find that the acquittal of the accused was justified and there is no merit in this appeal which is accordingly dismissed.

A.D. Koshal, J.

7. I agree.