

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 18th April, 2013

Pronounced on: 9th May, 2013

+ **Crl. A.538/2013**

DELHI ADMINISTRATION THROUGH ITS DESIGNATED
OFFICER Appellant

Through Ms. Rajdipa Behura, APP

versus

ASHWANI KUMAR Respondent

Through Mr. Saurabh Awasthi with Mr. Kapil
Sharma, Advocates

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The Appellant impugns a judgment dated 30.04.2012 passed by the learned Additional Sessions Judge(ASJ) whereby the order of the learned Metropolitan Magistrate(MM) dated 25.02.2010 holding the Respondent guilty for the offence punishable under Section 7 read with Section 16 of the Prevention of Food Adulteration Act, 1954(PFA Act) and the order dated 06.03.2010 whereby the Respondent was sentenced to undergo RI for one year and to pay a fine of ₹4,000/- and in default of payment of

fine to undergo SI for one month, was set aside and the Respondent was acquitted.

2. On 21.11.2002, Food Inspector, Kumari Usha Kiran purchased a sample of 'Dal Arhar' (a food article) for analysis. The sample purchased was properly mixed with the help of *jhaba*; it was divided in three equal parts and was put in three separate clean and dry bottles. The bottles were separately packed, sealed and labelled as per the provisions of the PFA Act and the Rules made thereunder. One sealed bottle was sent to the Public Analyst for analysis who by his report dated 05.12.2002 opined the sample to be adulterated as it was found to contain a synthetic colouring matter, viz, '*Tartrazine*'. After obtaining consent under Section 20 of the PFA Act, the complaint was instituted against the Respondent.
3. After institution of the complaint, the Respondent exercised the right to get the sample retested from Director, CFL, Pune who also found the sample to be non-conforming to the standard as per the Prevention of Food Adulteration Rules, 1955(PFA Rules) because of presence of '*Tartrazine*'.
4. On analysis of the evidence adduced, the learned MM opined that the Appellant had successfully proved the purchase of the sample which was found to be adulterated with the presence of '*Tartrazine*'. The Respondent was convicted and sentenced to imprisonment as stated earlier.

5. The Respondent successfully challenged the judgment dated 25.02.2010 and the order on sentence dated 06.03.2010 passed by the learned MM before the learned ASJ. The learned ASJ acquitted the Respondent on the premise that the Appellant failed to prove that presence of the colouring matter was to such an extent so as to make the food article injurious to health. Relying on *Khushi Ram v. State & Anr.*, 1984(II) FAC 256, the learned ASJ held that since the quantity, weight or proportion of 'Tartrazine' found present in the sampled food article was not given, it could not be said to be injurious to health. The presence of the colouring matter may be negligible and thus the Respondent was acquitted.
6. It is not in dispute that presence of 'Tartrazine', an artificial colouring matter, although is permitted under Rule 28 of the PFA Rules, yet Rule 29 of the PFA Rules prohibits use of even permitted synthetic food colours in or upon any food other than those mentioned this Rule. The case is squarely covered by a judgment of this Court in *Delhi Administration v. Manohar Lal*, (Crl.A.153/2013) decided on 18.02.2013 where similar contentions were raised by the both the parties. Paras 5 to 14 of the report are extracted hereunder:

"5. The following contentions are raised on behalf of the Appellant:

(i) The artificial colouring matter can be added only in the food articles specified in Rule 29 of the PFA Rules. Rule 23 prohibits addition of colouring matter to any article of food except specifically permitted by the PFA Rules. Since the standard of foodgrains is given in A.18.06 Appendix B of the Rules and that of Arhar Dal in Appendix A.18.06.09 of the Rules and Item A.18.06 specifically prohibits the use of any added colouring matter, thus, a conjoint reading of Rule 23, 28

and 29 read with Item A.18.06 and A.18.06.09 will clearly show that the sample of Arhar Dal was adulterated. Reliance is placed on the report of the Supreme Court in Prem Ballab and Anr. v. State(Delhi Admn.), (1977) 1 SCC 173.

(ii) It is true that the Public Analyst started analysis on 02.04.2003; the sample was completed on 04.04.2003 and the report Ex.PW1/G was signed by the Public Analyst on 10.04.2003; yet the delay of six days in signing the report by itself would not be fatal to the prosecution. The learned APP places reliance on a Full Bench judgment of this Court in Municipal Corporation of Delhi v. Chhote Lal, ILR, (1969) Delhi 885 and Municipal Corporation of Delhi v. Thou Ram, ILR, (1974) I Delhi 649.

(iii) The learned ASJ erred in holding that the photo-chromatic test was not a reliable test to determine the presence of an artificial colour. The learned APP relies on Dhian Singh v. Municipal Board, Saharanpur, 1970 AIR 318 in support of her contention that mode or particulars of analysis or test applied are not to be seen by the Court to come to a conclusion whether the article of food was or was not adulterated as defined in S. 2(i) of the PFA Act.

6. On the other hand, the learned counsel for the Respondent supports the impugned judgment. It is urged that the contentions raised by the learned APP cannot be attached any importance in view of the judgment of a learned Single Judge of this Court in Delhi Administration v. Amar Chand, (Crl.L.P.266/2012) decided on 21.05.2012.

7. I have given my thoughtful consideration to the contentions raised on behalf of both the parties.

8. In Amar Chand, a Co-ordinate Bench of this Court while dealing with a sample of Dal Moth held that making a harmonious construction of the provisions in Rule 28 and Article A.18.06, a synthetic food colour would not fall in the category of added colouring matters which are prohibited in foodgrains.

9. *With all humility at my command, I may say that the judgment in Amar Chand runs counter to the Supreme Court judgment in Prem Ballab and Full Bench judgment of this Court in Chhote Lal.*

10. *In the case of Prem Ballab, a sample of mustard oil was found to contain permitted coal tar dye. On behalf of the Appellant, a contention was raised before the Supreme Court that since no colouring matter was prescribed in respect of linseed oil (Item A.17.04), the presence of permitted artificial dye will make the sample of linseed oil to be adulterated.*

11. *The Supreme Court extracted Item A.17.04 of Appendix B which contains the standard of linseed oil and analysed Rules 23, 28 and 29 which deal with addition of artificial colour and held that since the added colouring matter was specifically prohibited, even permitted colouring matter was not permissible in linseed oil. Para 6 of the report is extracted hereunder:*

“6. That takes us to the question whether the present case falls within clause (j) of Section 2(i), for if it does, it would be immaterial whether it falls also within clause (l) of Section 2(i) and insofar as the linseed oil sold by the appellants is deemed to be adulterated under clause (j) of Section 2(i), the proviso to Section 16(1) would not be attracted. Now, the report of the Public Analyst showed that the linseed oil sold by the appellants contained artificial dye and this was clearly prohibited under the Rules. Rule 23 provided that the addition of a colouring matter to an article of food, except as specifically permitted by the Rules, shall be prohibited. The only artificial dyes, which were permitted to be used in food, were those set out in Rule 28, and Rule 29 prohibited the use of permitted coaltar dyes in or upon any food other than those enumerated in that rule. Linseed oil was admittedly not one of the articles of food enumerated in Rule 29 and hence even permitted coaltar dyes could not be added to linseed oil. It does not appear from the report of the Public Analyst as to what was the artificial dye found mixed in the sample of linseed oil sent to him but we will assume in favour of the defence that it was a permitted

coaltar dye. Even so, by reason of Rules 23 and 29, it could not be added to linseed oil. In the circumstances, the linseed oil sold by the appellants contained artificial dye which was prohibited under the Rules. The argument of the appellants was that since colouring matter was prohibited in respect of linseed oil, it could not be said that any colouring matter was prescribed in respect of linseed oil by the Rules and hence the presence of artificial dye in linseed oil did not attract the applicability of clause (j) of Section 2(i). It was said that clause (j) of Section 2(i) would be attracted only if a colouring matter is prescribed in respect of an article of food and the article is found to contain a colouring matter different from that prescribed. But if no colouring matter is prescribed, which would be the position where colouring matter is totally prohibited, it cannot be said that the article of food contains a colouring matter other than that prescribed in respect of it. This argument has the merit of ingenuity but it has no force and cannot be sustained. When no colouring matter is permitted to be used in respect of an article of food, what is prescribed in respect of the article is "nil colouring matter" and if the article contains any colouring matter, it would be "other than that prescribed in respect" of the article. Clause (j) of Section 2(i) is not merely intended to cover a case where one type of colouring matter is permitted to be used in respect of an article of food and the article contains another type of colouring matter but it also takes in a case where no colouring matter is permitted to be used in respect of an article of food, or in other words, it is prohibited and yet the article contains a colouring matter. There is really no difference in principle between the two kinds of cases. Both are equally reprehensible; in fact the latter may in conceivable cases be more serious than the former. Where no colouring matter is permitted to be used in an article of food, what is prescribed in respect of the article is that no colouring matter shall be used and if any colouring matter is present in the article in breach of that prescription, it would clearly involve violation of clause (j) of Section 2(i)."

12. Turning to the facts of the instant case, the standard of foodgrains is given in Item No.A.18.06, whereas Item No.A.18.06.09 lays down the standard of Dal Arhar which is included in the foodgrains. The relevant items for the purpose of dealing with the controversy raised are extracted hereunder:

“A.18.06-FOODGRAINS meant for human consumption shall be whole or broken kernels of cereals, millets and pulses. In addition to the undermentioned standards to which foodgrains shall conform, they shall be free from argemone maxicana and kesari in any form. They shall be free from added colouring matter. The foodgrains shall not contain any insecticide residues other than those specified in column (2) of the table of Rule 65 and the amount of insecticide residue in the foodgrains shall not exceed the limits specified in column (4) of the said Table. The foodgrains meant for grinding/processing shall be clean, free from all impurities including foreign matter (extraneous matter).

[Provided that the imported wheat for the purpose of Public Distribution System, or imported under the O.G.L. vide number G.S.R.386(E), dated the 28th June, 2006 from the date of commencement of the Prevention of Food Adulteration (VIth Amendment) Rules, 2006 till the 31st day of March, 2008, shall be practically free from argemone maxicana and kesari in any form.

Explanation.- For the purpose of this item, “Public Distribution System” shall have the same meaning assigned to it under the Public Distribution(Control) Order, 2001.]”

xxx	xxx	xxx	xxx	xxx
xxx	xxx	xxx	xxx	xxx

“A.18.06.09-SPLIT PULSE (DAL) ARHAR:

Dal Arhar shall consist of husk and split seeds of red gram[Cajanus cajan (L) Millsp]. It shall be sound, clean,

sweet, dry, wholesome and free from admixture of unwholesome substance. It shall also conform to the following standards, namely:-

(i) Moisture-Not more than 14 per cent by weight (obtained by heating the pulverised pulses at 130°C- 133°C for two hours).

(ii) Foreign matter (Extraneous matter)- Not more than 1 per cent by weight of which not more than 0.25 per cent by weight shall be mineral matter and not more than 0.10 per cent by weight shall be impurities of animal origin.

(iii) Other edible grains-Not more than 0.5 per cent by weight.

(iv) Damaged grains-Not more than 5 per cent by weight.

(v) Weevilled grains-Not more than 3 per cent by count.

(vi) Uric acid content-Not more than 100 mg per kilogram.

(vii) [Aflatoxin]-Not more than 30 micrograms per kilogram.

Provided that the total of foreign matter, other edible grains and damaged grains shall not exceed 6 per cent by weight.”

13. The standard of Dal Arhar as given in Item A.18.06.09 has to be read with the general standard of foodgrains as given in Item A.18.06 of Appendix B. Item A.18.06 specifically prohibits the use of colouring matter as it says they shall be free from added colouring matter. The reasoning of the Supreme Court extracted above fully applies to the standard of foodgrains which similarly prohibits use of added colouring matter. Thus, the judgment of the learned Single Judge of this Court in Delhi Administration v. Amar Chand shall have to be held as per incuriam.

14. The reasoning given by the learned ASJ that the quantity of the colour could be negligible or that the added colour was not injurious to health is going beyond the standard laid down in Item A.18.06 read with A.18.06.09 of Appendix B. The same, therefore, cannot be accepted. On the basis of the report of Supreme Court

in Prem Ballab there is no manner of doubt that presence of artificial dye even if it is one of the dyes as mentioned in Rule 28 cannot be allowed as it is not permitted by Rule 29 of the PFA Rules.”

7. It is urged by the learned counsel for the Respondent that ‘Dal Arhar’ is normally used by any person only after washing the same. Thus, the permitted artificial colour cannot, in any way, affect the food article. The contention is of no avail to the Respondent. The PFA Rules do not provide addition of any colouring matter at all except as specified in Rule 29. If an article falls below the standards as laid down in the Appendix to the PFA Rules, it has to be considered as adulterated.
8. In *Manohar Lal*, this Court in detail dealt with the question whether any sentence less than the minimum prescribed can be awarded to an accused held guilty under the PFA Act and negated the contention raised on behalf of the Respondent that any sentence less than the minimum could be awarded to an accused. Admittedly, the sample of ‘Dal Arhar’ was found to contain a synthetic colouring matter, viz, ‘Tartrazine’ which was prohibited as per the standard of ‘Dal Arhar’ as prescribed in Item No.A.18.06 read with A.18.06.09 in the PFA Rules. Thus, the sample of ‘Dal Arhar’ was rightly held to be adulterated within the meaning of Section 2(ia)(m) of the Act. The minimum punishment provided under Section 16(1)(a)(i) of the Act is punishment which shall not be less than six months but it may extend to three years or with fine which shall not be less than one thousand rupees. The learned M.M. in this case had awarded a sentence of rigorous imprisonment for one year and a fine of

₹4,000/-. I have already observed above the Court is not empowered to impose any sentence less than the minimum provided under the Act. The Respondent otherwise also has failed to disclose any adequate or special reasons for imposing a sentence of less than the minimum prescribed. But, at the same time, in view of the fact that the Respondent faced the rigours of trial for almost ten years, the ends of justice would be met if the Respondent is awarded the minimum substantive sentence of imprisonment. Thus, the Respondent is sentenced to undergo RI for six months and to pay a fine of ₹4,000/-. In default of payment of fine, the Respondent shall undergo SI for 15 days.

9. The impugned judgment, therefore, cannot be sustained and the same is liable to be reversed.
10. The Appeal is allowed in above terms.
11. The Respondent shall surrender before the Trial Court on or before 31.05.2013.

(G.P. MITTAL)
JUDGE

MAY 09, 2013

pst