

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.692 OF 2002

RAMJEE PRASAD & ANR.

Appellant(s)

VERSUS

STATE OF BIHAR

Respondent(s)

ORDER

This appeal has been filed by the two accused persons who stand convicted by the High Court for an offence punishable under Section 16(1)(a)(ii) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as "the Act") for having been found selling an adulterated food article - "Chhena Mithai".

In the light of what we intend to hold in this matter, the detailed facts would not be necessary.

The Public Analyst in his report found that the above-mentioned food article was adulterated with starch.

This opinion was only partially maintained by the Central Food Laboratory as it opined that the foodstuff was adulterated, but there was no reference whatsoever to the adulteration by starch. The trial court and the first appellate court tried and convicted the appellants, who are father and son, for an offence punishable under Section 16(1)(a)(i) of the Act and sentenced them to various terms of imprisonment.

The matter was taken in revision before the High Court and the learned Single Judge in his judgment dated 20th November, 2001 held that a case under Section 16(1)(a)(i) of the Act could not be made out against the appellants, but as

the trial court and the first appellate court had mis-applied the penal provision, it was the obligation of the High Court to see that the accused did not escape from criminal liability and accordingly convicted them for an offence punishable under Section 16(1)(a)(ii) of the Act.

It is in these circumstances that the matter is before us after grant of special leave.

Mr. Gaurav Agrawal, the learned counsel for the appellants has raised several arguments, but we are of the opinion that the matter can be disposed of on a simple admitted fact. We see that Section 16 (1)(a)(i) of the Act is relatable to Section 2(ia)(m) which provides that a food article shall be deemed to be adulterated 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. The High Court has, however, thought it fit to render the conviction under clause 16(1)(a)(ii) of the Act which stipulates that the food article shall be deemed to be adulterated if it is not of the nature, substance or quality which it purports or is represented to be. A bare reading of these two provisions and the finding of the first two courts reveal that the evidence required for recording a conviction under the two clauses would be distinct and different as the ingredients thereof are entirely different. In this view of the matter, it appears that the appellants were seriously prejudiced in the fact that the High Court had thought it fit to change the nature of the offence for which they had been brought to trial. While dealing with a similar matter, this Court in Municipal Corporation of Delhi v. Ram Sarup (1980) 1 SCC 580, in para 4 has held as under:-

"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(ia) of the Act, or whether he was tried for selling, within the meaning of clause (l) 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."

We are, therefore, of the opinion that the matter is settled in favour of the appellants by the cited judgment. The learned counsel appearing for the respondent has, however, pointed out that no prejudice had been caused to the appellants on account of this change in the nature of the offence. In the light of what has been observed by this Court (*ibidem*), the prejudice is writ large more particularly as the ingredients of the two provisions are substantially different and the evidence of one cannot lead to a finding of guilt for the other. The appeal is allowed. The orders of the courts below are set aside and the appellants are acquitted. As the accused appellants are on bail, their bail bonds are discharged.

.....J.
(Harjit Singh Bedi)

.....J.
(J.M. Panchal)

New Delhi;
April 22, 2009.