

PETITIONER:
MUNICIPAL CORPORATION OF DELHI

Vs.

RESPONDENT:
NEW KWALLTY SWEET HOUSE & ORS.

DATE OF JUDGMENT 05/12/1984

BENCH:
CHANDRACHUD, Y.V. ((CJ))
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CHANDRACHUD, Y.V. ((CJ))
PATHAK, R.S.

CITATION:
1985 AIR 329 1985 SCR (2) 284
1985 SCC (1) 195 1984 SCALE (2) 960

ACT:

Prevention of Food Adulteration Act section 7 read with section 16, scope of whether the conviction can be recorded under section 7 read with section 16 of the POFA act, even after, a quantity smaller than that required by the Rules to be sent for analysis is sent for the purpose of analysis to the Public analyst.

HEADNOTE:

Prevention of Food Adulteration Rules requires the Food Inspector to send 250 gms of suji (semolina) for analysis. On August 1, 1975 a Food Inspector purchased a sample of 200 gms of suji from the respondent-accused and sent the same to the Public Analyst for analysis. Though the report indicated that the sample was found to contain excessive moisture and ash, the Metro politan Magistrate, Delhi acquitted the accused by his judgment dated July 19, 1977 on the ground that the Food Inspector did not send the required quantity of the adulterated article for analysis. The High Court of Delhi dismissed the revision application filed by the Municipal Corporation.

Hence the appeal by special leave.

Dismissing the appeal, the Court,

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HELD: The fact that a lesser quantity than that prescribed by the Rules is sent for analysis cannot constitute an impediment in the conviction of a person accused of selling adulterated food, so long as the quantity sent for analysis is sufficient to enable the Analyst to make a satisfactory analysis according to accepted tests. Therefore, a conviction could be recorded under section 7 read with section 16 of the Prevention of Food Adulteration Act.

[285F-G]

State of Kerala V. Alaserry Mohammed [1978] 2 S.C.R. 820 followed.
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JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal

No. 114 of 1979

From the Judgment and order dated the 28th March 1978 of the Delhi High Court in Criminal Misc. No. 399/78. Randhir Jain Appellant.

The order of the Court was delivered by

CHANDRACHUD, C.J. As long back as on August 1, 1975 a Food Inspector purchased a sample of suji (Semolina) from the respondent accused, which was found to contain excessive moisture and ash. The learned Metropolitan Magistrate, Delhi acquitted the accused by his judgment dated July 19, 1977 on the ground that the Food Inspector did not send the required quantity of the adulterated article to the Public Analyst for analysis. The Rules required the i the Food Inspector to send 250 gms. Of suji for analysis, whereas he sent only 200 gms. The High Court of Delhi dismissed the revision application filed by the Municipal Corporation of Delhi summarily.

The learned Metropolitan Magistrate is clearly wrong in the view taken by him, from which it must follow that the High Court was not justified in dismissing the revision application summarily. The fact that a lesser quantity than that prescribed by the Rules is sent for analysis cannot constitute an impediment in the conviction of a person accused of selling adulterated food, so long as the quantity sent for analysis is sufficient to enable the Analyst to make a satisfactory analysis according to accepted tests. We do not, how ever, propose to interfere with the order of acquittal since, this appeal was filed not so much for the purpose of securing the conviction of the accused but for the purpose of obtaining a decision from this Court on the question whether a conviction could be recorded under section 7 read with section 16 of the Prevention of Food Adulteration Act even if, a quantity smaller than that required by the Rules to be sent for analysis is sent for the purpose of analysis to the Public Analyst. That question was decided long

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back in State of Kerala v. Alaserry Mohammed. (1) Therefore, though the view taken by the courts below is unsupportable, we do not propose to interfere with the ultimate order passed by them.

The appeal is accordingly dismissed.

S. R.

Appeal dismissed

[1978]2 S.C.R.820

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