

DINESH KUMAR

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v.

STATE OF M.P.

OCTOBER 27, 2004

[ARIJIT PASAYAT AND C.K. THAKKER, JJ.]

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Prevention of Food Adulteration Rules, 1955:

r.44-A—Applicability of—Kirana shopkeeper—Prosecution of for selling adulterated Besan—containing 'kesari dal—Held, State Government has to notify in official gazette the date with effect from which r.44-A becomes applicable in the State—Sample having been collected, much prior to the date with effect from which r.44-A was made operative in the State, Rule 44-A could not have been applied—Even otherwise, in Public Analyst's report there was no reference that the article was adulterated in terms of ss. 2(i)(c) of the Act—Prevention of Food Adulteration Act, 1954—ss. 2(1)(c), 7(1) and 16(1)(a)(i).

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Appellant, a Kirana Shopkeeper in the State of Madhya Pradesh, was prosecuted under section 7(1) read with section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954, as the 'Besan' kept in his shop was found to be adulterated. The appellant was acquitted by the trial court holding that the ingredients were within the permissible limit and because of the mixture of 'Kesari dal', the article could not be said to be adulterated. The High Court convicted the appellant holding that since under Rule 44 A of the Prevention of Food Adulteration Rules, 1955 sale of 'Kesari dal' in any form was forbidden, even though the ash content in the article was within the permissible limit, the appellant was to be convicted for violation of the said Rule.

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In the appeal filed by the shopkeeper, it was contended that on the date on which his shop was inspected and the sample was taken by the Food Inspector, Rule 44A was not in operation in the State of Madhya Pradesh and, therefore, his conviction as recorded by the High Court was not maintainable.

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Allowing the appeal, the Court

HELD: 1. Rule 44 A of the Prevention of Food Adultration Rules, 1955, provides that the State Government concerned has to notify in the official

A gazette the date with effect from which the said rule becomes applicable in the State. So far as State of M.P. is concerned, the required notification was issued for application of Rule 44-A with effect from 6th April, 2000. Admittedly the samples were collected much prior to that date i.e. 29.3.1988. Since Rule 44A was not applicable and was not in operation in the State of M.P. on the date of alleged collection of samples. The same could not have been applied to hold the accused guilty. [719-A-B]

2. Section 2(i) of the Prevention of Food Adulterated Rules, 1954 defines "adulterated", and Section 2(i)(c) deals with substitution of an article by inferior or cheaper substance which affects injuriously the nature, substance C or quality thereof. In the Public Analyst's report there was no reference to this aspect. On that score alone the High Court's judgment is indefensible and is accordingly set aside. [719-B-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1096 of 1999.

D From the Judgment and Order dated 3.2.99 of the Madhya Pradesh High Court in Crl. A. No. 216 of 1994.

Rajeev K. Virmani and P.N. Puri for the Appellant.

E Siddhartha Dave, Manu Shrivastav, Siddhartha Sharma and Ms. Vibha Datta Makhija for the Respondent.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Appellant faced trial for alleged commission of offence punishable under Section 7(1) read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (in short the 'Act'). While the trial Court acquitted him, Madhya Pradesh High Court by the impugned judgment upset it.

Factual position as projected by prosecution in nutshell is as follows:

G S.B. Dubey (PW-1) was appointed by the Government as Food Inspector. The accused Dinesh Kumar was having a kirana shop at Itava Road, Bhind. He used to sell Besan. On 29.3.1988 at about 3.00 p.m. the said Food Inspector went to his shop and inspected the articles and suspecting adulteration took a sample of Besan. He prepared Form No.6 and thereafter 750 gms. of Besan H was taken before the witnesses and Rs.4.50 being the price was given to the

accused and receipt was obtained. The sample was divided into three equal parts and he sealed it in separate containers. Panchnama (Ex.P-4) was prepared on the spot. One sample was sent to Public Analyst, Bhopal and remaining two were deposited in the office of Local Health Officer. A report (Ex.P-8) was received and it was found that Besan was adulterated, on the basis of which a complaint was filed. The accused was charged under Section 7(1) read with Section 16(1)(a)(i) of the Act. He denied the charge, but claimed that on the date of occurrence the Food Inspector went to his shop and demanded Besan, but Besan was not at his shop and hence he brought from the neighbouring flour mill which, had come there for grinding. The sample was taken of that Besan. The prosecution examined Vimal Kumar Jain as (PW-2), beside S.B. Dubey (PW-1). Besides, it relied upon the documents Ex.P-1 to Ex.P-10. After considering the entire material on record and hearing the parties the accused was acquitted by the learned Chief Judicial Magistrate. The State of M.P. filed an appeal before the Madhya Pradesh High Court, Gwalior Bench. By the impugned judgment a learned Single Judge of the High Court held that the appellant has contravened relevant provisions of the Act and was, therefore, to be convicted. Reference was made to Rule 44A of the Prevention of Food Adulteration Rules, 1955 (in short 'the Rules') and it was observed that sale of Kesari dal in any form was forbidden and even though the ash content was within permissible limit, accused-appellant was to be convicted for violation of Rule 44A of the Rules. Accordingly, he was sentenced to undergo imprisonment of six months and to pay a fine of Rs.1,000 with default stipulation.

In support of the appeal, learned counsel for the accused-appellant submitted that the occurrence took place on 29.3.1988, and at that point of time Rule 44A was not in operation in the State of the Madhya Pradesh and, therefore, the conviction as recorded is not maintainable.

Learned counsel for the State, however, supported the judgment submitting that sale of Kesari dal in any form is prohibited and, therefore, the mixture of Bengal Gram and Kesari dal exhibited for sale clearly was in contravention of the Act and Rules and, therefore, conviction was rightly recorded.

Under Rule 5 the definitions and standards of quality have been laid down in Appendix-B. Rule 5, *inter alia*, provides that the standard of quality of the various articles specified in Appendix-B are as defined in that Appendix. So far as Besan is concerned, standard is provided in serial A 18.04 of

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A Appendix-B. The same reads as follows:

“A 18.04: BESAN means the product obtained by grinding dehusked Bengal gram (*Cicer arietinum*) and shall not contain any added colouring matter or any other foreign ingredient.

B Besan shall conform to the following standards:-

- (a) Total ash Not more than 5 per cent.
- (b) Ash insoluble in dilute hydrochloric acid Not more than 0.5 per cent”

C The trial Court had held though the ingredients were within the permissible limit but because of the mixture of Kesari Dal, the article could not be said to be adulterated. It noted that there was no finding recorded by the Public Analyst that the percentage of powder of Kesari as had been found in the sample, affected injuriously the nature, substance and quality of the food article analysed. Accordingly, it was held that the sample collected was

D not adulterated. High Court only referred to Rule 44A and held that adulteration was established.

Rule 44A reads as follows:

E “44A: No person in any State shall, with effect from such date as the State Government concerned may by notification in the Official Gazette specify in this behalf, sell or offer or expose for sale, or have in his possession for the purpose of sale, under any description or for use as an ingredient in the reparation of any article of food intended for sale-

F (a) Kesari gram (*Lathyrus sativus*) and its products.

(b) Kesari dal (*Lathyrus sativus*) and its products.

(c) Kesari dal flour (*Lathyrus sativus*) and its products.

(d) a mixture of Kesari gram (*Lathyrus sativus*) and Bengal-gram (*Cicer arietinum*) or any other dal.

(e) a mixture of Kesari gram (*Lathyrus sativus*) and Bengal-gram dal (*Cicer arietinum*) or any other dal.

(f) a mixture of Kesari dal (*Lathyrus sativus*) flour and Bengal-gram (*Cicer arietinum*) or any other dal.”

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A bare reading of the Rule makes the position clear that the State Government concerned has to notify in the official gazette the date with effect from which Rule 44A becomes applicable in the State. A

We find that so far as State of M.P. is concerned, the notification No.F-3/62/98/M-2/17 was issued for application of Rule 44A with effect from 6th April, 2000. Admittedly the samples were collected much prior to that date i.e. 29.3.1988. Since Rule 44A was not applicable and was not in operation in the State of M.P. on the date of alleged collection of samples Rule 44A could not have been applied to find the accused guilty. Besides Section 2(i)(c) of the Act is relevant. Section 2(i) defines "adulterated". Section 2(i)(c) deals with substitution of an article by inferior or cheaper substance which affects injuriously the nature, substance or quality thereof. In the Public Analysts' report there was no reference to this aspect. What would happen if the Public Analysts' report in this regard even if Rule 44A was not in operation, does not, therefore, fall for consideration in this case. On that score alone the High Court's judgment is indefensible and is accordingly set aside. B

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Appeal is allowed. D

The bail bonds of the accused are discharged.

R.P.

Appeal allowed.

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