

2022 LiveLaw (SC) 873

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
S. ABDUL NAZEER; J., V. RAMASUBRAMANIAN; J.**

October 17, 2022

CRIMINAL APPEAL NO.1800 OF 2022 (Arising out of S.L.P.(Criminal)No.5272 of 2022)

M/S BHATTACHARJEE MAHASYA & ANR. Vs. THE STATE OF WEST BENGAL & ANR.

Adulteration – Prevention of Food Adulteration Act (Act 37 of 1954) – Section 16(1)(a)(i) – Section 2(ia)(m) – Definition of Adulteration – Proviso – Public Analyst report must examine whether primary foods did not meet prescribed standards or had constituents in quantities outside the permissible threshold as a result of inescapable natural causes – Whether proviso is attracted, has to be seen – Held, – There was no whisper in the complaint or in the evidence as to whether the case would fall under the proviso – Questions such as whether increase in moisture content due to natural causes, unsatisfactory milk fat content due to quality of milk, not examined by Public Analyst – Therefore, appeal allowed and conviction of sweetmeat shop under Section 16(1)(a)(i) read with Section 2(ia)(m) for allegedly selling "adulterated" paneer set aside.

(Arising out of impugned final judgment and order dated 31-03-2022 in CRR No. 1052/2011 passed by the High Court at Calcutta)

For Petitioner(s) Mr. Soumya Dutta, AOR Mr. Rohit Bansal, Adv. Mr. Harsh Bansal, Adv.

For Respondent(s) Mr. Kunal Chatterji, AOR Ms. Maitrayee Banerjee, Adv. Ms. Astha Sharma, Adv. For M/S. PLR Chambers and Co., AOR

ORDER

Leave granted.

2. Appellant No.1 is a partnership firm engaged in the business of selling Sweetmeat. Appellant No.2 is a partner of appellant No.1-Firm.
3. The appellants were convicted by the Municipal Magistrate, 2nd Court, Calcutta for an offence punishable under Section 16(1)(a)(i) read with Section 17 of the Prevention of Food Adulteration Act, 1954 (for short, 'the Act') and sentenced to simple imprisonment for two years together with a fine of Rs.3,000/-.
4. The appeal filed by the appellants was dismissed by the Additional District and Sessions Judge. The appellants filed a criminal revision. By the order impugned in the above appeal, the criminal revision was partly allowed, confirming conviction of the appellants, but modifying the sentence of imprisonment imposed upon appellant No.2 to a sentence of simple imprisonment for three months together with a fine of Rs.5,000/. It is against the said order, the appellants are before us.
5. The sum and substance of the complaint against the appellants was that the *Paneer* stored in their shop for sale and human consumption was found to be adulterated. The Food Inspector had actually purchased 750 grams of *Paneer* from the shop of the appellants and sent it for examination by the Public Analyst in the office of the Local Health Authority. It was on the basis of the opinion of the Public Analyst, that the prosecution was launched.
6. Interestingly, the opinion of the Public Analyst, which formed the foundation for the prosecution, reads as follows:

“Opinion:- The sample of Paneer does not conform to the prescribed standard in respect of moisture & Milk Fat content of the dry matter. Hence, it is highly adulterated.”

7. As we have indicated above, the complaint against the appellants was under Section 16(1)(a)(i) of the Act. The specific case of the Food Inspector was that there was an adulteration within the meaning of sub-clause (m) of clause (ia) of Section 2.

8. An offence under Section 2(ia)(m) will be made out if the quality or purity of the article falls below the prescribed standard. However, the *proviso* indicates an exception. Section 2(ia)(m) reads as follows:

“2. **Definition.**—In this Act unless the context otherwise requires,—

...

(ia) “adulterated”—an article of food shall be deemed to be adulterated—

(m) if the quality or purity of the article falls below the prescribed standards or its constituents are present in quantities not within the prescribed limits of variability but which does not render it injurious to health:

Provided that, where the quality or purity of the article, being primary food, has fallen below the prescribed standards or its constituents are present in quantities not within the prescribed limits of variability in either case, solely due to natural causes and beyond the control of human agency, then, such article shall not be deemed to be adulterated within the meaning of this sub-clause.

Explanation.—Where two or more articles of primary food are mixed together and the resultant article of food—

(a) is stored, sold or distributed under a name which denotes the ingredients thereof; and

(b) is not injurious to health,

then, such resultant article shall not be deemed to be adulterated within the meaning of this clause;”

9. There was no whisper in the complaint or in the evidence as to whether the case would fall under the *proviso*. For instance, the report of the Public Analyst says that the moisture content was 77.6% and that as per the prescribed standard, it shall not contain more than 70%. But there is no indication as to whether the moisture content was more due to natural causes. Even, the milk fat content of the dry matter may depend upon the quality of the milk and this question was also not gone into.

10. Therefore, we are of the view that a petty shop owner has been prosecuted by making much ado about nothing. Hence, the appeal is allowed and the impugned order of the High Court confirming the order of the Sessions Court and the order of the Magistrate are set aside. There shall be no order as to costs.