

The Chairman of The Bankura Municipality

Vs

Lalji Raja and Sons

Criminal Appeal No. 119 of 57

(K. C. Das Gupta, J. C. Shah JJ)

23.03.1960

JUDGMENT

SHAH, J. -

M/s. Lalji Raja & Sons - who will hereinafter be referred to as the respondents - are the owners of an oil seed pressing factory known as the Gouranga Oil Mill situated within the limits of the Bankura Municipality in the State of West Bengal. For extracting oil, the respondents import mustard seed from different areas. The respondents also hold a license for the sale of mustard seed.

On the application of the Sanitary Inspector of the Bankura Municipality, the Sub-Divisional Officer, Bankura, issued a search warrant directing seizure of 900 bags of "rotten and decomposed mustard seed", 600 bags stored in the mill godown and 300 bags stored in the court-yard of the rice mill at Hanseswar Maji. Pursuant to the search, a large quantity of mustard seed spread out for drying in the Gouranga Oil Mill was seized, and certain bags lying in the rice mill were also seized. On the report made by the Sanitary Inspector, the Chairman of the Municipality applied to the District Magistrate of Bankura on March 10, 1950, for action under ss. 431 and 432 of the Bengal Municipal Act, No. XV of 1932, alleging that the mustard seed seized was "in a highly decomposed state and gave out an offensive stench" and that the same was unwholesome and unfit for human consumption.

The proceedings started on the petition of the Chairman of the Municipality had a chequered career. It is unnecessary to set out for the purposes of this appeal the diverse orders which were made from time to time by the District Magistrate and which were set aside by the High Court of Judicature at Calcutta. It may be sufficient to state that on May 26, 1950, the District Magistrate ordered restoration of the mustard seed bags to the respondents and that order was set aside by a Division Bench of the Calcutta High Court in revision. Another order passed by the District Magistrate in April 1951 directing that the contents of the bags be disposed of as "manure or fodder" was set aside by the Calcutta High Court and the proceedings were directed to be re-tried. The District Magistrate again held an enquiry and by his order dated November 10, 1954, held that the mustard seed was lawfully seized in accordance with the provisions of the Bengal Municipal Act, 1932, that it was unwholesome and unfit for human consumption on the date of seizure and directed in exercise of the powers under s. 431(2) of the Act that the same be made over to the Commissioners of the Bankura Municipality for disposal either as manure or as cattle feed. The High Court at Calcutta by order dated August 24, 1955, in exercise of its revisional jurisdiction, set aside the order of the District Magistrate holding that s. 431 of the Bengal Municipal Act under which the order was made, had no application to a case of seizure of unwholesome food seized under a warrant issued under s. 430. Against the order of the High Court, this appeal is filed with special leave.

The only question which falls to be determined in this appeal is whether articles of food seized under a warrant issued by a Magistrate in exercise of the powers under s. 430 of the Bengal Municipal Act may be ordered to be destroyed under s. 431(2) of the Act. In order to determine this question, it is necessary to refer to certain provisions of the Bengal Municipal Act, 1932.

Section 421 prohibits, amongst other acts, selling or storing for sale of unwholesome articles to be used for human consumption. Section 427 (in so far as it is material) authorizes the Commissioners and certain other officers of a Municipality to enter upon and inspect any place in which any article of food is deposited for the purpose of sale or preparation for sale or to which any article of food intended for human consumption is brought for such purpose, and also to inspect the articles of food which may be found in the place inspected. Clause (1) of s. 428 confers upon the Commissioners and the officers designated in s. 427 power to seize articles of food intended for human consumption if, in the course of inspection, it appears that the same are unwholesome or unfit for human consumption. Section 429 provides that the articles of food referred to in s. 428 which have been seized under that section may, with the written consent of the owner or the person in whose possession they are found, be ordered to be destroyed. If the consent of the owner or the person in possession is not obtained and the articles are of a perishable nature, the officer seizing the same may take them before a Magistrate who may, if it appears to him that the articles are unsound or unwholesome or unfit as human food, condemn the same or order them to be destroyed. Section 430 (in so far as it is material) provides that if any Magistrate is satisfied on the application of the Commissioners, Health Officer, Sanitary Inspector or any other officer authorized by the Commissioner in this behalf that there is just cause to believe that any food which is unsound, unwholesome or unfit for human food is in the possession of any person for the purpose of being sold or offered or exposed for sale within the limits of the Municipality for such consumption, he may grant a warrant authorizing entry upon the premises of such person and search for and seizure of such articles of food. Section 431 by the 1st sub-section (in so far as it is material) provides that where any article of food, seized under s. 428 is not destroyed by consent under sub-s. 1 of s. 429 or when an article of food so seized which is perishable is not dealt with under sub-s. 2 of that section, it shall be taken before a Magistrate as soon as may be after such seizure. Sub-s. 2 provides that if it appears to the Magistrate that any such food is unsound, unwholesome or unfit for human food, he shall cause the same to be destroyed or to be otherwise disposed of by the Commissioners so as not to be capable of being used as human food.

It is evident from this resume of the relevant legislative provisions that the municipal authorities are entitled to enter upon and inspect places where articles of food are stored or prepared for sale. If the municipal authorities find that any article of food stored or prepared for sale is unwholesome or unfit for human food, they may seize them and destroy the same with the written consent of the owner or person in possession, and if such consent is not forthcoming and the articles are perishable, destroy them under the orders of a Magistrate. But s. 428 is not the only procedure under the Act authorizing seizure of articles of food which are unwholesome or unfit for human food. The municipal authorities may move a Magistrate for the issue of a warrant for seizure of articles of food which are unsound, unwholesome or unfit for human food, and under the authority of the warrant, such articles may be seized.

Articles of food seized under s. 428(1) which are not disposed of under s. 429 are required to be taken before a Magistrate as soon as may be after seizure and under sub-s. 2 of s. 431, the Magistrate is authorized, if it appears to him that the articles of food are unsound or unwholesome or unfit for human food to order destruction or disposal thereof. Evidently, the expression "such" used in sub-s. 2 of s. 431 refers to the articles of food described in sub-s. 1 of that section; and s.

431(1) only deals with articles seized under s. 428. There is no express provision made by the legislature either in s. 431 or elsewhere in the Act authorizing destruction or disposal of articles of food which are seized under a warrant issued under s. 430.

Counsel for the Municipality contends that the legislature intended that all articles seized, whether on inspection under s. 428 or under a warrant issued under s. 430 must be dealt with under s. 431 and the High Court was in error in holding that the authority of the Magistrate to order destruction or disposal of articles of food could be exercised only in respect of articles seized under s. 428. But the words used in s. 431(2) clearly authorize the Magistrate to order destruction or disposal of articles seized under s. 428 and not dealt with under s. 429, and it is difficult to uphold the plea that the legislature intended, even though it did not so expressly provide, that the articles seized under a warrant issued under s. 430 may also be dealt with under sub-s. 2 of s. 431. Counsel for the Municipality submits that it could not even have been the intention of the legislature that the Magistrate can order seizure of unwholesome food but cannot order its destruction, though he may order destruction of unwholesome articles of food seized by the officers of the Municipality. It appears, however, that a person storing unwholesome articles of food may be prosecuted for infraction of the provisions of s. 421 and in the course of or on the conclusion of those proceedings, it would certainly be open to the Magistrate, having seizin of the complaint, to pass an appropriate order under the Code of Criminal Procedure for destruction of the articles seized. In view of this, we are not prepared to say that the absence of an express provision relating to the disposal of articles seized under s. 430 is not deliberate; but even if we are constrained to hold that there is a lacuna in s. 431, we do not think that we would be justified contrary to the plain words used by the legislature, in attempting to remedy the same by holding that a Magistrate exercising power under sub-s. 2 of s. 431 has authority to order destruction of articles seized in pursuance of a warrant issued under s. 430.

The argument advanced by counsel for the Municipality that the seizure was in exercise of the powers under s. 428 and not under s. 430 has, in our judgment, no force. The report of the Chairman of the Municipality dated March 10, 1950, makes it abundantly clear that the search warrant was issued by the Sub-Divisional Officer in exercise of his authority under s. 430 of the Bengal Municipal Act. Any admission by the respondents that the seizure was under s. 428 of the Act in proceedings for resisting the order which the Municipality claimed to obtain against them can have no value.

Section 428 does not contemplate a seizure of articles of food which are unwholesome, under the authority of a Magistrate, and s. 430 is expressly the provision which authorises a Magistrate to issue a warrant, for such seizure. The powers under s. 431(2) are expressly directed to be exercised by the Magistrate in respect of articles seized under s. 428, and there is nothing in the former provision which may justify the view that those powers can also be exercised in respect of articles seized under a warrant issued under s. 430. In our opinion, the High Court was right in its conclusion.

The appeal therefore fails and is dismissed.

Appeal dismissed.

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