

M. V. Joshi

Vs

M. U. Shimpi and Another

Criminal Appeal No. 155 of 1959

(K. Subha Rao, Raghuvar Dayal JJ)

27.02.1961

JUDGMENT

SUBBA RAO, J. -

This appeal by special leave is directed against the judgment of the High Court of Judicature at Bombay allowing the appeal filed by respondent No. 1 against the acquittal of the appellant by the Judicial Magistrate, First Class, Thana, and convicting him under s. 16(1), read with s. 7(i), of the Prevention of Food Adulteration Act, 1954 (hereinafter called the Act), and sentencing him to undergo rigorous imprisonment for two months and to pay a fine of Rs. 250/-.

The appellant is the proprietor of a shop at Thana known as the Cottage Industries. He is a dealer in butter. On June 27, 1957, the Food Inspector of the Thana Borough Municipality visited the shop of the appellant and purchased from him some quantity of Khandeshi butter. After purchasing the butter, the Food Inspector notified his intention to the appellant that he was going to get the butter analysed. He divided the butter into three equal parts, put them in three separate bottles and duly sealed the bottles in the presence of two panchas. He gave one of those bottles to the appellant, sent one to the Public Analyst and kept the third with himself. The appellant signed the labels on the bottles and also passed a receipt in favour of the Food Inspector in token of the receipt of one of the bottles and that receipts was signed by the appellant and counter-signed by two panch witnesses.

The Public Analyst analysed the butter sent to him and sent his report in due course. In the report it was stated that the butter contained 18.32% foreign fat, 19.57% moisture and 64.67% milk fat.

On October 5, 1957, the Food Inspector filed a complaint in the Court of the Judicial Magistrate, First Class, Thana, against the appellant. It was alleged therein that the said butter was found to be "adulterated" as defined in s. 2(1)(a) of the Act and that the appellant had committed an offence under s. 16(1)(a) of the Act by selling the adulterated article of food in contravention of s. 7(i) of the Act and the rules made thereunder. The Judicial Magistrate acquitted the appellant on the ground that it had not been proved beyond reasonable doubt that the butter which was purchased from the shop of the appellant was the very same butter which was sent to the Public Analyst and also for the reason that butter prepared out of curd did not come within the mischief of the definition of the word "butter" in rule A. 11.05 of Appendix B of the Prevention of Food Adulteration Rules, 1955 (hereinafter called the Rules). The Food Inspector preferred an appeal against that order of acquittal to the High Court. The High Court held that the conclusion of the learned Judicial Magistrate that the butter purchased from the appellant might have been tampered with before it was sent to the Public Analyst was not based on any evidence on the record. It further held that butter prepared from curds was covered by the definition of the word "butter" given in the relevant rule. It further

held that even if the butter prepared out of curds was not butter as defined in the said rule, the appellant would still be liable under s. 2(1)(a) of the Act as it contained foreign fat and, therefore, was an adulterated article of food within the meaning of the said section. In the result it set aside the order of acquittal, convicted the appellant under the Act and sentenced him to rigorous imprisonment for two months and to pay a fine of Rs. 250/-. Hence this appeal.

Learned counsel for the appellant raised before us the following points : (1) the High Court went wrong in holding that the appellant had committed an offence under the Act, even though the butter in question was not butter within the meaning of the Rules. (2) Butter prepared from curds is not butter within the meaning of r. A. 11.05 of Appendix B to the Rules. (3) Butter sent to the Public Analyst was not the same butter seized from the appellant. (4) The report of the Public Analyst was vague and, therefore, no conviction could be based on it.

For the purpose of this appeal we are assuming in favour of the appellant that he would not be liable for conviction unless the butter seized from him was butter within the meaning of the rule. We shall proceed to consider the appeal on that basis. In this view, nothing further need be said on the first question raised by learned counsel.

At the outset it would be convenient to consider the ingredients of the offence alleged to have been committed by the appellant. Section 2(i) of the Act defines the word "adulterated" and it says that an article of food shall be deemed to be adulterated if it satisfies one or other of the conditions prescribed in sub-cl. (a) to (1). We are concerned in this appeal with sub-cl. (1) whereunder an article of food 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 which are in excess of the prescribed limits of variability. Section 2(xii) defines "prescribed" to mean "prescribed by rules made under this Act." In exercise of the powers conferred by sub-s. (2) of s. 4 and sub-s. (1) of s. 23 of the Act, the Central Government made rules prescribing, inter alia, the standards of quality of different articles of food. Rule 5 says that standards of quality of the various articles of food specified in Appendix B to the Rules are as defined in that appendix. Rule A. 11.05 of Appendix B to the Rules defines "butter" to mean "the product prepared exclusively from the milk or cream of cow or buffalo, or both, or without the addition of salt and annatto and shall contain not less than 80 per cent. of milk fat and not more than 16 per cent. of moisture" and no preservative is permissible in butter. Therefore, if the quality or purity of butter falls below the standard prescribed by the said rule or its constituents are in excess of the prescribed limits of variability, it shall be deemed to be adulterated within the meaning of s. 2 of the Act. If the prescribed standard is not attained, the statute treats such butter, by fiction, as an adulterated food, though in fact it is not adulterated. To put it in other words, by reason of the fiction, it is not permissible for an accused to prove that, though the standard prescribed is not attained, the article of food is in fact not adulterated. The non-conformity with the standard prescribed makes such butter an adulterated food. Section 7 of the Act prohibits the manufacture, sale, storage, or distribution of such food. Section 16 provides a penalty for the contravention of the provisions of s. 7. The first question, therefore, that falls for consideration is whether the butter seized from the appellant was butter as defined by rule A. 11.05 of Appendix B to the Rules.

Learned counsel for the appellant argues that butter prepared from curd is not butter as defined in the Act for the following reasons : (1) the definition of the word "butter" does not include the product which is obtained from curd, as it refers only to a product which is prepared from milk or cream; (2) the three words, "milk", "cream" and "curd", are separately and exhaustively defined in the Rules and, therefore, the omission of the word "curd" in the said rule is a clear legislative

indication that butter prepared from curd is not butter within the meaning of that rule; and (3) the word "exclusively" found in the rule emphasizes the fact that butter to come under the definition in the Act should have been prepared from milk or cream and from no other product.

Before considering the argument advanced, it would be necessary to notice how butter is made. In England butter is made as follows :

"...as quickly as the milk is separated the cream is cooled. The cream is delivered to the creamery, where it is graded according to at least two classes, sweet and sour..... Then it is pasteurized, and if ripened cream butter is to be made a pure culture of *Streptococcus lactis* is introduced to start the desirable souring process. If sweet cream butter is to be made no starter is added. The best storage butter is made from unripened or sweet cream. After pasteurization and ripening the cream is held overnight, when it is churned, washed, salted and worked in the combined churn and worker."

(See Encyclopaedia Britannica, Vol. 4, p. 469.)

In India butter is prepared in the rural areas by the indigenous process out of soured milk and cream, i.e., curd. In some cities butter is also made directly out of milk and cream; but the percentage of the said production is insignificant compared with the indigenous system obtaining throughout India. Whatever process is adopted, whether butter is taken directly out of milk or taken out of soured milk or cream, it is prepared only from milk. The only difference between the two is that in the case of butter prepared from curd there is an intervening souring process which is not necessary in the case of butter directly prepared from milk or cream. Shortly stated, butter, by whatever process it is prepared, is a product prepared from milk.

Now let us look at the relevant rules to consider whether they provide any reasonable basis for sustaining the argument advanced by learned counsel for the appellant. We shall now read the relevant rules of Appendix B to the Rules.

A. 11.01. Milk means the normal clean and fresh secretion obtained by complete milking of the udder of a healthy cow, buffalo, goat or sheep during the period following at least 72 hours after calving or until colostrum free whether such secretion has been processed or not.

A. 11.05. Butter means the product prepared exclusively from the milk or cream of cow or buffalo, or both, or without the addition of salt and annatto and shall contain not less than 80 per cent. of milk fat and not more than 16 per cent. of moisture. No preservative is permissible in butter.

A. 11.06. Dahi or curd : (a) Whole milk dahi or curd means the product obtained from fresh whole milk either of cow or buffalo by souring. It shall not contain any ingredient not found in milk.

A. 11.10. Cream means the portion of milk rich in milk fat which has risen to the surface of milk on standing and has been removed or which has been separated from milk by centrifugal force. It shall contain not less than 40 per cent. of milk fat and shall not contain any added substance. The fat separated from cream shall conform to the specification prescribed for ghee.

A. 11.14. Ghee means the pure clarified fat derived solely from milk or from milk curds or from cream to which no colouring matter or preservative has been added.

It was asked with some plausibility that if the rule making authority did not intend to make a distinction, in the context of making butter, between milk, cream and curd, why did it define the said three products separately, and why, in the case of butter, curd was not shown as one of the products from which it could be prepared, while in the case of ghee, it was shown as a separate produce from which ghee could be prepared. The first criticism can easily be answered. Milk, cream and butter have got to be separately defined, for they are sold in those three different forms, and the question of adulteration of the said products would have to be considered separately in regard to the standards prescribed for them. There is also no force in the second criticism. The original rules were framed on September 12, 1955, and the definition of ghee was introduced therein in 1956. The authority making the subsequent rule might have thought of clarifying the definition of ghee to steer clear of the difficulties raised in the case of the definition of butter. Putting aside the general argument, let us now look at the relevant provisions. The following words in the definition stand out prominently : "product prepared exclusively from milk or cream of cow or buffalo, or both." To be butter it should comply with the following conditions : (i) it shall be a product from milk or cream; (ii) the said milk or cream shall be that of cow or buffalo, or of both; (iii) the product shall be prepared from the said milk; and (iv) it shall be prepared exclusively from the said milk. "Product" means "a thing produced by nature or a natural process or manufacture." What is the meaning of the word "prepared" ? The Rules use different words for different milk products. In the case of butter, milk and curd, the word used is "obtained"; and in the case of ghee the word used is "derived". The dictionary meaning of the word "prepare" is, "to bring into proper state for use by some special or technical process, to manufacture, to make or compound" : (see The Shorter Oxford Dictionary, 3rd edn., at p. 1571). The word has a comprehensive meaning and takes in different processes involved in making a thing ready for use or consumption in a particular form. Butter is a product prepared by a process out of milk, whether the process involved is a simple or a complicated one, and, therefore, butter drawn from curd is a product prepared from milk. The word "exclusively", in our view, refers to the milk or cream of cow or buffalo. "Milk" has been defined as secretion obtained by milking of the udder of a healthy cow, buffalo, goat or sheep, whereas the definition of "butter" is confined exclusively to the milk of cow or buffalo. The word "exclusively", therefore, has no relation to other milk products. The plain meaning of the words used in the section indicates that butter prepared from milk or cream by whatever process, is comprehended by the definition.

Learned counsel for the appellant contends that the rule being a part of a penal statute, it should be construed in favour of the accused. When it is said that all penal statutes are to be construed strictly it only means that the court must see that the thing charged is an offence within the plain meaning of the words used and must not strain the words. To put it in other words, the rule of strict construction requires that the language of a statute should be so construed that no case shall be held to fall within it which does not come within the reasonable interpretation of the statute. It has also been held that in construing a penal statute it is a cardinal principle that in case of doubt, the construction favourable to the subject should be preferred. But these rules do not in any way affect the fundamental principles of interpretation, namely, that the primary test is the language employed in the Act and when the words are clear and plain the court is bound to accept the expressed intention of the Legislature.

The latest view on the relevant rule of construction is found in "Maxwell on the Interpretation of Statutes", 10th edn., at p. 262, which reads,

".....it is now recognized that the paramount duty of the judicial interpreter is to put upon the language of the Legislature, honestly and faithfully, its plain and rational meaning and to promote its object."

Adverting to Acts against adulteration, the learned author quotes Day, J., in *Newby v. Sims* [[1894] 63 L.J.M.C. 229] as follows :

"I cannot concur in the contention that because these acts (against adulteration) impose penalties, therefore, their construction should, necessarily, be strict. I think that neither greater nor less strictness should be applied to those than to other statutes."

So judged, we have no doubt that the butter prepared out of curd falls within the plain meaning of the words in the said rule.

Reliance is placed by learned counsel for the appellant on the decision of Miabhoy, J., in *Narshinha Bhaskar v. State of Bombay* [I.L.R. [1958] Bom. 637]. The decision is certainly in favour of the appellant. But a full bench of the same High Court in *Sadashiv v. P. V. Bhalerao* [I.L.R. [1959] Bom. 1800] overruled the said decision. In the latter decision Chainani, C.J., after considering the arguments, observed at p. 1804 thus :

"The emphasis is, therefore, on the basis material from which butter is prepared and not on the process by which it is made. Dahi is prepared from milk by souring it. Butter prepared from Dahi can, therefore, be said to be butter prepared from milk itself, after it has undergone the process of souring..... There is also a third method, which is used in some dairies and that is produce butter directly from milk itself. In all these three cases, the basic material from which butter is made is milk. Only the processes adopted for making it are different. In one case it is produced from milk directly. In the other two cases, cream and curd are first prepared and these are then churned to obtain butter. The preparation of cream or curd is only an intermediate process in the manufacture of butter from milk. Butter made from Dahi or curd, is therefore also butter made from milk."

We entirely agree with these observations.

Reliance is then placed upon a decision in *Hunt v. Richardson* [[1916] 2 K.B. 446] in support of the argument that if the standard prescribed was not maintained, the appellant did not commit any offence, as there was no adulteration of milk fat with other products. In the above case, by s. 6 of the Sale of Food and Drugs Act, 1875, "no person shall sell to the prejudice of the purchaser any article of food which is not of the nature, substance, and quality of the article demanded by the purchaser, under a penalty." By s. 4 of the said Act, the Board of Agriculture were empowered to make regulations for determining what deficiency in any of the normal constituents of genuine milk should for the purposes of the Sale of Food and Drugs Acts raise a presumption, until the contrary was proved, that the milk was not genuine. In exercise of their power, the Board of Agriculture made a regulation prescribing that where a sample of milk contained less than 3 per cent. of milk fat it was to be presumed that the milk was not genuine by reason of the abstraction therefrom of milk fat or the addition thereto of water. A dealer in milk sold pure milk and the deficiency in the milk fat was not due to any abstraction from the milk or addition thereto, but because of the herbage on which the cows were fed. The court, by a majority, held that no offence was committed by the

dealer. The reason given for the decision is found at p. 452 and it is,

"This section does not authorize the Board of Agriculture to define what is milk, or to fix a standard of the normal constituents below which an article shall be deemed not to be milk, and the regulation providing that where a sample of milk contains less than 3 per cent. of milk fat it shall be presumed, until the contrary is proved, not to be genuine of necessity implies that it may be proved to be genuine although it contains less than 3 per cent. of milk fat. It is to be observed that s. 1 of the same Act of 1899, which deals with the importation of adulterated or impoverished milk, provides in sub-s. 7 that for the purposes of that section milk shall be deemed to be adulterated or impoverished if it has been mixed with any other substance, or if any part of it has been abstracted so as in either case to affect injuriously its quality, substance, or nature. This, I think, confirms the view implied in the regulation that milk which has not been so treated although it be deficient in milk fat is none the less deemed to be milk for the purposes of s. 6 of the Sale of Food and Drugs Act, 1875."

It is, therefore, obvious that under the English Act selling milk below a particular standard is not an offence. The gist of the offence is mixing with milk any other substance or abstracting any part from it so as to affect injuriously the quality, substance, or nature of the milk. The regulation prescribing that milk shall contain not less than 3 per cent. of milk fat raises only a rebuttable presumption, and the dealer, notwithstanding such deficiency, can prove that the milk has not been adulterated or impoverished within the meaning of the said Act. But in the Indian Act selling butter below the prescribed standard is deemed to be adulteration. If the standard is not maintained, the butter, by a fiction, becomes an adulterated food. A dealer in such butter cannot adduce evidence to prove that notwithstanding the deficiency in the standard, it is not adulterated.

The conclusion we have arrived at is not only supported by the plain words of the rule, but also carries out the clear intention of the Legislature. The Act was passed to make provisions for the prevention of adulteration of food. Butter is a favourite edible fat and is consumed in different ways by innumerable persons in this country. As we have already pointed out, butter is prepared in the rural areas throughout this country by the indigenous process of churning soured milk, whereas only in a few cities butter is prepared directly from milk. The interpretation suggested by learned counsel for the appellant, if accepted, would make the rule a dead-letter, for all practical purposes, and the object of the Legislature would be defeated. In our view, the intention of the Legislature has been clearly expressed in the rule.

We, therefore, hold that butter prepared from curd comes within the definition of "butter" in r. A. 11.05 of Appendix B to the Rules.

The second contention turns upon a question of fact. The High Court considered the entire evidence and accepting the evidence of the Food Inspector and the Health Officer, held that the bottle sent to the Public Analyst was the sample seized from the appellant. There are no permissible grounds for allowing the appellant to canvass the correctness of this finding. We, therefore, accept the finding.

The last contention is that the report of the Public Analyst is ambiguous and, therefore, the benefit of doubt should be given to the appellant. What is stated is that in the report it is stated that the butter contained 19.57% of moisture, 64.67% of milk fat and 18.32% of foreign fat, totaling 102.56% i.e., more than 100%. It is, therefore, argued that the report on the fact of it is incorrect and therefore should not be acted upon. There is an obvious fallacy underlying this argument. 18.32

per cent. of foreign fat is not a percentage in relation to the milk but only in relation to the fat. Out of the fat in the milk, the analyst says that 18.32 per cent. is foreign fat. In his own words, "The butter fat in the sample contains 18.32% foreign fat." If that be so, there is no mistake on the face of the report. The report clearly indicates that the butter sold by the appellant was below the standard prescribed under the rule. If so, it follows that the appellant is guilty of the offence with which he was charged.

The High Court sentenced the accused to undergo rigorous imprisonment for two months and also to pay a fine Rs. 250/-. We agree with the High Court that the offence committed by the appellant is a serious one and that ordinarily the punishment should be deterrent. In most of the cases of this kind imprisonment would certainly be a suitable sentence. But in this case, there was conflict of view even in the Bombay High Court as regards the question whether butter made from curd would be butter within the meaning of the rule. Indeed, it was brought to our notice that on April 16, 1960, the Central Government made another rule amending rule A-11.05 by inserting the word "curd" in the definition of butter and the amended definition reads, "butter means the product prepared exclusively from milk, cream or curd of cow or buffalo....." This must have been made to clarify the position in view of the conflicting decisions. In the circumstances, we think that a sentence of fine would meet the ends of justice in the present case. We, therefore, set aside the sentence of two months' rigorous imprisonment and a fine of Rs. 250/- and instead sentence the appellant to pay a fine of Rs. 500/-.

With this modification, the appeal is dismissed.

Appeal dismissed.

</html