Jagdish Prasad

Vs

State of U. P.

Criminal Appeal No. 43 of 1965

(A. K. Sarkar, Raghuvar Dayal, R. S. Bachawat JJ)

15.04.1965

JUDGMENT

SARKAR, J. –

This appeal raises a question of construction of sub-s. (1) of s. 16 of the Prevention of Food Adulteration Act, 1954. The sub-section in providing for punishment for breaches of the Act states, "for a second offence, with imprisonment for a term which may extend to two years and with fine". In respect of the first offence it provides for a smaller sentence. The question is whether the appellant was liable to punishment for a second offence. The order of this Court granting leave to appeal confined it only to that question.

It appears that on an earlier occasion the appellant kept foodstuff for sale in a container without covering it as required by sub-r. (3) of r. 49 of the rules made under the Act and was thereupon convicted under s. 16 and sentenced to a fine of Rs. 40/- as for a first offence. This time he has been convicted for selling foodstuff which had been coloured with a dye the use of which was prohibited by r. 28 of the same rules.

Learned counsel for the appellant stated that the present was not a second offence. If we have understood his arguments correctly, and we confess to some difficulty in understanding them, he said that the second offence contemplated is an offence constituted by the same kind or type of act for which he had been convicted under the Act on an earlier occasion. According to him, if the present conviction was for keeping foodstuff intended for sale in a container not covered as required by sub-r. (3) of r. 49, then only it would have been for a second offence, but as the conviction in the present case was for selling foodstuff coloured with prohibited dye, it was not for a second offence.

This contention does not seem to us to be acceptable. The real question is, What do the words 'second offence' mean ? Learned counsel for the appellant referred us to Webster's New World Dictionary where one of the meanings of the word 'second' has been stated to be 'of the same kind as another'. That meaning cannot be attributed to that word in the sub-section. It increases the penalties as the offences are 'first', 'second' or 'third'. Thus it states, "for a third and subsequent offences, with imprisonment for a term which may extend to four years and with fine". The word 'subsequent' makes it clear that the words 'first', 'second' and 'third' were intended to indicate things happening one after another in point of time. Sub-section (2) of s. 16 also leads to the same conclusion. It says, "If any person convicted of an offence under this Act commits a like offence afterwards", the subsequent conviction and the penalty imposed with his name and address may be published in a newspaper at his expense. The word "afterwards" clearly indicates that the statute was contemplating offences committed subsequently and was indicating a sequence of time. In the

dictionary to which learned counsel referred, the meaning on which he relies is illustrated by the following sentence, "There has been no second Shakespeare". It seems plain to us that the meaning conveyed by the word 'second' in this sentence cannot be attributed to the word 'second' as used in the sub-section.

Then as regards the word "offence" in the expression "second offence", we find no justification for confining it to an offence constituted by the same type or king of conduct as the previous offence. The sub-section does not say "second offence" of the same type; the latter words are not there. The object of the sub-section clearly is to prevent repetition of offences. That is why for the offence subsequently committed a heavier sentence is provided. We cannot imagine what object would have been served by seeking to stop the repetition of the same type of conduct only. The Act no doubt intends to prevent the doing of various acts by punishing them. That object is better served by imposing a heavier penalty when a person repeats any of such offensive acts. The gravamen of the charge of a second offence is the repetition of any offence under the Act and not the repetition of one of the various types of offences mentioned in it. Any interpretation which would not carry out the object of the Act would be unnatural. We, therefore, think that the words "second offence" mean any offence under the Act committed by a person after his conviction earlier for any one of the offences punishable under the Act.

It was said that it would be strange if the Act intended to impose a heavier punishment for a second offence which might be of a trivial nature while the first offence which might have been of a serious nature entailed a lighter punishment. This contention is fallacious. There is no foundation in the Act for distinguishing between trivial and serious offences, for the Act provides the same punishment for each offence under it. If the punishment is the same, it would follow that the statute considered them to be of the same seriousness. The weakness of this argument will further appear if we consider a case where the first offence was of what is called a trivial nature and the second, of a serious nature though constituted by different acts. It would be equally strange if the Act in such a case contemplated the same punishment for the sub-sequent and serious offence as would be the case if the subsequent offence was not a "second offence". This contention lends no support to the interpretation suggested by learned counsel for the appellant.

Learned counsel then said that the word "offence" has to be understood as defined in s. 2(38) of the General Clauses Act, 1897, and therefore means any act or omission made punishable by any law for the time being in force. If we substitute this definition for the word "offence" in the provision now under consideration, it will mean an act made punishable by the law. That law must be the present Act. This does not assist learned counsel's contention at all; it really goes against him.

The word "offence" on doubt, refers to an offence under the Act. It cannot possibly mean any offence under any other Act. This view has invariably been taken in all the cases which have been cited to us : see City Board, Saharanpur v. Abdul Wahid [A.I.R. 1959 All. 695] and Chuttan v. State [A.I.R. 1960 All. 629]. In In re Authers [(1889) L.R. 22 Q.B.D. 345, 349] it was said, "where the legislature passes a statute and imposes a penalty of 501. for a first offence, it must mean, in the absence of express words to the contrary, that the conviction for the first offence must be under that Act, and the second conviction under the same Act; if it were otherwise, it would be idle to introduce the warning of a lower penalty for the first offence, and to impose a higher penalty for the second." This case supports our interpretation of the words "second offence" based on the object of the Act.

Learned counsel for the appellant no doubt agrees that the second offence must refer to an offence

under the Act but he says that since it would amount to adding the words "under the Act", it would justify the addition of further words implying that the second offence had to be of the same type as the first. This is a wholly unfounded contention. The offence contemplated in the expression "second offence" has to be under the Act because that arises from the object of the Act and, as we shall later show, from the necessary implication of the structure of the sub-section. There is no such reason to confine the second offence to an offence of the same type.

We have so far been dealing only with that portion of sub-s. (1) of s. 16 which concerns the penalty for the second offence. Considering the sub-section as a whole we find that it supports the interpretation of the expression "second offence" which has appealed to us. It says that if any person does any of the acts mentioned in cls. (a) to (g) in it, he shall be punishable for the first offence with a certain penalty, for the second offence with a higher penalty and for the third a still higher penalty. It is clear that the acts or omissions mentioned in the different clauses constitute offences for which the penalties are provided. From this structure of the sub-section the implication necessarily arises that the penalties were imposed for offences under the Act only. Now cl. (a) deals with a person importing, manufacturing for sale, storing, selling, or distributing any article of food in contravention of the provisions of the Act or of any rule made thereunder. This clause contemplates the breaches of various provisions of the Act and the rules, which are numerous. It covers various types of conduct, act or omission, each of which is punishable and each of which is, therefore, an offence. Turning next to that part of the sub-section which prescribes penalties, we find it provides increasing degrees of punishment for the second offence and the third and subsequent offences. It follows that an offence contemplated in this part of the statute - and which it we are now directly concerned - would be constituted by any of the acts which would come within cl. (a) and likewise within all the other clauses following it. We have pointed out that the acts and omissions contemplated there are of diverse kinds. The words "second offence" must, therefore, mean any act which is an offence under any of the clauses in the sub-section which has been done later in point of time after a conviction for an offence under the Act, no matter whether the acts or omissions constituting the two offences are of the same type or not. The appellant must, therefore, be held to have committed the second offence within the meaning of the sub-section on the present occasion and was liable to have the heavier punishment awarded to him. The sentence awarding such punishment is unexceptionable.

The appeal fails and it is hereby dismissed.

Appeal dismissed.

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