

Mohammed Yamin

Vs

State of Uttar Pradesh and Another

Criminal Appeal No. 253 Of 1968

(P. Jagmohan, K. K. Mathew JJ )

26.04.1972

JUDGMENT

MATHEW, J. -

This appeal, by Special Leave, is against a judgment of the High Court of Allahabad by which it restored the order of the Magistrate convicting the appellant of an offence under Section 16, read with Section 7 of the Prevention of Food Adulteration Act (Act 37 of 1954), hereinafter called the 'Act', and sentencing him to undergo one years rigorous imprisonment and pay a fine of Rs. 1,000/- and in default of payment of fine to undergo rigorous imprisonment for a further period of six months, after reversing the order passed by the Sessions Judge in appeal acquitting him of the offence.

2. On June 13, 1963, Head Constable Baboo Khan was on petrol duty. He happened to come to the chakki of the Abdul Razaq. There he found a heap of Shakkar and some Labourers mixing Shelkhari in it with spades. He went to the police station to inform the Station Officer about it but the Station Officer was not there. He then met the Sanitary Inspector and informed him about what he saw at the chakki. The Sanitary Inspector accompanied by the Food Inspector proceeded to the chakki and there they found the labourers mixing Shelkhari with Shakkar. The stock of Shakkar belonged to the appellant. The Food Inspector purchased 1 1/2 seers of Shakkar from the appellant by way of sample after paying its price. He divided the sample into three parts, gave one to the appellant and retained the other two with him. One of the samples retained was sent to the Public Analyst for examination. The Analyst found, in his report, dated July 11, 1963, that the Shakkar contained 2.4% moisture, 72.7% total sugar, 64.7% sucrose, 17% extraneous matter insoluble in water. According to him the extraneous matter insoluble in water, total ash and ash insoluble in Hydrochloric acids exceeded by 15.0%, 10.1% and 13.3% respectively as against the maximum prescribed standards of 2.0%, 6.0% and 0.5% respectively.

3. On the basis of a complaint filed by the Food Inspector of the Municipal Board, Saharanpur, the Magistrate who tried the appellant for an offence under Section 16, read with Section 7 of the Act came to the conclusion that the appellant had stored the Shakkar for sale, that it was adulterated and that he was guilty of the offence and convicted and sentenced him as aforesaid.

4. The appellant field an appeal against the order before the Sessions Judge. The Sessions Judge acquitted him of the offence for the reason that the prosecution had not proved that the Shakkar stored by the appellant was for sale. He said that the appellant was mixing extraneous matter with the Shakkar for converting it into Rab and as such it cannot be said that the Shakkar was stored for sale by the appellant. He also said that no standard of quality was prescribed by the rules framed

under the Act for Shakkar, that as an article of food, Shakkar was neither 'gur' nor 'jaggery' and that the sale of Shakkar to the Food Inspector by the appellant was under duress and was not a sale in the eye of the law.

5. The Municipal Board filed an appeal against the order to the High Court. The High Court held that Shakkar is same as 'jaggery' that standard of quality has been prescribed by the rules framed under the Act for jaggery, that the Shakkar in question was adulterated, that the sample purchase by the Food Inspector for the purpose of analysis amounted to sale within the meaning of Section 2(xiii) of the Act, that Food Inspector had power under the Act to get the sample even if the Shakkar was stored for being manufactured into Rab and not for sale and restored the order of the Magistrate convicting and sentencing the appellant as aforesaid.

6. The first contention on behalf of the appellant was that Shakkar is not 'jaggery' and since no standard of quality has been prescribed for Shakkar under the rules framed under the Act, the Shakkar was not adulterated.

7. We find it difficult to accept the contention that Shakkar is not jaggery. Para A. 07.05 of Appendix B of the Rules reads :

"Gur or jaggery means the product obtained by boiling or processing juice pressed out of sugar-cane or extracted from palmyra palm, date palm or coconut palm. It shall be free from substances deleterious to health and shall conform to the following analytic standards on dry weight basis -

(i) total sugar not less than 90% and sucrose not less than 70%;

(ii) extraneous matter insoluble in water not more than 2%;

(iii) total ash not more than 6%;

(iv) ash insoluble in Hydrochloric acid (HCl) not more than 0.5%.

Gur or jaggery other than that of the liquid or semi-liquid variety shall not contain more than 10% moisture."

It is not disputed that Shakkar is a product obtained by boiling or processing juice pressed from out of sugarcane, and therefore, it is clear that Shakkar is jaggery. But counsel for the appellant submitted that Appendix B of the Rules does not define jaggery but only gives the description of what 'jaggery' is and it cannot, therefore, be said that jaggery would comprehend all the varieties of products obtained by boiling or processing juice pressed out of sugarcane. In other words, counsel said that Appendix B to the Rules only describes what jaggery or gur is and that it does not define what jaggery or gur is. We are unable to accept the contention for the reason that jaggery or gur is defined as any product obtained by the boiling or processing juice pressed out of sugarcane and so any product so obtained would be comprehended within the definition. Quit apart from this, we find in Chamber Twentieth Century Dictionary (Revised Edition) the meaning of jaggery as :

"A coarse dark sugar made from palm sap or otherwise. (Hindi - Shakkar; - Sanskrit - Sarkara)."

It is, therefore, clear that Shakkar is 'jaggery'; and the finding of the High Court, on the basis of the

report of the Analyst, that the Shakkar has not conformed to the standard of quality prescribed for jaggery and, therefore, the food was adulterated, was correct and has to be maintained.

8. The second contention on behalf of the appellant was that he had kept the Shakkar for manufacturing Rab out of it. The contention, in other words, is that he had not kept the Shakkar for sale but kept it for manufacturing Rab out of it and, therefore. The conviction under Section 16, read with Section 7 of the Act was bad. We do not think that there is any substance in this contention either. Section 7 of the Act, insofar as it is material, provides :

"No persons shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute -

(1) any adulterated food;"

Section 16, which imposes the punishment insofar as it is relevant, says :

"16. (I) If any person -

(a) whether by himself or by any other person on his behalf imports into India or manufactures for sale, or stores, sells or distributes any article of food -

(i) which is adulterated or misbranded or the sale of which is prohibited by the Food (Health) authority in the interest of public health;"

The finding of the High Court is that the Shakkar was kept by the appellant for the purpose of sale and not for the purpose of manufacturing Rab out of it and that the attempt of the appellant was to sell the Shakkar as an article of food after mixing Shelkhari with it. We see no reason to think that the finding was wrong. But assuming that the finding was wrong and that the appellant kept the Shakkar not for sale but for manufacturing Rab out of it, what follows? If Shakkar is an article of food, it does not matter whether the appellant kept it for sale, or for manufacturing Rab out of it, provided the appellant has sold it. And a sale to the Food Inspector is a sale for the purpose of Section 16 of the Act. In *The Food Inspector, Calicut Corporation v. Cherukattil Gopalan and Another* ((1971) 2 SCC 322.), this Court held that, if any articles of food are so by the person, whether he be a dealer in them or not, and if the food is adulterated, he is liable to be convicted under Section 16, read with Section 7 of the Act. The respondents before this Court in that case were the manager and owner of a tea stall. The case against them was that they sold 600 grams of sugar to the appellant, the Food Inspector, for analysis and that the sugar was adulterated. The respondents pleaded that the sugar was not sold 'as such' in the tea stall and was only used for preparing tea which alone was sold, the plea was accepted by the District Magistrate and the respondents were acquitted. The acquittal was confirmed by the High Court. In appeal to this Court by the Food Inspector, one of the arguments for the respondents, was that they not dealers in sugar and the sugar was not kept for sale and so they cannot be convicted under Section 16, read with Section 7 of the Act. The Court held, inter alia, that sale to a Food Inspector is a sale for the purpose of Section 16 of the Act, that the article of food sold to the Food Inspector need not have been taken from a larger quantity kept for sale and that the persons by whom the article of food was sold to the Food Inspector need be dealer as such in the article.

9. In that case it was assumed by this Court that the sugar was adulterated. Whether it was adulterated or not as a matter of fact, this Court proceeded on the assumption that it was adulterated. If that be so, we see no reason to doubt the correctness of the ratio of the case.

10. We think the High Court was right in its conclusion. We dismiss the appeal.

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