

Jai Narain

Vs

Municipal Corporation of Delhi

Criminal Appeal No. 172 of 1969

(J. M. Shelat, I. D. Dua, H. R. Khanna JJ)

23.08.1972

JUDGMENT

SHELAT, J. -

1. In March, 1967, the appellant was an employee in a sweetmeat shop, known as Bengal Sweet Shop, being shop No. 6, Sector II, in Ramakrishna Puram, New Delhi. The shop was owned by one Budh Ram and one A. K. Bhattacharya.

2. On March 15, 1967, Wit. F. Dean, a Food Inspector in the employment of the Municipal Corporation of Delhi, went to the said shop and purchased 'patisa' which were sold to him by the appellant. These were sold to him from a lot exposed for sale. The Food Inspector then divided the 'patisa' into three portions and packed each of them into sealed bottles, one of which was handed over by him to the appellant.

3. On an analysis of the sample by the Public Analyst appointed under the Prevention of Food Adulteration Act, XXXVII of 1954 it was found that the patisa were prepared with unpermitted coal tar dye, and therefore, were adulterated foodstuff. A complaint to that effect was filed before the Magistrate, First Class, Delhi, who, after recording evidence, found the appellant and the said Budh Ram guilty under Section 7(1) read with Section 16(1) of the Act, and sentenced each of the two accused to simple imprisonment for a period of six months and a fine of Rs. 1,000, in default imprisonment for a further period of three months. On an appeal by the appellant and his co-accused, the said Budh Ram, the Additional Sessions Judge allowed Budh Ram's appeal and set aside the order of conviction passed against him on the ground that though he and the said Bhattacharya were partners in the firm which carried on the said shop, there was nothing to show that Budh Ram was in charge of the said shop or its business or was in any way responsible for the sale of articles sold in the shop. He found that Budh Ram was, on the contrary, an employee of a club in New Delhi and was therefore at best a sleeping partner. So far as the appellant was concerned, the Additional Sessions Judge held that he was an employee of the firm, concerned with the sales, that the prosecution had led sufficient evidence to establish its case against him, and therefore, his conviction could not be interfered with. Regarding the sentence awarded to him, the Additional Sessions Judge remarked that : (a) the case was not covered by Section 2(i)(j) of the Act, but was one which amounted to violation of Rules 23 to 30 of the Rules framed under the Act, (b) that there was nothing in the evidence to show that the use of the unpermitted coal tar dye in the manufacture of the patisa in question rendered them injurious to health, and (c) that there was no allegation of the appellant having committed similar offence before. On these grounds he partially allowed the appeal by reducing the sentence of imprisonment to the period of imprisonment already undergone by the appellant before he was granted bail. The order awarding the said fine was not

interfered with.

4. Against that order, the Municipal Corporation filed a revision petition in the High Court urging that in view of the mandatory provisions of Section 16 of the Act providing for the compulsory minimum sentence, the Additional Sessions Judge ought not to have interfered with and reduced the sentence imposed by the Trial Magistrate. The High Court accepted that contention and setting aside the order of sentence, as modified by the Additional Sessions Judge, restored the order of sentence passed by the Trial Magistrate. The High Court, however, granted a certificate under Article 134(c) of the Constitution. The appellant filed this appeal on the strength of that certificate.

5. Council for the appellant did not challenge before us either the order of conviction or the order of sentence passed against him by the High Court, which, as aforesaid, confirmed the conviction and restored the order of sentence passed by the Trial Magistrate. The only point raised by him was that the appellant should be given the benefit of Section 4 of the Probation of Offenders Act, 1958, under which the sentence of imprisonment awarded to the appellant could be dispensed with and an admonition should instead be given to him.

6. In a recent decision in *Isher Das v. Punjab* (AIR 1972 SC 1295 : 1972 Cri LJ 874.) to which two of us were parties, it was held on a consideration of Section 18 of the Probation of Offenders Act that its operation is not excluded in cases of persons found guilty of offences under the Prevention of Food Adulteration Act, 1954. The former Act was brought on the statute book in 1958, but no specific exception as regards the Prevention of Food Adulteration Act, 1954, though an earlier Act, is to be found therein, just as an exception in respect of the Prevention of Corruption Act, 1947 has been expressly made. The provisions of the Probation of Offenders Act, 1958, therefore, apply to persons found guilty under the Prevention of Food Adulteration Act. That decision, however, expressed a note of caution that adulteration of food being a menace to public health and the Act having been enacted with the object of eradicating that anti-social evil and for ensuring purity of articles of food sold to the members of the public courts should not lightly resort to the provisions of Section 4 of the Probation of Offenders Act which applies to offenders who are 21 years of age or above.

7. The question, therefore, is whether we ought to apply, in the circumstances of the case and the nature of the evil to prevent which Section 16 of the Prevention of Food Adulteration was enacted, Section 4 of the Probation of Offenders Act and release the appellant from the sentence of simple imprisonment awarded to him with an admonition and a warning only.

8. Under Section 2(i)(j), the patisa, in the preparation of which a non-permissible colouring matter has been used, is an adulterated article. Such an article is adulterated food as defined by clause (v) of Section 2, as that clause defines 'food' to include any article used in the preparation of human food or any flavouring matter. Section 7 provides that no person shall himself or by any person on his behalf manufacture for sale, or store, or sell "any adulterated food" or any article of food in contravention of any other provision of the Act or of any rule made thereunder. Section 16 provides for a minimum sentence of imprisonment for not less than six months inter alia for the offence of selling adulterated food. The proviso conferring discretion to the courts in the matter of sentence does not apply to sales of food which is adulterated under Section 2(i)(j). The policy of Section 16, therefore, is clearly to impose a sentence not less than that provided therein inter alia for sale of food articles adulterate as defined by Section 2(i)(j). Under Rule 23 of the Prevention of Food Adulteration Rules, 1955, addition of a colouring matter to any article of food except as specifically permitted under the rules is prohibited. Rule 28 makes only the coal tar dyes specified therein

permissible in the preparation or manufacture of articles of food set out in Rule 29.

9. There is no dispute that the coal tar dye used in the patisa sold by the appellant was not one of the coal tar dyes permissible under Rule 28. That is also clear from the report of the Public Analyst, the correctness of which was not under any challenge before us. Though there was no express evidence on the record that the use of the particular coal tar dye in the making of the patisa sold at this shop was injurious to health, it must be presumed to be so from the fact that it is not one of the permitted coal tar dyes enumerated in Rule 28. It is, therefore, clear that the sale of such an article of food was an anti-social activity, deleterious to the health of those who would consume them as article of food, the eradication of which is the principal aim of the Act and in particular of Section 16 thereof. The evil would appear to be more pernicious when it is realised that patisa are more often than not purchased and consumed by children and by persons from the unaffluent sections of the society, who cannot afford to buy costlier sweets prepared by more sophisticated processes. The colouring matter was obviously used to attract customers, without any regard to the injury it would cause to those who consumed them. The appellant's activity being thus distinctly anti-social, we do not think that it would be either expedient or in consonance with the object with which the Prevention of Food Adulteration Act was passed to apply Section 4 of the Probation of Offenders Act.

10. There being no other point raised for our consideration, the appeal fails and is dismissed.

</html