

Smt. Manibai and Another

Vs

The State of Maharashtra

Criminal Appeal No. 36 of 1970

(H. R. Khanna, A. Alagiriswami JJ)

10.08.1973

JUDGMENT

KHANNA, J. -

1. This is an appeal by special leave by Smt. Manibai and her son Pranjivan Morarji against the judgment of the Bombay High Court reversing on appeal the acquittal of the two appellants and convicting them under Section 16(1)(a)(i) read with Section 7(1) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the Act). Manibai has been sentenced to pay a fine of Rs. 2,500 or in default to undergo rigorous imprisonment for two months, while the other appellant has been sentenced in view of special and adequate reasons to undergo rigorous imprisonment of two months and to pay a fine of Rs. 1,000 or in default to undergo rigorous imprisonment for a further period of one month.
2. The prosecution case is that on February 16, 1968 Food Inspector, Mahajan, went to oil shop No. 213-215 in Kumbharwada, Bombay. Pranjivan appellant was present at the shop. The Food Inspector after disclosing his identity purchased 450 grams of coconut oil from Pranjivan. The coconut oil was then divided into three parts. Each of the parts was poured into a bottle which was thereafter sealed. One of the bottles was handed over to Pranjivan, while the second bottle was sent to the public analyst who report showed that the coconut oil was adulterated as it did not conform to the prescribed standard. According to the standard prescribed, the butyro-refractometer reading of the coconut oil should be 34 to 35.5 and the iodine value should be between 7.5 and 10. The butyro-refractometer reading of coconut oil purchased from Pranjivan was 36.5 and its iodine value was 16.8. A complaint was thereafter made against the two appellants. It is stated that Smt. Manibai appellant No. 1 is the licensee of the shop while Pranjivan is a co-licensee of the shop from which the food inspector had purchased the coconut oil.
3. At the trial, Manibai stated that she did not know anything about the sale of the coconut oil. Pranjivan admitted having sold the coconut oil to the Food Inspector. He denied the other allegations.
4. The trial magistrate acquitted both the appellants on the ground that there had not been sufficient compliance with the procedure laid down in the Act and the rules framed thereunder. On appeal at the Bombay High Court reversed the judgment of the trial magistrate and held that there had not been any such deviation from the prescribed procedure as would warrant the acquittal of the accused appellants.
5. In appeal before us, Mr. Gupta on behalf of the accused appellants has contended that the High

Court was in error in convicting Manibai. As against that, Mr. Wad on behalf of the State has submitted that this Court should not interfere with the conviction of Manibai. In this respect we find that Manibai was admittedly not present at the time the coconut oil was purchased by the Food Inspector, Mahajan, from Pranjivan, accused. The High Court in the course of its judgment has arrived at the finding that Manibai is not in charge of nor is she actually conducting the business carried on at the shop from which the Food Inspector purchased the coconut oil. In the circumstances, the fact that Manibai is the licensee of the shop would not warrant her conviction. According to Section 17(1) of the Act, where an offence under the Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible of the conduct of the business of the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. The sub-section is followed by the proviso according to which nothing contained in the sub-section would render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. Company has been defined in Section 17 to mean any body corporate and to include a firm or other association of individuals. "Director" in relation to a firm has been defined to; mean a partner in the firm. There is nothing to show that the business carried on in the shop in question was that of a firm and that Manibai was a partner of the said firm. Even if it may be assumed that the business was owned by a firm or an association of individuals and Manibai was a partner of that firm or member of that association of individuals, Manibai would be liable under Section 17(1) of the Act for the sale which was made by her son Pranjivan only if it was shown that she was in charge of and was responsible for the conduct of the business which was carried on at the shop. There is no evidence to that effect on the record. In the absence of such evidence, no criminal liability for the sale of coconut oil by Pranjivan can be fastened on Manibai under the provisions of the Act.

6. So far as Pranjivan appellant is concerned, the submission which has been advanced on his behalf is that the offence committed by him is of a technical nature as it is not shown that the coconut oil purchased from him was harmful to the health of those who would consume it. In this respect we find that the coconut oil which was purchased from Pranjivan was found on analysis to be adulterated. It is not for the prosecution in a case under the Act to show that the adulterated article of food in question was deleterious to health and if so, how much harmful effect it would have upon the health of the person consuming it. All that is required to be shown is that the article of food in question was adulterated. So far as that aspect of the matter is concerned in the present case we find that the coconut oil which was purchased from Pranjivan was adulterated as it did not conform to the prescribed standard. According to Section 2 of the Act, an article of food shall be deemed to be adulterated if inter alia the quality or purity of the article falls below the prescribed limits of variability. The High Court has on account of special reasons awarded a sentence to Pranjivan which is less than the minimum prescribed by the Act. We see no cogent ground to interfere with the discretion exercised by the High Court in the matter of sentence awarded to Pranjivan.

7. We accordingly accept the appeal of Shrimati Manibai, set aside her conviction and acquit her. The appeal so far as it relates to Pranjivan Morarji, is dismissed.

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