Bhagwan Das Jagdish Chander

Vs

Delhi Administration

Criminal Appeals Nos. 59 And 60 of 1971

(A. Alagiriswami, M. H. Beg, N. L. Untawalia JJ)

25.03.1975

JUDGMENT

BEG, J. –

These two criminal appeals, after certification of the cases as fit for decision by this Court, under Article 134(1)(c) of the Constitution, arise out of the prosecution of M/s. Bhagwan Das Jagdish Chander, Ghee merchants and Commission Agents at Delhi, under Sections 7/16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'the Act'). The appellant was prosecuted jointly with Laxmi Narain, the vendor of 450 gms. of ghee to a Food Inspector, on August 22, 1967. On analysis, the sample was found to be adulterated. Laxmi Narain, a partner of M/s. Laxmi Sweets, Delhi, in defence, successfully relied upon Section 19(2) of the Act and was acquitted. Section 19, which reads as follows, may be set out here in toto :

> 19. (1) It shall be no defence in a prosecution for an offence pertaining to the sale of any adulterated or misbranded article of food to allege merely that the vendor was ignorant of the nature, substance or quality of the food sold by him or that the purchaser having purchased any article for analysis was not prejudiced by the sale.
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> (2) A vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves -
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> (a) that he purchased the article of food -
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> (i) in a case where a licence is prescribed for the sale thereof, from a duly licensed manufacturer, distributor or dealer;
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> (ii) in any other case, from any manufacturer, distributor or dealer, with a written warranty in the prescribed form; and
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> (b) that the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it.
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> (3) Any person by whom a warranty as is referred to in Section 14 is alleged to have been given shall be entitled to appear at the hearing and give evidence.

2. Section 14 of the Act, to which reference was made in Section 19(3), says :

> Section 14 - No manufacturer, distributor or dealer of any article of food shall sell

> such article to any vendor unless he also gives a warranty in writing in the prescribed form about the nature and quality of such article to the vendor.

Explanation - In this section, in sub-section (2) of Section 19 and in Section 20A the expression "distributor" shall include a commission agent.

3. In the course of the trial, Laxmi Narain filed an application praying that the warrantor may be discharged or acquitted so that Laxmi Narain may examine the warrantor as his defence witness to prove his own purchase of the offending article under a warranty. It may be mentioned that, as the complaint describes the warrantor accused as "M/s. Bhagwan Das Jagdish Chander through an authorised person", appearance was put in by Jagdish Chander, a partner, as the accused person responsible on behalf of the firm.

4. The trying Magistrate allowed the application of Laxmi Narain and acquitted Jagdish Chander on the ground that Laxmi Narain would be deprived of a valuable defence unless this was done and relied upon V. N. Chokra v. State (AIR 1966 Punj 421) in support of this action. Of course, an accused person has a right to appear in defence under Section 342A of the Code of Criminal Procedure; and, Laxmi Narain, taking advantage of this provision, did depose in his own defence. But, it seems that it was urged on behalf of Laxmi Narain that Jagdish Chander could not be compelled to appear as a defence witness until he had been discharged or acquitted. The Magistrate accepted this ground as good enough for the acquittal of Jagdish Chander. After the evidence of Jagdish Chander and Laxmi Narain, as defence witnesses, the trying Magistrate acquitted Laxmi Narain also on the ground that Laxmi Narain was protected by a warranty covered by Section 19(2) of the Act. Thus, both the accused persons were acquitted.

5. After their acquittal, the Magistrate impleaded the manufacturers, M/s. Gauri Shanker Prem Narain, under Section 20A of the Act. This provision reads as follows :

> 20A Where at any time during the trial of any offence under this Act alleged to have been committed by any person, not being the manufacturer, distributor or dealer of any article of food, the Court is satisfied, on the evidence adduced before it, that such manufacture, distributor or dealer is also concerned with that offence, then, the Court may, notwithstanding anything contained in sub-section (1) of Section 351 of the Code of Criminal Procedure, 1898, or in Section 20 proceed against him as though a prosecution had been instituted against him under Section 20.

6. Although, we are not concerned in the appeals before us with the prosecution of the manufacturer, M/s. Gauri Shanker Prem Narain, yet, we find that one of the questions framed for consideration and decided by the Delhi High Court relates to the meaning and scope of Section 20A of the Act. We may mention that a statement has been made at the Bar that the manufacturer has also been acquitted. We do not know whether this acquittal was on the ground that the manufacturer cannot be impleaded under Section 20A of the Act after the trial is concluded by the acquittal of the two accused. it is clear that Section 20A contemplates action which can only be taken during the course of the trial. A separate trial would require a written consent of the Central Government of the State Government or a local authority or of a person authorised in this behalf by general or special order by the Central Government or the State Government or a local authority, unless it is a complaint by a purchaser, other than a Food Inspector, who could rely upon Section 12 of the Act. But, an addition of an accused under Section 20A of the Act constitutes an expressly laid down exception to the requirement of a sanction under Section 20(1) of the Act.

7. In the case before us, the prosecutor, the Municipal Corporation of Delhi, appealed against the acquittals of Laxmi Narain and Jagdish Chander. In the Delhi High Court, two questions, arising in the case before us and in other similar cases, were framed and referred for decision by a Full Bench as follows :

> (i) Whether a joint trial of the vendor, the distributor and the manufacturer for offences under the Prevention of Food Adulteration Act, 1954 is illegal ? and
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> (ii) What is the scope of Section 20A of the said Act ?

8. On the first question, the Full Bench held : that, the general procedure for joint trials, found in Sections 234 to 239 of the Criminal Procedure Code, applies to prosecutions under the Act which contains no other or special procedure for joinder of charges or of accused persons in the same trial; that, the joint trial of the vendor Laxmi Narain with the warrantor Jagdish Chander was permissible as the actions of both these accused form parts of the same transaction, as explained by this Court in the State of A. P. v. Cheemalapati Ganeswara Rao (1964) 3 SCR 297 : AIR 1963 SC 1850 : (1963) 2 Cri LJ 671) that, this view was reinforced by the consideration that mens rea was not an essential element for offences under the Act, and the High Court relied on the pronouncement of this Court in Andhra Pradesh Grain and Seeds Merchants Association v. Union of India ((1970) 2 SCC 71 : 1970 SCC (Cri) 307) for this proposition; that proof of a guilty mind is not necessary in statutes creating absolute liability for offences against public health and public welfare; that, there was a "unity of purpose" between the manufacturer and distributor and vendor of the adulterated article of food sold furnished by the purpose of all of them to sell; that, an indication of a "unity of purpose", which is less stringent than either a "common object" or a "common intention", was sufficient to establish the sameness of a transaction for the purposes of Section 239 of the Criminal Procedure Code; that, although the joinder of the vendor or manufacturer in a single trial was legally valid under Section 239 of the Criminal Procedure Code, it did not appear to be incumbent upon the Court to hold such a joint trial where such joinder may jeopardise the interests of justice; that, Section 19 of the Act, as it stands, does not require that the warrantor should be separately prosecuted only after the vendor had successfully established that he could rely upon a warranty covered by Section 19(2) of the Act; that, as both the vendor and his warrantor could get an adequate opportunity to prove their cases in a trail for sale of an adulterated article under the Act, no right of an accused person, either in law or justice, was jeopardised by such a joint trial; that, in any event, a person accused of such an offence under the Act "can always insist that a co-accused should be discharged or acquitted on the ground that he wants to examine him as a witness; that, Section 19(3) of the Act confers a right upon the vendor and not upon the warrantor; that, no interests of an accused person were prejudicially affected in the case before us by a joint trial of the vendor and the distributor.

9. As regards Section 20A of the Act, the Full Bench held : that, this provision, which is an Exception to Section 351(1) of the Criminal Procedure Code, "can be invoked after the trial of the vendor has commenced and before it has concluded and not after that"; and that, Section 20A of the Act is not controlled by Section 239 of the Criminal Procedure Code but is a self-contained provision so that the person concerned in the offence", mentioned therein, is not to be equated with "a person who has committed the same offence", mentioned in Section 239 of the Criminal Procedure Code.

10. The High Court, while maintaining the acquittal of Laxmi Narain, set aside the acquittal of the appellant M/s. Bhagwan Das Jagdish Chander. It is not clear to us why two appeals to this Court became necessary as the appellant does not question the correctness of the acquittal of Laxmi

Narain. Separate Counsel have, however, appeared and argued the case for the appellant firm and its partner Jagdish Chander. We propose to deal with the case as one only and assume that both the firm and its partner Jagdish Chander question the validity of the trial on a complaint where the only allegation against the appellant firm, arraigned as an accused through its partner, was that it was a distributor of the adulterated ghee sold. The charge framed against the appellant was :

> That you, on or about the 22nd day of August, 1967 at 12 noon a sample of ghee was purchased by Sh. V. P. Anand F. I. from accused No. 1 Lakshmi Narain and the said was sold by you to accused No. 1 Lakshmi Narain on 21.8.67 and the said sample of ghee in analysis was found to be adulterated and hereby committed an offence punishable under Section 7/16 of the Prevention of Food Adulteration Act of 1954 and within my cognizance.

11. The material question before us, shorn of subtlety and bereft of verbiage, could be said to be : Should this charge be quashed, after holding that the prosecution of the appellant, which was duly sanctioned by the competent authority, was invalid merely because, initially, the appellant was sent up for trial jointly with Laxmi Narain, or, alternatively, should we quash it on any other ground ?

12. We are not impressed by the argument that a distributor could only be prosecuted for selling without giving a warranty to a vendor which is a separate offence under Section 14 of the Act. It is clear from Section 14 itself that a manufacturer as well as a distributor can sell. The definition of "Sale", given in sub-section (xiii) of the Act, is wide enough to include every kind of seller. Every seller can be prosecuted of an offence created by Section 7 of the Act which prohibits a sale as well as distribution of an adulterated article of food. The mere fact that, for the purposes of Section 14, the person who could be the last seller, in the sense that he sells to the actual consumer, is described as "the vendor", could not affect a liability for an offence under Section 7 of the Act of a sale of an article of food which is found to be adulterated. A sale of an article of food by a manufacturer, distributor, or dealer is a distinct and separable offence. Section 14 was not meant to carve out an exemption in favour of a distributor or a manufacturer who sells articles of food, found to be adulterated, irrespective of the question whether any warranty was given for them. It is true that the manufacture of an adulterated article of food for sale is also an offence under Section 7 of the Act. But, neither Section 7 nor Section 14 of the Act bars trial of several offences by the same accused person, be he a manufacturer, a distributor, or a last seller, referred to as "the vendor" in Section 14 of the Act.

13. We are also unable to accept as correct a line of reasoning found in V. N. Chokra v. State (supra) and Food Inspector, palghat Municipality v. Seetharam Rice & Oil Mills ((1974) FAC 534 (Cri Appeal Nos. 222,223,225 to 227/73, etc. etc., decided on July 3, 1974) Kurup v. Food Inspector, Malappuram Panchayat ((1969) Ker LT 8450), that, in every case under the Act, there has to be initially a prosecution of a particular seller only, but those who may have passed on or sold the adulterated article of food to the vendor, who is being prosecuted, could only be brought in subsequently after a warranty set up under Section 19(2) has been pleaded and shown to be substantiated. Support was sought for such a view by referring to the special provisions of Section 20A and Section 19(2) and Section 20 of the Act. A reason for Section 20A seems to be that the prosecution of a person impleaded as an accused under Section 20A in the course of a trial does not require a separate sanction. Section 20A itself lays down that, where the Court trying the offence is itself satisfied that a manufacturer, or distributor, or dealer is also concerned with an offence", for which an accused is being tried, the necessary sanction to prosecute will be deemed to have been given. Another reason seems to be that such a power enables speedy trial of the really guilty parties.

We are in agreement with the view of the Delhi High Court that these special provisions do not take away or derogate from the effect of the ordinary provisions of the law which enable separate as well as joint trials of accused persons in accordance with the provisions of the old Section 233 to 239 of Criminal Procedure Code. On the other hand, there seems no logically sound reason why, if a distributor or a manufacturer can be subsequently impleaded, under Section 20A of the Act, he cannot be joined as a co-accused initially in a joint trial if the allegations made justify such a course.

14. This brings us to the most debated point in the case : Was the sale of ghee on August 22, 1967 by the last seller or vendor, Laxmi Narain, so connected with the sale by the accused appellant Jagdish Chander to Laxmi Narain on August 21, 1967 that, if the ghee was found adulterated in the hands of Laxmi Narain, the appellant Jagdish Chander could be prosecuted jointly with Laxmi Narain as the two sales were part of the "same transaction" within the meaning of Section 239(d) of Criminal Procedure Code of 1898 corresponding to Section 223 of the Code of 1973 ?

15. We do not propose to attempt, in this case, the task of defining exhaustively what constitutes the same transaction within the meaning of Section 239 of Criminal Procedure Code of 1898 corresponding to Section 223 of Criminal Procedure Code of 1973. It is practically impossible as well as undesirable to attempt such a definition of a concept which has to be necessarily elastic. Moreover, this Court has, in the State of A. P. v. Cheemalapati Ganeswara Rao (supra), already expressed its views (at page 321), which we respectfully quote and follow, on this question :

> What is meant by 'same transaction' is not defined anywhere in the Code. Indeed, it would always be difficult to define precisely what the expression means Whether a transaction can be regarded as the same would necessarily depend upon the particular facts of each case and it seems to us to be a difficult task to undertake a definition of that which the Legislature has deliberately left undefined. We have not come across a single decision of any Court which has embarked upon the difficult task of defining the expression. But, it is generally thought that where there is proximity of time or place or unity of purpose and design or continuity of action in respect of a series of acts, it may be possible to infer that they form part of the same transaction. It is, however, not necessary that every one of these elements should co-exist for a transaction to be regarded as the same. But if several acts committed by a person show a unity of purpose or design that would be a strong circumstance to indicate that those acts form part of the same transaction.

16. Learned Counsel for the appellant, however, relies on the immediately following observations (at page 322) :

> The connection between a series of acts seems to us to be an essential ingredient for those acts to constitute the same transaction and, therefore, the mere absence of the words 'so connected together as to form' in clauses (a), (c) and (d) of Section 239 would make little difference. Now, a transaction may consist of an isolated act or may consist of a series of acts. The series of acts which constitute a transaction must of necessity be connected with one another and if some of them stand out independently, they would not form part of the same transaction but would constitute a different transaction or transactions. Therefore, even if the expression 'same transaction' alone had been used in Section 235(1) it would have meant a transaction consisting either of a single act or of a series of connected acts. The expression 'same transaction' occurring in clauses (a), (c) and (d) of Section 239 as well as that

> occurring in Section 235(1) ought to be given the meaning according to the normal rule of construction of statutes.

17. It is contended that it would be dangerous to leave the "unity of purpose and design", which may constitute a transaction, so vague as to bring in the manufacturer and every conceivable distributor as accused persons whenever any adulterated food, manufactured and sealed by one party and distributed by another, is finally sold by a vendor in the market. The learned Counsel for the appellant contended that we must, therefore, restrict the concept of a "transaction", in a prosecution for sale of an adulterated article of food, to an alleged criminal participation in the adulteration of the actual article of food sold. It was urged that some vague and general connection or concern of all the co-accused as manufacturers or distributors of the article sold will not do. It had, according to the contention on behalf of the appellant, to be specifically alleged that the accused was concerned with the adulteration or sale of the particular article of food sold. The argument of the learned Counsel for the appellant seems to us to go so far as to suggest that an allegation was indispensable of a participation in some kind of conspiracy to sell the actual adulterated article of food which was sold in order to enable a trial in which the seller, the distributor, and the manufacturer could be jointly tried for offences which could be looked upon as parts of a single transaction. To accept such an argument would be to import into such a case the need to establish a conspiracy between the accused manufacturer or distributor, as the case may be, and the actual vendor or the last seller to the consumer. We think that such a result would be obviously incorrect.

18. It was pointed out by this Court, in Sarjoo Prasad v. State of U. P. ((1961) 3 SCR 324 : AIR 1961 SC 631 : (1961) 1 Cri LJ 747) that mens rea, in the sense of a guilty knowledge of adulteration of the food sold, is not necessary to prove for an offence under Section 7 of the Act. Indeed, Section 19 (1) specifically rules out such a defence although Section 19 (2) makes it available in the particular case of the accused who has taken the precaution of protecting himself from what seems otherwise to be an absolute liability without proof of guilty knowledge. Even if we were to widen the concept of "mens rea" here to embrace carelessness or indifference as the required states of mind in the manufacture or distribution or sale of an adulterated article of food, as an ingredient of a legally punishable offence, the law obviously and expressly does not require parties to an offence under the Act to have a particular guilty knowledge about the particular item of food found to be adulterated. We cannot introduce such a requirement into simply because several accused persons are being jointly tried. The law does require proof, for a successful defence, of a degree of care and caution revealed by the actions of the seller, distributor, or manufacturer, which will be enough to procure an exemption from criminal liability for a sale of adulterated article of food without knowledge of its actual adulteration. But, we cannot, for this reason, equate such an offence with one in which the co-accused must necessarily have a common knowledge or design to sell an article actually known to them to be adulterated. In other words, a particular state of mind, which could be described as guilty or wrongful, could not, even if it could be there individually and separately in a particular case, provide the connecting link between the co-accused in a trial for such an offence in order to constitute the same transaction. The link, if any, has to be found elsewhere.

19. In our opinion, considering the character of the offence and the nature of the activities of manufacturers and distributors, who generally deal in bulk, and of the ordinary vendor, who sells particular items to the consumer, the common link, which could provide the unity of purpose or design so as to weave their separate acts or omissions into one transaction, has to be their common intention that a particular article, found adulterated, should reach the consumer as food. ignorance of the fact of adulteration is immaterial. In order to justify a joint trial of accused their common object or intention to sell the article as food is enough. In such a case of a strict liability created by

statute, for safeguarding public health, the mental connection between the acts and omissions of the manufacturer, the distributor, and the last vendor would be provided simply by the common design or intention that an article of food, found to be adulterated, should reach and be used as food by the consumer. Each person dealing with such an article has to prove that he has shown due care and caution by taking prescribed steps in order to escape criminal liability. Otherwise, if one may so put it, a mens rea shared by them is presumed from a common carelessness exhibited by them. Again, a sale at an anterior stage by a manufacturer or distributor to a vendor, and the sale by the vendor to the actual consumer could be viewed as linked with each other as cause and effect.

20. We think that the activities of the manufacturer, the distributor, and the retail seller are sufficiently connected, in such a case of sale of an article of food found to be adulterated, by a unity of purpose and design, and therefore, of a transaction, so as to make their joint trial possible in a suitable case. But, at the same time, we think that, where a joinder of several accused persons concerned with dealing in different ways with the same adulterated article of food at different stages is likely to jeopardise a fair trial, a separate trial ought to be ordered. It is not proper to acquit or discharge an accused person on this ground alone. The ordering of a separate trial, in a case where prejudice to an accused from a joint trial is apprehended, is enough. Indeed, we can go even further and say that, ordinarily, they ought to be separately tried. But, a joint trial of such accused persons is not ab initio illegal. It can take place in capable cases.

21. We may point out that, in V. N. Kamdar v. Municipal Corporation of Delhi ((1974) 1 SCR 157, 161 : 91973) 2 SCC 207 : 1973 SCC (Cri) 783), this Court held (at p. 161) : [SCC p. 210 : SCC (CRI) p. 786, para 10]

The normal rule under the Criminal Procedure Code is to try each accused separately when the offence committed by him is distinct and separate. The provisions of Sections 233 to 239 would indicate that joint trial is the exception. In State of A. P. v. Cheemalapati Ganeswara Rao (supra), this Court said that separate trial is the normal rule and joint trial is an exception when the accused have committed separate offences. Section 5(2) of the Criminal Procedure Code provides that the provisions of that Code will apply to trial of an offence under any law other than the Indian Penal Code subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offence.

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