Prem Ballab and Another

Vs

The State (Delhi Admn.)

Criminal Appeal No. 287 of 1971

(P.N. Bhagwati, Syed M. Fazal Ali JJ)

15.09.1976

JUDGMENT

BHAGWATI, J. –

1. This appeal, by special leave, is directed against a judgment of the High Court of Delhi confirming the conviction of the appellants under Section 7(i) read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954.

2. The prosecution case was that at all material times the second appellant was the owner of a grocery shop situate at Maharani Bagh, New Delhi and the first appellant was employed as a salesman in the shop. On June 23, 1969 Bhanot, a Food Inspector went to the shop of the first appellant and finding the first appellant there as a salesman, took from him a sample of mustard oil for analysis after paying its purchase price. He divided the sample into three parts and sent one part to the Public Analyst for analysis, handed over the other part to the second appellant and retained the third part with him. The Public Analyst reported that the sample was misbranded as linseed oil and was adulterated due to the presence of artificial dye. On the strength of this report, the appellants were charge-sheeted under the Section 7(i) read with Section 16(1)(a)(i) before the Judicial Magistrate, Delhi. The defence of the first appellant was that the second appellant was at no time engaged by him as the salesman and no mustard oil was purchased by Bhanot from the second appellant. The second appellant also claimed that he was never an employee of the first appellant and while he was going to his house after purchasing sarson oil for his personal use, he was caught by two or three persons near Maharani Bagh and a sample was taken from the oil which he was carrying and his signatures were obtained by threat on certain papers. The learned Judicial Magistrate accepted the evidence led on behalf of the prosecution and rejected the defence version and held that the appellants were guilty of the offence of selling linseed oil containing artificial dye which was an offence punishable under Section 7(i) read with Section 16(1)(a)(i). The learned Judicial Magistrate accordingly convicted the appellants and sentenced each of them to suffer rigorous imprisonment for nine months and to pay a fine of Rs. 1000. The appellants preferred an appeal, but the appeal was rejected by the learned Sessions Judge and the conviction was confirmed with only a slight modification in the sentence. The sentence was reduced from nine months' to six months' rigorous imprisonment. This led to the filing of a revision application in the High Court by the appellants, but the revision application was also unsuccessful. Hence the present appeal by special leave obtained from this Court.

3. The first contention raised on behalf of the appellant in support of the appeal was that the conviction was bad inasmuch as it rested solely on the evidence of Bhanot and one other Food Inspector, namely, Bhatnagar, who happened to come there at the time of taking the sample and

there was no independent witness to support the prosecution case. Now, it is true that the prosecution could not produce any independent witness to depose to the taking of the sample by Bhanot from the second appellant at the shop of the first appellant but that by itself cannot be regarded as sufficient to warrant rejection of the prosecution case out of hand. The sample was taken by Bhanot in the presence of one Keshav Dutt Sharma and a panchnama evidencing the transaction was prepared and signed by Keshav Dutt Sharma on the spot. But in the witness box Keshav Dutt Sharma turned hostile and denied that he was present at the time of taking the sample. Of course, he could not deny that the endorsement B to B on the panchnama was in his handwriting and he had put his signature at the foot of it, but his explanation was that one Food Inspector came to the shop where he was working and asked him either to give a sample of the ice-cream he was selling at the shop or to give his signature on the panchnama. This explanation is palpably dishonest and cannot be accepted by any court. Moreover, it does not explain how the endorsement B to B came to be made by Keshav Dutt Sharma in his handwriting. There can be no doubt that Keshav Dutt Sharma was present at the time of taking of the sample and he wrote down the endorsement B to B on the panchnama and signed it as he was witness to the transaction. It is unfortunately not an infrequent occurrence to find that panch witnesses turn hostile and go back upon what is stated in the panchnama in utter disregard of truth. This betrays lack of character and absence of civic sense which not only result in the guilty escaping the punishment but lead to general deterioration in standards of honesty and integrity. This is a highly reprehensible phenomenon which has to be curbed in the larger interest of the administration of justice. Here, apart from the endorsement B to B in the panchnama and the signature at the foot of it showing that Keshav Dutt Sharma was a witness to the taking of the sample, we have the statement of Bhanot who said in his evidence that Keshav Dutt Sharma was taken by him to witness the taking of the sample and Keshav Dutt Sharma made the endorsement B to B on the panchnama and put his signature below it and this statement made by Bhanot was not challenged in the cross-examination, nor was it even suggested to Bhanot that Keshav Dutt Sharma was not present at the taking of the sample. The prosecution case obviously cannot be thrown out merely because Keshav Dutt Sharma refused to support what had been stated by him in his own handwriting in the panchnama and went back upon it to the utter dismay of the prosecution. It is true that by reason of the defection of Keshav Dutt Sharma, the prosecution was left only with the evidence of Bhanot and Bhatnagar, but this evidence was regarded by the High Court as well as the learned Judicial Magistrate and the learned Sessions Judge sufficient to found the conviction of the appellants and we do not see why we should interfere with the concurrent view taken by them as regards the appreciation of this evidence. There is no rule of law that conviction cannot be based on the sole testimony of a Food Inspector. It is only out of a sense of caution that the courts insist that the testimony of a Food Inspector should be corroborated by some independent witness. This is a necessary caution which has to be borne in mind because the Food Inspector may in a sense be regarded as an interested witness, but this caution is a rule of prudence and not a rule of law : if it were otherwise, it would be possible for any guilty person to escape punishment by resorting to the device of bribing panch witnesses. The conviction of the appellants cannot, therefore, be assailed as infirm on the ground that it rested merely on the evidence of Bhanot and Bhatnagar.

4. The appellants then contended that on the opinion expressed by the Public Analyst, the offence committed by the appellants was one under Section 16(1)(a)(i) with respect to an article of food adulterated under clause (1) of Section 2 and the Court had, therefore, discretion under the proviso to Section 16(1) to impose a lesser sentence of imprisonment than six months for adequate and special reasons. The argument of the appellants was that this was a fit case in which the discretion under the proviso to Section 16(1) should have been exercised and the minimum sentence of six

months' imprisonment should not have been imposed on the appellants. This was in substance a plea for reduction of the sentence of imprisonment and this plea raises the question as to which is the clause of Section 2(i) in which the present case falls. Does it fall within clause (l) as claimed by the appellants or within clause (i) as contended on behalf of the prosecution or within both and, if it falls within both, what is the effect Section 2(i) defines 'adulterated' and says that an article of food shall be deemed to be adulterated if the article falls within the description given in any of the succeeding clauses (a) to (i). Clause (j) provides that an article of food shall be deemed to be adulterated :

> (i) if any colouring matter other than that prescribed in respect thereof and in amounts not within the prescribed limits of variability is present in the article, and clause (l) deems an article of food to be adulterated :
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> (1) if the quality or purity of the article falls below the prescribed standard or if constituents are present in quantities which are in excess of the prescribed limits of variability.

In the present case what was sole by the appellants was linseed oil which contained artificial dye. The standard of quality of linseed oil is defined in paragraph A. 17.04 of Appendix B to the Prevention of Food Adulteration Rules, 1955 as follows :

> A. 17.04 Linseed oil (Tilli ka tel) means the oil obtained by process of expressing clean and sound linseed (Linum usitatissimum). It shall be clear, free from rancidity, suspended or other foreign matter, separated water, added colouring or flavouring substances, or mineral oil. It shall conform to the following standards :
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> #(a) Butyro-refractometer readingat 40 Degree C .. 69.5 to 74.3(b) Saponification value .. 188 to 196(c) Iodine value .. Not less than 170(d) Unsaponifiable matter .. Not more than 1.5 per cent.(e) Free fatty acid as oleic acid .. Not more than 2.0 per cent.##

The argument of the appellants was the requirement of this paragraph that linseed oil shall be free from foreign matter or added colouring substances lays down a standard of quality of linseed oil and since the linseed oil sold by the appellants contained artificial dye, the quality of the linseed oil fell below the prescribed standard and hence the case was covered by clause (1) of Section 2(i). The appellants contended that if clause (i) of Section 2(i) was applicable in the present case, it excluded the applicability of clause (j) and the linseed oil containing artificial dye could not be said to be adulterated under that clause. It was also urged on behalf of the appellants that, in any event, no colouring matter was prescribed in respect of linseed oil and, therefore, it could not be said that there was present in the linseed oil sold by the appellants artificial dye "other than that prescribed in respect thereof and in amounts not within the prescribed limits of variability" so as to bring the case within the scope of clause (i) of Section 2(i). These contentions of the appellants, plausible though they may seem at first sight, are without merit and must be rejected. Our reasons for saying so are as follows.

5. It may be made clear at the outset that the different clauses of Section 2(i) are not mutually exclusive. They overlap one another and, it is quite possible that an article of food may be found adulterated under two or more clause of Section 2(i). Take for example a case where an article of food contains a foreign substance which affects injuriously the quality thereof and at the same time

renders it unfit for human consumption. Such a case would clearly fall within clauses (b) and (f) of Section 2(i) and the article of food would be deemed to be adulterated under both these clause. So also, a case may arise where a colouring matter not permitted under the rules is added to an article of food and such colouring matter affects injuriously the quality of the article of food and in such a case too more than one clause of Section 2(i) would be attracted, namely, clauses (b) and (j). These instances which we have given are merely by way of illustration and they show that merely because an article of food is covered by one clause of Section 2(i), it does not exclude the applicability of another clause of the section : an article of food may be deemed to be adulterated under more than one clauses of Section 2(i). It is, therefore, not a valid argument that because the present case falls under clauses (l) of Section 2(i), the applicability of clause (j) is ipso facto negatived and the case cannot come within that clause.

6. That takes us to the question whether the present case falls within clause (j) of Section 2(i), for if does, it would be immaterial whether it falls also within clause (l) of Section 2(i) and in so far as the linseed oil sold by the appellants is deemed to be adulterated under clause (j) of Section 2(i), the proviso to Section 16(1) would not be attracted. Now, the report of the Public Analyst showed that the linseed oil sold by the appellants contained artificial dye and this was clearly prohibited under the Rules. Rule 23 provided that the addition of a colouring matter to an article of food, except as specifically permitted by the Rules, shall be prohibited. The only artificial dyes, which were permitted to be used in food, were those set out in Rule 28, and Rule 29 prohibited the use of permitted coaltar dyes in our upon any food other than those enumerated in that rule. Linseed oil was admittedly not one of the articles of food enumerated in Rule 29 and hence even permitted coaltar dyes could not be added to linseed oil. It does not appear from the report of the Public Analyst as to what was the artificial dye found mixed in the sample of linseed oil sent to him but we will assume in favour of the defence that it was a permitted coaltar dye. Even so, by reason of Rules 23 and 29, it could not be added to linseed oil. In the circumstances, the linseed oil sold by the appellants contained artificial dye which was prohibited under the Rules. The argument of the appellants was that since colouring matter was prohibited in respect of linseed oil, it could not be said that any colouring matter was prescribed in respect of linseed oil by the Rules and hence the presence of artificial dye in linseed oil did not attract the applicability of clause (j) of Section 2(i). It was said that clause (j) of Section 2(i) would be attracted only if a colouring matter is prescribed in respect of an article of food and the article is found to contain a colouring matter different from that prescribed; But if no colouring matter different from that prescribed. But if no colouring matter is prescribed, which would be the position where colouring matter is totally prohibited, it cannot be said that the article of food contains a colouring matter other than that prescribed in respect of it. This argument has the merit of ingenuity but it has no force and cannot be sustained. When no colouring matter is permitted to be used in respect of an article of food. What is prescribed in respect of the article is "nil colouring matter" and if the article contains any colouring matter, it would be "other than that prescribed in respect" of the article. Clause (j) of Section 2(i) is not merely intended to cover a case where one type of colouring matter is permitted to be used in respect of an article of food and the article contains another type of colouring matter but it also takes in a case where no colouring matter is permitted to be used in respect of an article of food, or in other words, it is prohibited and yet the article contains a colouring matter. There is really no difference in principle between the two kinds of cases. Both are equally reprehensible; in fact the latter may in conceivable cases be more serious than the former. Where no colouring matter is permitted to be used in an article of food, what is prescribed in respect of the article is that no colouring matter shall be used an if any colouring matter is present in the article in breach of that prescription, it would clearly involve violation of clause (j) of Section 2(i). The words of clause (j)

of Section 2(i) "other than that prescribed in respect thereof" recall to the mind similar words used in Section 29(2) of the Limitation Act which makes certain provisions of the Limitation Act applicable in cases where a special or local law prescribes a period of limitation different from the period prescribed by the schedule to the Limitation Act. These words of Section 29(2) of the Limitation Act came up for interpretation before this Court in Vidya Charan Shukla v. Khubchand Baghel [(1964) 6 SCR 129 : AIR 1964 SC 1099 : 25 ELR 354]. It was contended in that case that, on a true construction of these words, it is only where a period of limitation is specifically prescribed in the schedule and a special or local law prescribes a different period of limitation, that Section 29(2) would be attracted and that section would have no application where no time limit is prescribed by the schedule. This contention was negatived and it was held by this Court that where the schedule does not specifically prescribed any period of limitation for an application but is silent and a special or local law prescribes a period of limitation for such an application, it can appropriately be said that the special or local law has prescribed a period of limitation different from that prescribed in the schedule and Section 29(2) would be applicable. The analogy of this decision is very apt and it supports the construction we are inclined to place on the words "other than that prescribed in respect thereof" in clause (j) of Section 2(i). We take the view that even where the Rules prescribe that no colouring matter or artificial dye shall be used in respect of an article of food, clause (j) Section 2(i) would apply if it is found that some colouring matter or artificial dye is present in the article. Here, the linseed oil sold by the appellants contained artificial dye despite the prohibition in the Rules and hence the case was clearly covered by clause (j) of Section 2(i) and the linseed oil must be deemed to be adulterated under that clause. That would exclude the applicability of the proviso to Section 16(1), since the offence in this view would be one with respect of an article of food deemed to be adulterated under clause (j) of Section 2(i). The appellants' plea invoking the liberality of the provision enacted in the proviso to Section 16(1) must, in the circumstances, be rejected and the minimum sentence of imprisonment for six months must be maintained.

7. The appellants then pleaded that in any event on the facts and circumstances of the present case the benefit of the Probation of Offenders Act, 1958 should be given to them and they should not be consigned to the rigours of jail life. This plea also does not impress us. It is no doubt true and that was laid down by this Court in the first pronouncement made by it on the subject in Ishar Das v. State [(1972) 3 SCR 312 : (1973) 2 SCC 65 : 1973 SCC (Cri) 708] that the operation of the Probation of Offenders Act, 1958 is not excluded in case of persons found guilty of offences under the Prevention of Food Adulteration Act, 1954. To quote the words of Krishna Iyer, J. in P. K. Tejani v. M. R. Dange [(1974) 2 SCR 154 : (1974) 1 SCC 167 : 1974 SCC (Cri) 87] :

> The rehabilitatory purpose of the Probation of Offenders Act, 1958 is pervasive enough technically to take within its wings an offence even under the Act.

But in the very same decision in Ishar Das' case this Court sounded a note of caution which must be borne in mind :

> Adulteration of food is a menace to public health. The Prevention of Food Adulteration Act has been enacted with the aim of eradicating that anti-social evil and for ensuring purity in the articles of food. In view of the above object of the Act and the intention of the legislature as revealed by the fact that a minimum sentence of imprisonment for a period of six months and a fine of rupees one thousand has been prescribed, the courts should not lightly resort to the provisions of the Probation of Offenders Act in the case of persons above 21 years of age found guilty of offences under the Prevention of Food Adulteration Act. . . .

The imperatives of social defence must discourage the applicability of the probation principle. No chances can be taken by society with a man whose anti-social activities, in the guise of a respectable trade, jeopardise the health and well-being of numerous innocent consumers. The adulterator is a social risk. It might be dangerous to leave him free to carry on his nefarious activities by applying the probation principle to him. Moreover, it must be remembered that adulteration is an economic offence prompted by profit motive and it is not likely to lend itself easily to therapeutic treatment by the probationary measure. It may be pointed out that the Law Commission also in its Forty-seventh Report recommended the exclusion of applicability of the probationary process in case of social and economic offences and presumably in response to this recommendation, the legislature has recently amended the Prevention of Food Adulteration Act, 1954 by introducing Section 20AA providing that nothing contained in the Probation of Offenders Act, 1958 or Section 360 of the Code of Criminal Procedure, 1973 shall apply to a person convicted of an offence under the Act unless that person is under eighteen years of age. This amendment of course would not apply in the present case but it shows the legislative trend which it would not be right for the court to ignore. We cannot, therefore, give the benefit of the Probation of Offenders Act, 1958 to the appellants and release them on probation.

8. We accordingly confirm the conviction and sentence recorded against the appellants and dismiss the appeal.

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