

State of Tamil Nadu

Vs

R. Krishnamurthy

Criminal Appeal No. 236 of 1973

(R.S. Sarkaria, O. Chinnappa Reddy JJ)

15.11.1979

JUDGMENT

CHINNAPPA REDDY, J. –

1. Gingelly oil mixed with 15% of ground-nut oil was sold as gingelly oil by the respondent to the Food Inspector, Thanjavur Municipality. The defence of the respondent was that he kept the oil in his shop to be sold, not for human consumption, but, for external use. The trial Magistrate did not accept the defence. He convicted him under Section 16(1)(a)(i), read with Section 2(i)(a) of Food Adulteration Act and sentenced him to suffer imprisonment till the rising of the Court and to pay a fine of Rs. 200. On appeal, the learned Session Judge accepted the defence of the respondent and acquitted him of the charge. According to the learned Sessions Judge, the respondent could not be convicted unless it was established that the sale of the gingelly oil was for human consumption. The State of Tamil Nadu preferred an appeal to the Madras High Court. The High Court confirmed the order of acquittal. The State of Tamil Nadu has filed this appeal by special leave of this Court. The learned Counsel for the State of Tamil Nadu made it clear to us at the hearing that the State was not anxious, at this distance of time (the occurrence was on May 26, 1969) to secure a conviction, but was anxious that the legal position should be clarified. We accordingly proceed to do so.

2. Section 16(1)(a)(i) as it stood at the relevant time was as follows :

16. (1) If any person -

(a) Whether by himself or by another 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;

he shall, in addition to the penalty to which he may be liable under the provisions of Section 6, be punishable with imprisonment for a term which shall not be less than six months but which may extend to six years, and with fine which shall not be less than one thousand rupees :

Provided that -

(i) if the offence is under sub-clause (i) of clause (a) and is with respect to an article of food which is adulterated under sub-clause (1) of clause (i) of Section 2 or

misbranded under sub-clause (k) of clause (ix) of that section; or

(ii) If the offence is under sub-clause (ii) of clause (a) the Court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or of fine than of less than one thousand rupees or of both imprisonment for a term of less than six months and fine of less than one thousand rupees.

3. Section 7 is also relevant and it was as follows :

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

(i) any adulterated food;

(ii) any misbranded food;

(iii) any article of food for the sale of which a licence is prescribed, except in accordance with the conditions of the licence;

(iv) any article of food the sale of which is for the time being prohibited by the Food (Health) Authority in the interest of public health; or

(v) any article of food in contravention of any other provision of this Act or of any rule made thereunder.

4. "Food" is defined by Section 2(v) as meaning "any article used as food or drink for human consumption other than drugs and water and includes :

(a) any article which ordinarily enters into, or is used in the composition or preparation of human food, and

(b) any flavouring matter or condiments.

5. "Sale" is defined by Section 2(xiii) as follows :

"Sale" with its grammatical variations and cognate expressions, means the sale of any article of food, whether for cash or on credit or by way of exchange and whether by wholesale or retail, for human consumption or use, or for analysis, and includes an agreement for sale, an offer for sale, the exposing for sale or having in possession for sale of any such article, and includes also an attempt to sell any such article;

6. Section 16(1)(a)(i) read with Section 7(i) prohibits and penalises the sale of any article of food which is adulterated or misbranded, etc. The question for consideration is whether the sale of adulterated gingelly oil which is sold or offered for sale for external use is sale of an article of food which is adulterated. This must depend upon the definitions of "sale" and "food" in the Act.

7. According to the definition of "food" which we have extracted above, for the purposes of the Act, any used as food or drink for human consumption and any article which ordinarily enters into or is used in the composition or preparation of human food is "food". It is not necessary that it is intended

for human consumption or for preparation of human food. It is also irrelevant that it is described or exhibited as intended for some other use. It is enough if the article is generally or commonly used for human consumption or in the preparation of human food. It is notorious that there are, unfortunately, in our vast country, large segments of population, who, living as they do, far beneath ordinary subsistence level, are ready to consume that which may otherwise be thought as not fit for human consumption. In order to keep body and soul together, they are often tempted to buy and use as food, articles which are adulterated and even unfit for human consumption but which are sold at inviting prices, under the pretense or without pretense that they are intended to be used for purposes other than human consumption. It is to prevent the exploitation and self-destruction of these poor, ignorant and illiterate persons that the definition of "food" is couched in such terms as not to take into account whether an article is intended for human consumption or not. In order to be "food" for the purposes of the Act, an article need not be "fit" for human consumption; it need not be described or exhibited as intended for human consumption; it may even be otherwise described or exhibited; it need not even be necessarily intended for human consumption; it is enough if it is generally or commonly used for human consumption or in the preparation of human food. Where an article is generally or commonly not used for human consumption or in the preparation of human food but for some other purpose, notwithstanding that it may be capable of being used, on rare occasions, for human consumption or in the preparation of human food, it may be said, depending on the facts and circumstances of the case, that it is not "food". In such a case the question whether it is intended for human consumption or in the preparation of human food may become material. But where the article is one which is generally or commonly used for human consumption or in the preparation of human food, there can be no question but that the article is "food". Gingelly oil, mixed or not with ground-nut oil or some other oil, whether described or exhibited as an article of food for human consumption or as an article for external use only is "food" within the meaning of the definition contained in Section 2(v) of the Act.

8. Most of High Courts appear to have so understood the meaning of the word "food", though there appears to have been some confusion because of a misunderstanding of certain observations of this Court in *Andhra Pradesh Grain & Seed Merchants' Association v. Union of India* ((1971) 1 SCR 166 : (1970) 2 SCC 71, 78) and *Shah Ashu Jaiwant v. State of Maharashtra* ((1976) 2 SCC 99, 102).

9. In the first case it was observed : (SCC p. 78 para 11)

We are again unable to accept the argument that under the Act even when an article is purchased not as an article of food, but for use otherwise, the vendor will be deemed guilty if the article does not conform to the prescribed standards, or is an article of food adulterated or misbranded. Counsel said that coconut oil is used in the State of Kerala as a cooking medium, and sale of adulterated coconut oil may in Kerala be an offence under Section 16, but in other parts of the country where coconut oil is not used as a cooking medium and is used as a component of hair oil or for other purposes, it amounts to imposing an unreasonable restriction to penalise the vendor who sells coconut oil knowing that the purchaser is not buying it as a cooking medium. But there are no articles which are used as food only in one part, and are not at all used as food in another part of the country. Even coconut oil is used as a cooking medium by certain sections of the people in parts of India other than Kerala. In any event it is always open to a person selling an article capable of being used as an article of food as well as for other purposes to inform the purchaser by clear notice that the article sold or supplied is not intended to be used as an article of food. What is penalised by Section 16(1) is importation, manufacture for sale, or storage,

sale or distribution of any article of food. If what is imported, manufactured or stored, sold or distributed is not an article of food, evidently Section 16 can have no application.

10. In the second case it was observed : (SCC p. 102, para 10)

Hence, where Section 7 prohibits manufacture, sale or storage or distribution of certain types of "food", it necessarily denotes articles intended for human consumption as food. It becomes the duty of the prosecution to prove that the article which is the subject-matter of an offence is ordinarily used for human consumption as food whenever reasonable doubts arise on this question. It is self-evident that certain articles, such as milk, or bread, or butter, or foodgrains are meant for human consumption as food. These are matters of common knowledge. Other articles may be presumed to be meant for human consumption from representations made about them or from circumstances in which they are offered for sale.

11. The seeming confusion created by the observation in the two cases will disappear if they are properly understood in the context in which they were made. In the first case the Court was considering the argument based upon the supposition that there might be articles which were "food" somewhere and not "food" elsewhere. The Court first remarked that there were no articles which were used as food only in one part, and were not at all used as food in another part of the country. In such an unlikely event, the person selling the article could inform the purchaser that the article sold was not meant to be used as an article of food. If prosecuted he could establish that in that area what he sold was not an article of food at all. That was all that was observed. If the expression "food" is understood as we have explained earlier, there would be no occasion for any confusion.

12. The observations in the second case are in accord with what we have said. The Court merely observed that if there was any doubt in a particular case whether an article was ordinarily used for human consumption in order to fall within the definition of "food", the prosecution would have to prove the same.

13. That gingelly oil, however described or exhibited, is an article of food is not an end of our problem. We have further to investigate the definition of "sale". Now, the definition is designedly wide. It seems a real sale as well as an 'embryonic' sale (like agreement for sale, offer for sale, exposure for sale, possession for sale, attempt at sale) are sales for the purposes of the Act. The sale may be for cash or credit or by way of exchange. The sale may be by wholesale or retail. Thus every kind, manner and method of sale are covered. Finally, the sale may be "for human consumption or use, or for analysis". In the context, these words can only mean "whether for human consumption or for any other purpose (including analysis)". The object is to emphasise that whatever be the purpose of the sale it is sale for the purposes of the Act, just as the words "whether by wholesale or retail" or "whether for cash or credit or by way of exchange" are intended to emphasise that it is immaterial for the purposes of the Act what manner and method of sale is adopted. To give any other interpretation to the definition of "sale" would be to exclude from the ambit of the Act that which has been included by the definition of "food". Further, a sale "for analysis" can never be a sale "for human consumption" but it is nonetheless a sale within the meaning of the definition. It is an unqualified sale for the purposes of the Act. To insist that an article sold for analysis should have been offered for sale for human consumption would frustrate the very object of the Act. A person selling an adulterated sample to a Food Inspector could invariably inform him that it was not for human consumption and thereby insure himself against prosecution for selling adulterated food. If

sale for analysis is an unqualified sale for the purposes of the Act, there is no reason why other sales of the same article should not be sales for the purposes of the Act. The question may be asked why sale for analysis should be specially mentioned if all manner of sales are included in the definition. It is only to prevent the argument that sale for analysis is not a consensual sale and hence no sale an argument which was advanced and rejected in *Mangaldas v. State of Maharashtra* (AIR 1966 SC 128).

14. We are therefore of the opinion that the sale of gingelly oil mixed with ground-nut oil is punishable under Section 16(1)(a)(i) read with Section 2(i)(a) notwithstanding the fact that the seller had expressly stated at the time of sale that it was intended for external use only. We declare the legal position as indicated in the earlier paragraphs but we refrain from passing any further order in the appeal which we accordingly dismiss. We have not referred to any of the decisions of the various High Courts which were considered by us and all of which, we may add, have been studiously collected and scrupulously considered by Madhusudana Rao, J., in *Public Prosecutor v. Rama Chandra Raju* ((1977) 1 An WR 356).

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