State of Punjab

Vs

Devinder Kumar and Others

Criminal Appeals Nos. 286-292 of 1981

(E. S. Venkataramiah, A. N. Sen JJ)

07.04.1983

JUDGMENT

VENKATARAMIAH, J. –

1. The above criminal appeals by special leave are filed against a common judgment delivered on April 24, 1980 by the High Court of Punjab and Haryana in Criminal Miscellaneous Nos. 196, 198, 1565, 1567, 1569, 1571 and 1573-M of 1980.

2-3. By its judgment under appeal the High Court has quashed certain criminal proceedings instituted in different Magistrates' courts against different parties for violation of Section 7 (i) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'the Act'). Since the facts in all these cases are more or less the same, we shall briefly state the facts in one of them, i. e. Criminal Miscellaneous No. 196-M of 1980 on the file of the High Court filed by Daljit Vig, Works Manager, Kishan Chand and Co. Oil Industry Ltd., manufacturers of vanaspati at Ludhiana in which had been initiated by a complaint filed by the Government Food Inspector, District Faridkot. In that case the complainant alleged that when he visited the premises of Darshan Lal (accused 1) on July 30, 1979 he found that Darshan Lal had in his possession for purposes of sale about 20 sealed tins each containing 16.5 kgs of crown vanaspati and he demanded a sample of crown vanaspati by serving a notice on Darshan Lal in the form prescribed under the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as 'the Rules'). Thereafter purchased 1.5 kgs of crown vanaspati after opening a sealed tin for analysis by paying him Rs. 15. The sample was divided into three equal parts and put into three dry and cleaned bottles which were labeled and duly closed and sealed. One of the bottles containing the sample was sent to the Public Analyst, Punjab in a sealed container, through a special messenger along with a memorandum (Form No. VII) containing the specimen of the seal and the remaining two bottles were deposited with the Local Health Authority, Faridkot in accordance with the Rules. He also seized the entire stock of vanaspati under Section 10 (4) of the Act. After the receipt of the Report of the Public Analyst dated August 24, 1979 he filed the complaint annexing the Report as an enclosure to it. The said Report stated that on analysis he (the Public Analyst) found that the sample sent to him did not contain sesame oil at all whereas vanaspati was required to contain not less than 5 per cent by weight of sesame oil. The three accused named in the complaint were Darshan Lal, the vendor. M/s Hem Raj Pawan Kumar, the dealers and Kishan Chand and Co., Oil Industry Ltd., the manufacturers of the vanaspati contained in the aforementioned sealed tins. The complainant alleged that as the vanaspati in question did not satisfy the prescribed standard the accused were liable to be punished under Section 16 (1) (a) (i) of the Act for having contravened the provisions of Section 7 (i) of the Act. The names of witnesses including the name of the person in the presence of whom the sample had been taken were furnished in the complaint. When process was issued on the basis of the above complaint Daljit Vig, the works

manager, of the manufacturer of the vanaspati in question filed Criminal Miscellaneous No. 196-M of 1980 on the file of the High Court. Criminal Miscellaneous No. 198-M of 1980 was filed by Pawan Kumar of M/s Hem Raj Pawan Kumar. In these two petitions they pleaded that the criminal proceedings initiated against them were liable to be quashed on various grounds. They contended, inter alia, that because the complainant had taken the sample of vanaspati after opening a sealed tin, he had violated Rule 22-A of the Rules and that because under Section 20-A of the Act, the dealer or a manufacturer could be proceeded against only after the vendor had set up a successful defence as contemplated under illegal. In the connected cases which were disposed of by the common judgment under appeal, the grounds were more or less the same. The High Court allowed all the petitions quashing all the criminal proceedings filed against the petitioners before it on the ground that where the food sold or stocked for sale or for distribution was in sealed containers having identical label declaration, the entire contents of one or more of such containers as may be required to satisfy the quantity prescribed in Rule 22 should be taken as a part of the sample in a sealed form and since the sealed container had been opened in each of these cases to draw the sample the prosecution was not tenable. In the instant case it may be recalled that each of the sealed containers contained 16.5 kgs of vanaspati and after opening one such sealed container the complainant had been 1.5 kgs of vanaspati as sample. The method adopted by the complainant was found by the High Court. It may be stated here that the High Court following its decision in these cases quashed the proceedings against Darshan lal, the vendor of the vanaspati in question, in Criminal Miscellaneous No. 2197-M of 1980 by its order dated June 17, 1980 against which a separate petition is filed before this Court in Special Leave Petition (Criminal) No. 2570 of 1980 which is also being disposed of today by a separate order.

4. Adulteration and misbranding of foodstuffs are rampant evils in our country. The Act is brought into force to check these social evils in the larger public interest for ensuring public welfare. In certain cases the Act provides for imposition of penalty proof of guilty mind. This show the degree of concern exhibited by Parliament insofar as public health is concerned. While construing such food law courts should keep in view that the need for prevention of future injury is as important as punishing a wrong-doer after the injury is actually inflected. Merely because a person who has actually suffered in his health after consuming adulterated food would not be before court in such cases, courts should not be too eager to quash on slender grounds the prosecution for offenses, alleged to have been committed under the Act.

5. Section 11 of the Act prescribes the procedure to be followed by the Food Inspectors in taking samples of food for analysis. The quantity of sample to be sent to the Public Analyst for analysis is prescribed by Rule 22 of the Rules. In the case of vanaspati 300 grams (approximately) should be sent to the Public Analyst under that Rule. Rule 22-A states that where food is sold or stocked for sale or for distribution in sealed containers having identical label declaration, the contents of one or more of such containers as may be required to satisfy the quantity prescribed in Rule 22 shall be treated to be a part of the sample. This Rule is enacted apparently to get over the difficulty that may arise in taking sample and in dividing it into three parts as required by Section 11 (1) (b) of the Act where each sealed container containing the food in question contains a quantity less than the required quantity to be taken as sample for purposes of Section 11 read with Rule 22. Rule 22-A of the Rules was promulgated for the purpose of overcoming an objection to the effect that the contents of two or more different sealed containers could not form the parts of the same sample. Rule 22-A of the Rules does not state that where a sealed container contains a quantity larger than what is required for purposes of Section 11 read with Rule 22 the sealed container as such should be taken as sample and that no sample can be taken after opening the sealed container. It may be stated here that the inevitable consequence of the acceptance of this argument of the accused which has

appealed to the High Court is that where a manufacturer or distributor sells foodstuffs in large sealed containers containing quantities much larger than what is required to be taken as sample under the law and the contents of only one such container, are exposed for sale by a vendor after opening the container, a Food Inspector would not be able to take a sample at all for proceeding under the Act against the manufacturer, distributor or even the vendor. We feel that any construction which would lead to such absurd result should be avoided while construing the provisions of the Act. The precautions prescribed in Section 11 of the Act which have to be observed while taking samples are indeed adequate to prevent effectively any false sample being sent to the Public Analyst. If there is any prejudice caused to the accused by any negligence on the part of the authorities concerned in taking or sending the true sample to be Public Analyst, the prosecution may have to fail. But there is, however, no legal requirement which compels the Food Inspector to send the sealed container as such to the Public Analyst even though it contains a quantity much larger than what is required to be taken as sample under Rule 22. Rule 22-A is only a corollary to Rule 22. Rule 22-B sets at rest many doubts which were being raised prior to its promulgation. It says :

> 22-B. Quantity of sample sent to be considered as sufficient-Notwithstanding anything contained in Rule 22 the quantity of sample sent for analysis shall be considered as sufficient unless the public analyst or the Director reports to the contrary.

6. Even prior to the coming into force of Rule 22-B the legal position was the same as what was attempted to be achieved by Rule 22-B of the Rules. In State of Kerala v. Alasserry Mohammed (1978) 2 SCR 820 : (1978) 2 SCC 386 : 1978 SCC (Cri) 198 : 1978 Cri LJ 925) this Court held that Rule 22 which prescribed the quantity of food that should be sent to the Public Analyst was only directory and that a prosecution could not fail merely on the ground that the quantity sent to the Public Analyst was less than what was prescribed, provided the quantity which was actually sent was sufficient for purpose of analysis. Untwalia, J. speaking on behalf of the five learned Judges who heard that case observed at SCR pages 828-29 thus : [SCC paras 9 & 11, pp. 393-95 : SCC (Cri) pp. 206-07]

It would thus be seen that the whole object of Section 11 and Rule 22 is to find out by a correct analysis, subject to further verification and tests by the Director of the Central Laboratory or otherwise, as to whether the sample of food is adulterated or not. If the quantity sent to the Public Analyst even though it is less than that prescribed, is sufficient and enables the Public Analyst to make a correct analysis, then merely because the quantity sent was not in strict compliance with the Rule will not result in the nullification of the report and obliterate is evidentiary value. If the quantity sent is less, it is for the Public Analyst to see whether it is sufficient for analysis or not. If he finds it insufficient, there is an and of the matter. If however he finds it sufficient, but due to one reason or the other, either because of further tests or otherwise, it is shown that the report of the Public Analyst based upon the short quantity sent to him is not trustworthy or beyond doubt, the case may fail. In other words, if the object is frustrated by the sending of the short quantity by the Food Inspector to the Public Analyst, it is obvious, that the case may end in acquittal. But if the object is not frustrated and is squarely and justifiably achieved without any shadow of doubt then it will endanger public health to acquit offenders on technical grounds which have no substance. To quote the words of Sir George Rankin, C. J. from the decision of the Calcutta High Court in Chandra Nath Bagchi v. Nabadwip Chandra Dutt (AIR 1931 Cal 476 : 53 Cal LJ 329 : 35 Cal WN 9 : 131 IC 702) at AIR page 478, it would "be merely piling unreason upon technicality...". In our considered judgment the Rule is directory and the mandatory. But we must hasten to reiterate what we have said above that, even so, Food Inspectors should take care to see that they comply with the

Rule as far as possible.

* * * *##

We may, in passing, note that the Rules have now boon amended and Rule 22-B has been added in 1977,... In our option, the new Rule has been added for the purpose of clarifying the law and not way of amending it. The law, as we have enunciated it, was so even without Rule 22-B and it is stated here to place it beyond any debate or doubt.

7. It may be noted that none of these cases has the Public Analyst expressed the opinion that the quantity of sample sent to him was inadequate for the purpose of analysing it and to make a report as required by the Act. It is unfortunate that the High Court in deciding the cases before it failed to appreciate and follow the approach adopted by this Court in Alasserry Mohammed case (1978) 2 SCR 820 : (1978) 2 SCC 386 : 1978 SCC (Cri) 198 : 1978 Cri LJ 925). The decision of the High Court on the above point cannot, therefore, be sustained.

8. The other ground namely that the dealer, manufacture or distributor cannot be prosecuted along with the vendor by impleading all of them initially as the accused in a prosecution under the Act is unsustainable in view of the decision of this Court in Bhagwan Das Jagdish Chander v. Delhi Administration (1975 Supp SCR 30 : (1975) 1 SCC 866 : 1975 SCC (Cri) 410 : AIR 1975 SC 1309 : 1975 Cri LJ 1091). In that case after considering the effect of Section 19 (9), Section 20 and Section 20-A of the Act the Court observed at SCR pages 36-37 thus : [SCC para 13, p. 874 : SCC (Cri) p. 418]

We are also unable to accept as correct a line of reasoning found in V. N. Chokra v. State (AIR 1966 Punj 421 : ILR (1966) 1 Punj 785 : 68 Punj LR 917 : 1966 Cri LJ 1201); Food Inspector, Palghat Municipality v. Seetharam Rice & Oil Mills (1974 FAC 534) and in P. B. Kurup v. Food Inspector, Malappuram Panchayat (1969 Ker LT 845), that, in every case under the Act, there has to be initially 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, 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 provision 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 Sections 233 to 239 if Criminal Procedure Code. On the other hand, there seems on logically sound reason why, if a distributor or a manufacturer can be subsequently impleaded, under 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.

9. Before concluding we should observe that the High Court committed a serious error in these cases in quashing the criminal proceeding in different Magistrates' courts at a premature stage in

exercise of its extraordinary jurisdiction under Section 482, Criminal Procedure Code. These are not cases where it can be said that there is no legal evidence at all in support of the prosecution. The prosecution has still to lead its evidence. It is neither expedient not possible to arrive at a conclusion at this stage on the quilt or innocence of the accused on the material before the court. While there is no doubt that the onus of proving the case is on the prosecution, it is equally clear that the prosecution should have sufficient opportunity to adduce all available evidence.

10. We are of the view that on the facts and in the circumstances of these criminal proceedings, the High Court should not have interfered at this interlocutory stage. These were not cases of the exceptional character where continuance of prosecution would have resulted either in waste of public time and money or in grave prejudice to the accused concerned. On the other hand this undue interference by the High Court has been responsible for these prosecutions in respect of grave economic offences remaining pending for a long time. In a similar case in State of Punjab v. Sat Pal (Criminal Appeal No. 199 of 1983 decided on March 25, 1983) we have set aside the order of the High Court and remanded the case for disposal to the trial court. Accordingly, we set aside the judgment and order to the High Court in each of these appeals and remand the cases to the respective Magistrates' courts for disposal in accordance with law. All the other contentions are left open.

11. The appeals are accordingly allowed.

</html