

Charanji Lal

Vs

State of Punjab

Criminal Appeal No. 462 of 1983

(D. P. Madon JJ)

25.10.1983

JUDGMENT

1. A. P. SEN, J. - This appeal special leave is directed against the judgment and sentence of the Punjab and Haryana High Court dated March 3, 1982 by which the High Court has set aside the order of acquittal recorded by the Judicial Magistrate, First Class, Moga dated March 14, 1980 and convicted the appellant under Section 7 read with Section 16(1)(a)(i) of the Prevention of Food Adulteration act, 1954 ('Act' for short) and sentenced him to undergo rigorous imprisonment for a period of six months and a fine of Rs. 1,000, and in default, rigorous imprisonment for a further period of three months.

2. The questions in this appeal are, firstly, a question of law as to whether the word 'damaged' appearing in the proviso to sub-section (2-C) of Section 13 of the Act is susceptible of a wider construction as to include damage due to any cause including decomposition; and secondly a mixed question of fact and law, as to whether the kutchra khoya sold by the appellant was 'adulterated' i.e. not of the nature, substance or quality prescribed by law.

3. The relevant facts are these. The appellant runs a sweetmeat shop at Sadar Bazar, Moga. On January 3, 1978 Dr. Paramjit Singh, Medical Officer, R. D. Ramnagar, district Faridkot, PW 2 along with Dr. Narinder Kumar, PW 3 visited the shop of the appellant, disclosed his identity as a Food Inspector and demanded 750 grammes of kutchra khoya for analysis and purchased the same. The Food Inspector divided the kutchra khoya so purchased into three equal parts, put them into three polythene packs and added 18 drops of formalin to each. The polythene packs were wrapped, labelled and sealed as required under Section 11(1)(b). One part of the sample was sent by the Food Inspector to the Public Analyst, Chandigarh and the remaining two parts to the Local (Health) Authority, Faridkot as required by clause (a) of sub-section (1) of Section 11 for purposes of sub-section (2) thereof and sub-section (2-A) and (2-E) of Section 13. The Public Analyst, Chandigarh by his report dated February 3, 1978 found the sample to be adulterated with sesame oil (till oil) besides being insect infested. The fat content of the sample was reported to be 25 per cent. On the basis of the report of the Public Analyst, the Food Inspector lodged a complaint against the appellant before the Judicial Magistrate, First Class, Moga. The appellant entered appearance and duly exercised his right under sub-section (2) of Section 13. The learned Magistrate sent on of the two parts of the sample to the Director of the Central Food Laboratory, Calcutta for purposes of analysis under sub-section (2-B) and the remaining part to the Local (Health) Authority as required under sub-section (2-C) of Section 13 of the Act. The Director by his letter dated May 2, 1978 initiated that the sample received by him was decomposed and therefore unfit for analysis and added that the counterpart of the sample may be sent to him immediately for analysis and report. It appears that for a period of six months apparently nothing was done. On November 10, 1978 the learned

Magistrate forwarded the remaining part of the sample to the Director of Central Food Laboratory, Ghaziabad for purposes of analysis. The report of the Director, Central Food Laboratory, Ghaziabad dated December 7, 1978 revealed that the sample was adulterated. The fat content was however stated to be 33-12 per cent with a note added that "the extracted fat of 20.37 per cent did not comply with the standards of milk fat for the State of Punjab". At the conclusion of the arguments, an application was made by the prosecution for clarification to be sought from the Director, Central Food Laboratory, Ghaziabad since the report was not clear. The learned Magistrate however rejected the application and proceeded to judgment. He held that the certificate of the Director, Central Food Laboratory, Ghaziabad had the effect of superseding the report of the Public Analyst, Chandigarh under sub-section (3) of Section 13 and therefore it could not be looked into. He further relied upon a decision of the Himachal Pradesh High Court in Ram Prakash v. State of H.P. ((1979) Cri LJ 750) and held that the certificate of the Director, Central Food Laboratory, Calcutta that the sample had become unfit for analysis had become final and therefore there was no occasion for sending the remaining part of the sample to the Director, Central Food Laboratory, Ghaziabad for analysis. He also held that even assuming that the sample sent to the Director, Central Food Laboratory, Calcutta had become 'damaged' within the meaning of proviso to sub-section (2-C) of Section 13 and therefore he could proceed in the manner provided by sub-section (2-B), the report of the Director, Central Food Laboratory, Ghaziabad showed the fat content to be 33.12 per cent i.e. in excess over the minimum standard of 20 per cent for khoya prescribed under the rules and therefore the khoya could not be treated to be adulterated. In this view, the learned Magistrate acquitted the appellant of the charge under Section 7 read with Section 16(1)(a)(i) of the Act.

4. On appeal preferred by the State Government, the High court disagreed with the view taken by the Himachal Pradesh High court in Ram Prakash case ((1979) Cri LJ 750), and held that it was not permissible to put a narrow construction on the word 'damaged' used in proviso to sub-section (2-C) of Section 13. According to the High court, a sample may be 'lost or damaged' within the meaning of proviso to sub-section (2-C) of Section 13 while in transit due to contamination or for various other reasons and therefore if another part of the sample was available, it could still be examined afresh. Further, it observed that the remaining part of the sample was sent to the Director, Central Food Laboratory, Ghaziabad for analysis without any objection by the appellant nor had any prejudice been caused to him. The High Court dealt with the evidence and relying upon the testimony of Dr. Paramjit Singh, PW 2 and Dr. Narinder Kumar, PW 3 held that the appellant had sold an article of adulterated food and was therefore guilty of an offence punishable under Section 7 read with Section 16(1)(a)(i) of the Act and sentenced him as above.

5. In this appeal, two questions are involved, namely : (1) Whether the part of the sample sent by the learned Magistrate to the Director, Central Food Laboratory, Calcutta was 'damaged' within the meaning of proviso to sub-section (2-C) of Section 13 of the act to enable him to proceed in the manner provided in sub-section (2-B) i.e. forward the remaining part of the sample to the Director, Central Food Laboratory, Ghaziabad; and (2) Whether the kutchra khoya sold by the appellant was adulterated within the meaning of Section 2(i-a)(1) of the Act.

6. To appreciate the contentions raised, it is necessary to set out the relevant provisions. The expression 'adulterated' is defined in Section 2(i-a)(1) of the Act which reads :

2. Definitions. - In this act unless the context otherwise requires, -

(i-a) "adulterated" - an article of food shall be deemed to be adulterated -

(1) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability, which renders it injurious to health.

Sub-sections (2-B) and (2-C) of Section 13 of the Act provide as follows :

(2-B) : On receipt of the part or parts of the sample from the Local (Health) Authority under Sub-section (2-A), the court shall first ascertain that the mark and seal or fastening as provided in clauses (b) of sub-section (1) of Section 11 are intact and the signature or thumb-impression, as the case may be, is not tampered with, and dispatch the part or, as the case may be, one of the part so the sample under its own seal to the Director of the Central Food Laboratory who shall thereupon send a certificate to the court in the prescribed form within one month from the date of receipt of the part of the sample specifying the result of the analysis.

(2-C) : Where two parts of the sample have been sent to the court and only one part of the sample has been sent by the court to the Director of the Central Food Laboratory under sub-section (2-B), the court shall, as soon as practicable, return the remaining part to the Local (Health) Authority and that Authority shall destroy that part after the certificate from the Director of the Central Food Laboratory has been received by the court :

Provided that where the part of the sample sent by the court to the Director of the Central Food Laboratory is lost or damaged, the court shall require the Local (Health) Authority to forward the part of the sample, if any, retained by it to the court and on receipt thereof, the court shall proceed in the manner provided in sub-section (2-B).

7. The question is whether the kutchra khoya sold by the appellant was not of the nature, substance or quality which it perpetrated or represented to be. Sub-section (1) of Section 23 confers powers on the Central Government, after consultation with the Central Committee for Food Standards constituted under Section 4, to make rules to carry out the purposes of the Act. In particular and without prejudice to the generality of the foregoing power, sub-section (1-A) enacts that such rules may provide for all or any of the matters enumerated therein. One of the subjects upon which rules can be made is defining the standards of quality for, and fixing the limits of variability permissible in respect of, any article of food. In exercise of the powers conferred by Section 23 of the Act, the Central Government framed the prevention of Food Adulteration Rules, 1955 ('Rules' for short). Rule 5 of the Rules provides that the standards of quality of the various articles of food specified in Appendix B to the Rules shall be as defined therein. Standards of quality and limits of variability fixed by the Central Government in Appendix B are not subject to alteration or variation by the courts. Definitions of milk of various descriptions for each of which standards have been laid down are in A. 11.01. There is a separate provision made with regard to milk products. A. 11.02 defines milk products obtained from milk such as cream, malai, curd, skimmed milk curd, chhanna, skimmed milk chhanna etc. and khoya. A. 11.02.01 contains the following prescription :

Milk products specified in Appendix B shall not contain any substance not found in milk unless specified in the standards.

Khoya means the product obtained from cow or buffalo or goat or sheep milk or a combination

thereof by rapid drying. The milk fat content shall not be less than 20 per cent of the finished product.

8. It appears that the attention of the High Court was not drawn to the finding reached by the learned Magistrate based on the report of the Director, Central Food Laboratory, Ghaziabad. It revealed the fat content of the sample to be 33.12 per cent and R. M. value of extracted fat to be 20.37 per cent i.e. more than the minimum prescribed standard of 20 per cent under item A.11.02.17 of Appendix B to the Rules. The High Court has not touched upon the finding recorded by the learned Magistrate that the article of food was not adulterated and that the report of the Director, Central Food Laboratory, Ghaziabad could not form the basis for conviction. True it is, under proviso to sub-section (5) of Section 13 of the Act, the certificate of the Director, Central Food Laboratory, Ghaziabad is final and conclusive evidence of the facts stated therein, and it states that the sample was 'adulterated'. At the same time, the fat content in the report was shown to be in excess of the minimum fat content prescribed under item A.11.02.17 with a note appended that "the extracted fat content did not comply with the standards of milk fat for the State of Punjab". There is no material on record to show that any separate fat content for khoya has been prescribed under item A.11.02.17 for the State of Punjab. We gave time to learned counsel for the State to enlighten us on the subject, but he has not been able to place on record any notification issued by the Central Government in that behalf. The contention is that unless the khoya was found to be adulterated within the meaning of Section 2(i-a)(1) of the Act, the appellant could not obviously be convicted for having committed an offence punishable under Section 7 read with Section 16(1)(a)(i) of the Act.

9. There are certain aspects of the case which are rather disturbing. It is not clear as to how the fat content of the same article of food the sample of which, according to the report of the Public Analyst, Chandigarh dated February 3, 1978 was 25 per cent, went up to 33.12 per cent as appears from the report of the Director, Central Food Laboratory, Ghaziabad dated December 7, 1978. Further, it is also not clear that when the fat content of the sample was 33.12 per cent and the R. M. Value of the extracted fat was 20.37 per cent, still the Director on analysis found the sample to be adulterated. Was it due to the presence of any substance not found in milk like sesame oil (til oil) as found by the Public Analyst, Chandigarh or was it that there was a higher fat content prescribed for khoya for the State of Punjab as appears from the appended note? These are some of the aspects which require investigation. There is no other alternative but to remit the matter to the High Court for a decision afresh. The High Court may call for a clarification from the Director, Central Food Laboratory, Ghaziabad, or take such other steps as it deems fit.

10. Turning now to the main question as to the real meaning of the word "damaged" which occurs in the proviso to sub-section (2-C) of Section 13 of the Act, it must be construed in furtherance of the intention of the Legislature. The Problem of interpretation is a problem of meaning of words and their effectiveness to communicate a particular thought. In all ordinary cases primarily the language employed is the determining factor, but words used by the Legislature do not always bear a plain meaning. The word "damaged" must take its colour from the context in which it appears. It will be seen that the word "damaged" in the collocation of the words "lost or damaged" appears both in sub-section (2) of Section 11 and in the proviso to sub-section (2-C) of Section 13 and it is therefore necessary to ascertain the purpose and object of inserting these provisions, and the mischief sought to be avoided by the Legislature. It is necessary to keep in view the fact that Act 34 of 1976 has changed the whole procedure of taking samples for purposes of analysis. These changes have been brought about by Parliament with a view to prevent certain malpractices. It is clearly plain from the report of the Joint Select Committee on the Bill to amend the Act that these provisions are intended

and meant to check the Food Inspectors from indulging in corrupt practices. The procedure prescribed under the Act prior to the amendment was that a Food Inspector was under an obligation to give one of the parts of the sample to the person from whom the sample was taken, send another part to the Public Analyst, and retain the third part for production in case any legal proceedings were taken, or for analysis by the Director of the Central Food Laboratory, as the case may be. Experience in the showed that after a Food Inspector had sent one part of the sample for analysis, the remaining part i.e. one given to the vendor, and the other kept with the Food Inspector, were usually tampered with the result that prosecutions under Section 7 read with Section 16(1)(a)(i) of the Act invariably failed because of the breach of the provisions of sub-section (2) of Section 13 of the Act which entitles the accused to have the remaining part of the sample sent to the Director of the Central Food Laboratory for analysis.

11. It is pertinent to observe that along with the changes brought about in Section 11 dealing with the procedure to be followed by a Food Inspector, a new Section 13 has been inserted by Act 34 of 1976. After the amendment when a sample of article of food is taken, there is a duty cast upon a Food Inspector under Section 11(1) (c) (i) to send one of the three parts of the sample for analysis to the Public Analyst under intimation to the Local (Health) Authority. Under Section 11(3) he must do so by the immediately succeeding working day. He is further required under Section 11(1)(c)(ii) to send the remaining two parts to the Local (Health) Authority for the purpose of being utilized under sub-section (2) of Section 11, or sub-section (2-A) and (2-E) of Section 13, also not later than by the succeeding working day under Rule 17(b). Under sub-section (2) of Section 11, if the sample sent to the Public Analyst is lost or damaged, the Local (Health) Authority is empowered, on a requisition made by the Public Analyst or the Food Inspector, to dispatch one of the parts of the sample sent to it under Section 11(1) (c)(ii) for analysis.

12. Under the scheme of the Act, the remaining two parts of the sample are kept with the Local (Health) Authority in order that in case the part of the sample sent to the Public Analyst under Section 11(1)(c)(i) is lost or damaged, or one of the remaining two parts of the sample sent by the court to the Director of the Central Food Laboratory under Sub-section (2-B) of Section 13 is lost or damaged, the remaining part of parts are preserved for further analysis by the Public Analyst, or the Director of the Central Food Laboratory, as the case may be. It would be seen that the phrase 'lost or damaged' appears both in sub-section (2) of Section 11 and in the proviso to sub-section (2-C) of Section 13, and these provisions have been inserted by parliament with a definite object.

13. The word "damaged" in the collocation of the words "lost or damaged" appearing in the proviso to sub-section (2-C) of Section 13 in relation to the part of the sample sent by the court to the Director of the Central Food Laboratory must, in the context, mean "damaged due to any cause, including decomposition". The part of the sample sent by the court to the Director of the Central Food Laboratory under the proviso to sub-section (2-C) of Section 13 may be either damaged due to the container not being properly sealed or fastened, or due to various other causes including breakage of the container, or because decomposition has occurred, or it may be lost in transit. The word "damaged" in the collocation of the words "lost or damaged" occurring in sub-section (2) of Section 11 and in the proviso to sub-section (2-C) of Section 13 must be construed in furtherance of the object and purpose of inserting these provisions. The whole purpose of depositing two parts of the sample with the Local (Health) Authority is that if one of the parts of the sample is lost or damaged for any reason whatever, the remaining part may still be available for analysis.

14. There is a conflict of opinion between the High Courts and also within the same High Court as to the construction of the word "damaged" used in the proviso to sub-section (2-C) of Section 13 of

the Act. some of which have been able to trace out. The Punjab and Haryana High Court has itself two contrary views, one in the instant case, and other in *Darshan Lal v. State of Punjab* ((1982) 1 FAC 290). The view of the Himachal Pradesh High Court in *Ram Prakash* case ((1979) Cri LJ 750), and that of the Punjab and Haryana High Court in *Darshan Lal* case ((1982) 1 FAC 290), is that the meaning of the word "damaged" occurring in the proviso to sub-section (2-C) of Section 13 must be controlled by the context and it means "damaged due to the container not being properly sealed or fastened". The view to the contrary has been expressed by the Delhi High Court in *State v. Joginder Lal Kapoor* ((1980) 1 FAC 86, 89) and by the Punjab and Haryana High Court in the present case that the word "damaged" used in the proviso must be given a wider meaning as to include "damaged due to any cause, including decomposition". In *Joginder Lal Kapoor* case ((1980) 1 FAC 86, 89), the Delhi High Court observed that the loss or damage contemplated in the proviso to sub-section (2-C) of Section 13 of the Act must occur after the sample is dispatched for analysis to the Central Food Laboratory, and added. :

.... A sample can get damaged for a number of reasons including breakage, leakage and decomposition. The possibility of a sample getting decomposed because of delay in transit cannot be ruled out. In my view the word "damaged" used in sub-section (2-C) has to be given a wider meaning and it would include damage of any nature including decomposition but the damage must occur after the sample is despatched.

15. In *Stroud's Judicial Dictionary of Words and Phrases*, 3rd edn., p. 710 para 9, it is stated : "You 'damage' a thing if you render it imperfect or inoperative". Decomposition would render a sample useless and of no value for analysis. While the Delhi High Court is right in holding in *Joginder Lal Kapoor* case ((1980) 1 FAC 86, 89) that the word "damaged" used in sub-section (2-C) has to be given a wider meaning, it is not possible for us to subscribe to the view that the loss or damage must occur after the sample is dispatched for analysis to the Central Food Laboratory. We are inclined to think that the word "damaged" is wide enough to mean "damaged due to any cause whatever, including decomposition". To restrict the meaning of the phrase 'lost or damaged' would be to defeat the object for which the new Section 13 was inserted by Parliament by Act 34 of 1976. It is not necessary that loss should take place only after the actual despatch of the part of the sample to the Central Food Laboratory has commenced. From the nature of things, the loss contemplated by the proviso to sub-section (2-C) of Section 13 must take place after the court has directed one part of the sample to be despatched to the Central Food Laboratory but the course of such despatch is not required to be confined to the period of actual transit. Even if that part of the sample is lost after the court has directed it to be sent to the Director of the Central Food Laboratory and before the actual transit has commenced, that part of the sample would be "lost" within the meaning of the proviso to sub-section (2-C) of Section 13. So far as the damage to that part of the sample is concerned, if damage in the sense of decomposition were to be interpreted to mean decomposition taking place during the course of transit, it would frustrate the very object of Parliament in enacting the proviso to sub-section (2-C) of Section 13. Decomposition is not something which always takes place suddenly or immediately. It is a process which in some cases may be slow and in some cases quick. Decomposition cannot be noticed or ascertained by the court when it inspects the part of the sample under sub-section (2-B) of Section 13 to ascertain whether the mark and seal or fastening are intact and the signature or thumb-impression, as the case may be, not tampered with before dispatching that part to the Central Food Laboratory. Even with the mark and seal intact, and the signature or thumb impression, as the case may be, not tampered with the sample might have already decomposed or decomposing might have already commenced. Whether a sample has decomposed or not can only be ascertained when the sealed container is opened in the Central Good Laboratory for the purpose of analysis. Thus, while from the nature of things loss or external damage to the sample

must take place after the Court directs under sub-section (2-B) of Section 13 despatch of the part of the sample, damage in the sense of decomposition of that part of the sample sent to the Central Food Laboratory may take place either before or after the Court directs its dispatch to the Central Food Laboratory. In either event, that part of the sample would be "damaged" within the meaning of that expression in the proviso to sub-section (2-C) of Section 13 of the Act.

16. With these observations, the appeal partly succeeds and is allowed. The judgment and sentence passed by the High Court are set aside and the appeal is remanded to the High court for a decision afresh with advertence to the observations made above.

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