State of Punjab

Vs

Nohar Chand

Criminal Appeal No. 247 of 1984

(D. A. Desai, A. N. Sen JJ)

17.05.1984

JUDGMENT

DESAI, J. -

1. Special leave granted.

2. One Nohar Chand, the respondent herein, was carrying on business of Manufacturing fertilisers at Ludhiana under the name and style of M/s. Varinder Agro-Chemicals (India). One inspector designated as Fertiliser Inspector visited the premises of M/s Sachdeva Enterprises, Kapurthala ('agent' for short) on December 12, 1978 and obtained a sample of the fertiliser manufactured by Nohar Chand which was being marketed by the agent. The sample was obtained for the purpose of analysis to ascertain whether it conformed to the prescribed standard. On analysis it was found to be substandard. The Chief Agricultural Officer, Kapurthala filed a criminal complaint being C. C. No. 156-C of 1980 on December 24, 1980 in the Court of the Chief Judicial Magistrate, Kapurthala against the two partners of M/s. Sachdeva Enterprises, one Raj Shetty and respondent Nohar Chand Gupta, the manufacturer of substandard fertiliser under Section 13-A of the Essential Commodities Act, 1955 read with Section 13(1) (a) of the Fertilisers Control Order, 1957. The learned Chief Judicial Magistrate framed the charge against all the accused for the aforementioned offence. On July 20, 1981 respondent Nohar Chand moved an application before the learned Magistrate praying that he be discharged and the proceedings be dropped against him on the ground that the Court of Chief Judicial Magistrate, Kapurthala had no territorial jurisdiction to try him because he carried on business of manufacture of fertilisers at Ludhiana. The learned Chief Judicial Magistrate following the decision of the Gujarat High Court in State of Gujarat v. Agro Chemical an Animal, discharged the respondent and dropped the proceedings against him. The State of Punjab preferred Criminal Revision Application No. 48 of 1981 in the Court of the learned Addition Sessions Judge, Kapurthala who by his judgment and order dated February 13, 1982 set aside the order of learned Chief Judicial Magistrate holding that in view of the provisions contained in Section 180 of the Code of Criminal Procedure, the Court of the chief Judicial Magistrate, Kapurthala had jurisdiction to try the respondent along with the other co-accused. Thereupon the respondent preferred a revision petition being Criminal Misc. No. 1473-M of 1982 in the High Court of Punjab an Haryana. A learned Single Judge of the High Court held that in view of the decision in Satinder Singh v. State of Punjab which accepted the view taken by the Gujarat High Court, the learned Additional Sessions Judge was in error in interfering with the order of the learned Chief Judicial Magistrate and that the Court of the Chief Judicial Magistrate, Kapurthala had no jurisdiction to try Nohar Chand, the manufacturer. Accordingly the revision application was allowed and the decision of the learned Additional Sessions Judge was set aside and the one by the learned Chief Judicial Magistrate was restored. Hence this appeal by special leave.

3. The allegation against the respondent was that he manufactured substandard fertiliser and through his marketing agents M/s. Sachdeva Enterprises, Kapurthala marketed the same. The offence was disclosed when the Fertiliser Inspector took a sample of the substandard fertiliser from the marketing agents at Kapurthala. It is an admitted position that the respondent who is the manufacturer carries on his business of manufacturing fertilisers at Ludhiana. The question posed is : Whether the Court of Chief Judicial Magistrate, Kapurthala where the marketing agents of substandard fertiliser manufactured by the respondent marketed the same, will have jurisdiction to try the respondent, the manufacturer of the substandard fertiliser along with the marketing agents.

4. The learned Single Judge of the High Court following the decision in Satinder Singh case had that the manufacturer of substandard fertiliser cannot be tried where the commodity was being marketed. The view taken by the High Court with respect is wholly untenable in law. But before examining the legal position subsequent development of law in the same High Court on this very point may be noticed.

5. To begin with, let it be pointed out that the decision against which the present appeal is being heard was quoted before another learned Single Judge of the same High Court and as the learned Single Judge had grave doubt about the correctness of the view taken by the learned Judge in this case, he referred the matter for authoritative pronouncement to a larger Bench of the same High Court. This referred matter : Incharge Production, Haryana State Co-operative Supply and Marketing Federation Ltd. (HAFED) Fertilizer v. State of Punjab came up for hearing before a Division Bench of the High Court. The Division Bench referred to the decision rendered by the learned Single Judge in this case and clearly disapproved it and in terms overruled it. Simultaneously it also overruled the decision in Satinder Singh case which the learned Judge had followed in this case. It can be safely said that the larger Bench of the High Court has disapproved the view taken by the learned Judge in this case.

6. The respondent, the manufacturer of the substandard fertiliser is to be tried along with those who marketed the substandard fertiliser manufactured by him as his agents. The question is whether the court where the substandard fertiliser is marketed would have jurisdiction to try the manufacturer of the substandard fertiliser whose manufacturing activity is at a different place. This very argument was posed before the Division Bench of the High Court. The High Court after referring to Sections 179 and 180 of the Code of Criminal Procedure, 1973 held that the court where substandard fertiliser was found to be marketed will have the jurisdiction to try the manufacturer of substandard fertiliser even if the manufacturing activity is at an entirely different place. The Division Bench held that the manufacturer as well as the dealer can be tried at a place where the consequences of the manufacturing and selling of substandard fertiliser had ensued as envisaged in Sections 179 and 180 of the Code of Criminal Procedure. That in our opinion appears to be the correct view in law.

7. Section 179 provides that when an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a court within whose local jurisdiction such thing has been done or such consequence has ensued. Section 180 provides that where an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, the first-mentioned offence may be inquired into or tried by a court within whose local jurisdiction either act was done.

8. Now if manufacturing substandard fertiliser is by itself an offence and marketing the substandard Fertiliser is itself distinct offence but they are so interconnected as cause and effect, both can be

tried at one or the other place. If one manufactures the substandard fertiliser, wherever it is marketed the inter-relation or causal connection is of cause and effect. The situation will be adequately covered by Sections 179 and 180 of the Code of Criminal Procedure. We are in agreement with the later decision of the Division Bench rendered on March 9, 1983 that the court where the substandard fertiliser is being marketed will equally have the jurisdiction to try the manufacturer of substandard fertiliser. This is so obvious that any further discussion appears to us to be superfluous.

9. Mr. Frank Anthony, learned counsel who appeared for the respondent urged that the concurring decision of Alagiriswami, J. in Bhagwan Dass Jagdish Chander v. Delhi Administration would clearly show that the manufacture of an adulterated article of food and selling the same cannot be said to be part and parcel of the same transaction and that unless therefore the complaint shows that the sample of fertiliser was taken from a bag of fertiliser as delivered by the manufacturer, it is distinctly possible that adulteration may have taken place on a subsequent occasion and therefore one cannot infer manufacture of substandard fertiliser from it being so marketed when the sample was taken room the marketing agency. This approach overlooks the fact that the trial is yet to be held. One can envisage two situations. When a sample of fertiliser is taken from a bag which was in the same condition as delivered by the manufacturer and it was in possession of a marketing agent manufacture and sale of substandard fertiliser would constitute indisputably one transaction. But this is predicated upon the facts which may be disclosed in the trial and proved. In Bhagwan Dass Jagdish Chander case, the allegation was that the appellant before the court sold ghee to a vendor which was on analysis found to be adulterated and both were jointly tried under Section 7 read with Section 16 of the Prevention of Food Adulteration Act, 1954. In the course of trial, the purchaser of ghee wanted warrantor to be discharged so that he can be examined as a defence witness to prove his own purchase of the offending article. This application was granted and the warrantor was acquitted. After the acquittal of the warrantor, the learned Magistrate impleaded the manufacturer Mr. Gauri Shanker Prem Narain under Section 20-A of the Prevention of Food Adulteration Act, 1954. An appeal was preferred by the Municipal Corporation of Delhi against the acquittal of the warrantor and the other accused. The High Court maintained the acquittal of Lakshmi Narain but set aside the acquittal of warrantor. That is how the matter came up to this Court. We fail to see how this decision can at all help the respondent in this case. However, reliance was placed on one observation in the occurring judgment of Alagiriswami, J. which reads as under : [SCC para 28, p. 879 : SCC (Cri) p. 423]

It would be noticed that while the charge states that the sample of ghee purchased from Laxmi Narain was found to be adulterated, there is no allegation that the ghee sold by the appellant to Laxmi Narain was adulterated. While it may be readily conceded that the common object or common intention or unity of purpose between the manufacturer, the distributor and the vendor was to sell the article of food sold, it is not said that it was to sell the adulterated article of food.

At a later stage, it is observed that "the validity of the charge has to be decided on the facts put forward as the prosecution case. If it is not established against anyone of them that the article of food manufactured, distributed or sold by him was adulterated that person will be acquitted, not because the charge was not valid or was defective but because there was no proof to substantiate the charge. But without that allegation there cannot be said to be a unity of purpose or common object or common intention on the part of all of them who manufacture, distribute or sell the adulterated food". It was further observed that "the manufacture, distribution and sale of adulterated ghee would be the same transaction if it was found to be adulterated at all the three stages. Otherwise it only means that they were all same transaction only in the sense that the common object of all of them is

the selling of the ghee". How the extracted observation in any way helps the respondent passes comprehension. Firstly the question of jurisdiction of the court trying the offender was never raised in that case. And here the respondent was discharged on the ground of want of jurisdiction. Secondly the decision proceeded on the facts of the case as would be evident from the extracted passage which recites the charge. That aspect does not figure in this case. Let it be made clear that no affidavit was filed on behalf of the respondent in this Court, nor the complaint was read over to us. And the case proceeds on the averments not presently disputed. Therefore in this case we are left with the allegations as found in the judgment of the High Court and the learned additional Sessions Judge and it and it clearly establishes that where the marketing agent of the manufacturer of fertiliser which is found to be substandard is being prosecuted for marketing substandard fertiliser, the manufacturer can be tried with him and the court where the substandard fertiliser was marketed will have jurisdiction to try them both.

10. Therefore the High Court was in error in setting aside the order of the learned Additional Sessions Judge. This was the only point in this appeal and as it clearly transpired that the High Court was in error in interfering with the order of the learned Additional Sessions Judge, this appeal is allowed and the judgment of the High Court is quashed and set aside and the judgment of the learned Additional Sessions Judge is restored.

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