

State of Orissa

Vs

K. Rajeshwar Rao

Criminal Appeal No. 323 of 1980

(Kuldip Singh K. Ramaswamy JJ.)

14.11.1991

JUDGEMENT

K. RAMASWAMY, J:-

1. The respondent was found to have sold adulterated cumin (Jira) on March 13, 1976 punishable under S. 16(1)(a)(i) read with S. 7(1) of the Prevention of Food Adulteration Act, 1954, for short 'the Act'. Both the Courts found as a fact that the adulterated cumin was exposed for sale and PW-1, the Food Inspector, purchased the cumin (Jira) under the provisions of the Act and on analysis by the Public Analyst it was found that it contained 9% foreign seeds as against permissible 7.0%; inorganic (dust, stones, lumps of earth etc.) at 0.2% and organic (chaff, stem, stipules, etc.) at 1.8%. Accordingly it was found to have been adulterated. The Magistrate and the High Court acquitted the respondent on the sole ground that his father Appa Rao was the owner of the shop. Had that fact been brought to the notice of the sanctioning authority under S. 20 of the Act, it would not have permitted to prosecute the respondent, the son of the owner. Accordingly placing reliance on Jagannath Sahu v. Food Inspector, Jaipur Municipality, (1973) 2 Cut WR 1556, acquitted the accused and was confirmed by the High Court.

2. The sole question that emerges for consideration is whether it is necessary that the respondent should be the owner of the shop for being prosecuted for the offences under S. 16(1)(a)(i) read with S. 7(1) of the act. Sub-section (1) of S. 20 of the Act reads thus:

"(1) No prosecution for an offence under this Act shall be instituted except by, or with the written consent of the Central Government or the State Government or a local authority or a person authorised in this behalf, by general or special order, by the Central Government or the State Government or a local authority."

Proviso is not necessary. Hence omitted.

Section 2 of the Act defines 'adulterated' that if the articles sold by a vendor is not of the nature, substance or quality demanded by the purchaser, who is to purchase, the article is adulterated. If the quality or variety of the articles fall below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability is also adulterated. It would, therefore, be clear that the word 'adulterated' was used widely. If the food or article of food is adulterated, if it is not of the nature, substance or quality demanded by the purchaser and sold by the seller and is to his prejudice, or contains any foreign substance in excess of its prescribed limit, so as to affect injuriously, the nature, substance or quality thereof. In view of the finding of the Courts below that cumin (Jira) was adulterated it is a sale by the vendor to the purchaser in terms of the provisions of

the Act. What S. 20 envisages is that no prosecution for an offence under the Act should be instituted except by or by the written consent of the Central Government or the State Government or a local authority or a person otherwise authorised in this behalf by general or special order by the Central Government or the State Government or a local authority. therefore, grant of sanction to prosecute for an offence under the Act is a condition precedent. The relevant criteria under S. 20(1) is the competence of the officer to grant the sanction for the offence. It does not postulate whether the person sold should be the owner or a servant or a person on behalf of the owner (son of the owner). Section 7 prohibits manufacture, sale of certain, articles of food. No 'person' shall himself or any person on his behalf manufacture for sale, or store or sell or distribute (i) any adulterated food etc. The phrase "himself or any person on his behalf" obviously included any other person like servant, son, father, or agent irrespective of the relationship legal or jural etc. The person so sold during the course of business either the owner or the person that sold the adulterated food or article of food or both are liable to prosecution.

3. It is not in dispute that the officer that granted the sanction in this case is the competent officer as a delegate on behalf of the local authority. Undoubtedly, a valid sanction is a condition precedent. If no valid sanction was granted by the authority, certainly the accused is entitled to the benefit of statutory infraction, though it is technical and be acquitted of the offence.

4. In *Sarjoo Prasad v. State of U.P.*, (1961) 3 SCR 324: (AIR 1961 SC 631), it was contended that a servant who sold food on behalf of his employer was not liable unless it was known that he has done it with knowledge that the food was adulterated. This Court held that S. 7 of the Act enjoins everyone whether an employer or a servant not to sell adulterated food and anyone who contravenes this provision is punishable under S. 16 without proof of mens rea. This Court repelled the argument that the legislature could not have intended, having regard to the fact that large majority of servants in the shops which deal in food are illiterate to penalise servants who are not aware of the true nature of the article sold. The intention of the legislature must be gathered from the words used in the statute and not by any assumption about the capacity of the offenders to appreciate the gravity of the acts done by them. There is also no warrant for the assumption that the servants employed in shops dealing in food stuff are generally illiterate. In the interest of the public health, the Act was enacted prohibiting all persons from selling adulterated food. In the absence of any provision, express or necessarily implied from the context, the Courts will not be justified in holding that the prohibition was only to apply to the owner of the shop and not to the agent of the owner who sells adulterated food. This view was reiterated in *Ibrahim Haji Moideen v. Food Inspector*, (1976) 2 FAC 66 (SC). This Court held that for the purpose of conviction under charge on which A-2 was tried, it was immaterial whether he was an agent or a partner of A-1. Once it is proved that he sold the adulterated articles, he was liable to be convicted under S. 16(1) read with S. 7 of the Act. The contention that it is only the owner of the shop that could be convicted was held to be wholly an unsustainable contention.

5. The Act is a welfare legislation to prevent health hazards by consuming adulterated food. The mens rea is not an essential ingredient. It is a social evil and the Act prohibits commission of the offences under the Act. The essential ingredient is sale to the purchaser by the vendor. It is not material to establish the capacity of the person vis-a-vis the owner of the shop to prove his authority to sell the adulterated food exposed for sale in the shop. It is enough for the prosecution to establish that the person who sold the adulterated article of food had sold it to the purchaser (including the Food Inspector) and that Food Inspector purchased the same in strict compliance with the provisions of the Act. As stated earlier the sanctioning authority has to consider the material placed before it whether the offence of adulteration of food was, committed and punishable under the Act. Once that

satisfaction is reached and the authority is competent to grant the sanction, the sanction is valid. It is not necessary for the sanctioning authority to consider that the person sold is the owner, servant, agent or partner or relative of the owner or was duly authorised in this behalf.

6. We have, therefore, no hesitation to hold that the Courts below committed manifest error of law causing miscarriage of justice in holding that the sanctioning authority must be apprised of the status of the person that sold the adulterated food article to the Food Inspector or the purchaser. Consequently, the acquittal is set aside and the respondent is held liable to be convicted and accordingly convicted under Section 16(1)(a)(i) read with S. 7(1) of the Act. But what is the sentence to be imposed? The offence had occurred on March 13, 1976 before the Amending Act has come into force. Under the Unamended Act it was not mandatory to impose the minimum sentence. For reasons to be recorded the Magistrate may impose the sentence, fine or both for the first offence and it was mandatory to impose minimum sentence for second or subsequent offences. As stated 15 years have passed by from the date of the offence and at this distance of time the ends of justice may not serve to send the respondent to imprisonment. Suffice that he has undergone, all these years, the agony of the prosecution. But, however, the sentence of fine of a sum of Rs. 500/-imposed upon the respondent and he shall pay the same. In default he shall undergo the imprisonment for a period of one month. The appeal is accordingly allowed.

Order accordingly.

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