

ALLAHABAD HIGH COURT

Chuttan

Vs.

State (Allahabad)

Criminal Revn. No. 197 of 1959

M.C. Desai, J.

08.04.1960

ORDER

M.C. Desai, J.

1. The applicant has been convicted under Section 16(1)(ii) of the Prevention of Food Adulteration Act for selling adulterated milk and sentenced to rigorous imprisonment for one year and a fine of Rs. 2000/-. The conviction of the applicant is fully supported by evidence and there is nothing illegal or improper in it. The question raised before me is that of the sentence.

2. The applicant was convicted twice before under the U. P. Pure Food Act. On 22-11-1955 he was convicted and fined Rs. 75/- under Section 42 of the Pure Food Act for selling adulterated milk. He was again convicted on 13-2-1956 under Section 42 of the Pure Food Act for selling milk without a license and sentenced to a fine of Rs. 10/-. Section 16 of the Prevention of Food Adulteration Act reads as follows :

"16(1) If any person -

- (a) whether by himself.....stores, sells or distributes, any article of food in contravention of any of the provisions of this Act or of any rule made thereunder, or
- (b) prevents a food inspector from taking a sample or
- (c) prevents a food inspector from exercising any other power or
- (d).....has in his possession.....any material which may be employed for the purpose of adulteration; or
- (e).....tampers or in any other manner interferes with such article, or
- (f) uses any report or certificate of a testfor the purpose of advertising.... or
- (g).....gives to the purchaser a false warranty.....he shall be punishable -
- (i) for the first offence, with imprisonment for a term which may extend to one year.....;
- (ii) for a second offence with imprisonment for a term which may extend to two years and

with fine : Provided that in the absence of special and adequate reasons to the contrary . . . such imprisonment shall not be less than one year and such fine shall not be less than two thousand rupees;

(iii) for a third and subsequent offences,

(2) If any person convicted of an offence under this Act commits a like offence afterwards it shall be lawful for the Court before which the second or subsequent conviction takes place to cause the offender's name and place of residence, the offence and the penalty imposed to be published at the offender's expense in such newspapers or in such other manner as the Court may direct....."

3. The question that arises is whether the words "a second offence" occurring in Section 16(1)(ii) requires that the previous offence must be one punishable under Section 16 (1) of the Prevention of Food Adulteration Act or may be one punishable under any other Act dealing with adulteration of food, such as the U. P. Pure Food Act (No. 32 of 1950). Since the previous offences committed by the applicant in the present case were both offences punishable under the U. P. Pure Food Act and not under the Prevention of Food Adulteration Act, the further question whether for bringing a case within Section 16(1)(ii) the previous offence must be not only an offence punishable under the Prevention of Food Adulteration Act but also offence of the same nature, i. e., punishable under the same sub-sections (a), (b), (c), etc. of Section 16(1) does not arise. The question raised by the words "a third and subsequent offences" in clause (iii) is similar to that raised by the words of clause (ii). The "first offence," the "second offence," the "third offence" and the "subsequent offence" to be punished under clauses (i), (ii) and (iii) of Section 16(1) must obviously be offences punishable under the Act and if an offence is to be punished as a second offence (or a third or a subsequent offence) the problem is what previous offence will render it "a second offence." It can be asserted without any hesitation that an exactly similar previous offence punishable under this very Act will render it so and it can be asserted with equal confidence that any previous offence such as that punishable under the Cattle Trespass Act or the Public Gambling Act or the Child Marriage Restraint Act will not render it so. But what about a previous offence of the same nature as the one to be punished, but punishable under another Act (for example, the U. P. Pure Food Act, as in the present case, or the Indian Penal Code, Sections 272, 273 etc.)? What about a previous offence of a dissimilar nature punishable under the Prevention of Food Adulteration Act or a similar Act?

4. The first fact to be noticed is that no words contained in Section 16 give an express answer to the questions raised above; what must be the nature of the previous offence is left to presumption. If an offence punishable under any section of the Cattle Trespass Act is not to be treated as a previous offence, there is no good reason for treating an offence punishable under an Act similar to the Prevention of Food Adulteration Act as a previous offence; no words of the section justify a distinction between a similar Act and a dissimilar Act. If an offence punishable under a dissimilar Act is not to be treated as a previous offence, one punishable under a similar Act also should not be treated so; in other words the previous offence must be one punishable

under the Prevention of Food Adulteration Act.

5. Naturally when one is confronted with the words "previous offence" or "previous conviction" one contemplates a previous offence of the same nature or punishable under the same law or a previous conviction under the same section of the same Act. Had the Legislature intended that a previous conviction for an offence punishable under another law should be taken into consideration, one would have expected express or clear words to this effect in clauses (ii) and (iii). If the language, used in a statute is ambiguous it must be interpreted favorably to the subject and strictly against the State unless the object behind it would be defeated.

6. The scheme of Section 16 is that in the first part it declares certain acts (mentioned in sub-sections (a), (b). etc.) as offences and prescribes the punishment for them in the second part and divides the punishment into three classes (mentioned in clauses (i), (ii) and (iii)) clause (i) applies for the first offence, i. e. when the offence is committed for the first time. This offence must necessarily be the offence described in any of the sub-sections (a), (b), etc. Clause (ii) applies for a second offence, i. e. for repeating an offence, for committing it second time. An offence is not repeated unless it was committed once before; it follows that for the applicability of the clause (ii) the previous offence must be one punishable under Section 16. If it was punishable under another law, even if the act was of a similar nature, the subsequent offence cannot be said to be a repetition of it. What is to be considered is the offence, not the act constituting it; the offence must be repeated and not the act. If an act was done when it was not punishable under Section 16 (because it was not in force then), and is repeated after the enforcement of the Act, which punishes it, it is not a repetition of an offence and the offence cannot be said to be a second offence. If the act done previously was not punishable under Section 16, it is immaterial if it was punishable under some other law.

7. The acts mentioned in sub-sections (a), (b), etc. can be divided into two classes, (1) of those mentioned in sub-sections (a), (b) and (c) which are violations of the provisions of the Act (or a rule made there under) and (2) of those mentioned in the remaining sub-sections not connected with the Act (or a rule made there under). Any of the former acts would amount to an offence only if done after the enforcement of the Act; there could not possibly be any question of a violation of the Act before its enforcement. The other acts are made punishable merely on account of their nature and could have been punishable as offences even before the Act was enforced (if there was in force another Act punishing them). The act for which the applicant has been convicted falls under sub-section (a); he sold adulterated milk in contravention of Section 7(i) of the Act which prohibits the sale of any adulterated food. It is to be noted that the offence that is punishable is not that of selling adulterated milk but that of violating a provision of the Act (prohibiting the sale of adulterated food). Had the offence been that of selling adulterated milk, it could have been committed at any time regardless of the enforcement of the Act, if there was in force another Act punishing it; but since it is that of violating a provision of the Act, it can be committed only after the Act came into force. Now though there are two classes of acts, which

are made punishable under Section 16, the provisions regarding punishment for them contained in clauses (i), (ii) and (iii) are the same. So it can be said that whether the previous offence should be one punishable under the Act or not does not depend upon the nature of the offence to be punished. Whatever may be said in respect of punishment for an offence mentioned in sub-sections (d), (e) etc., there can hardly be any doubt that in respect of punishment for an offence under sub-section (a), (b) or (c) the previous offence must have been one punishable under the Act in order to bring in the applicability of clauses (ii) and (iii). As I said earlier, it is not necessary for me to decide in this case whether if the offence to be punished is one mentioned in sub-section (a), the previous offence must be punishable under the same sub-section in order to bring in the applicability of clause (ii) or (iii), i. e. whether if the previous offence was one punishable under sub-section (b) or sub-section (c) the offence to be punished under sub-section (a) can be said to be "a second offence" within the meaning of clause (ii).

8. Nothing turns upon the fact that the language used in sub-section (2) of Section 16 is different from that contained in clauses (ii) and (iii). The structures of the provisions of sub-section (1) and of sub-section (2) are different; therefore there is the difference in the language. The provisions contained in clauses (i), (ii) and (iii) are a part of sub-section (1), which mentions the various acts made punishable by the Act. The sentences prescribed in the clauses are for the offences punishable under the Act and the Legislature seems to have thought that the use of the words "the first offence," "a second offence" and "a third offence" made it clear that the offence which was to be punished and the previous offence or offences were all offences punishable under the same Act. Clause (i) expressly provides for punishment of an offence punishable under the Act. The context in which the words "a second offence" and "a third and subsequent offences" are used shows that the second offence referred to in clause (ii) must be subsequent to the first offence referred to in clause (i) and that the third and subsequent offences referred to in clause (iii) must be subsequent to the second offence referred to in clause (ii). Clause (ii) would not be applicable unless clause (i) had been applied once, i. e. there had been a previous conviction under this very Act. It must have been on account of these inferences to be drawn from the context, that the Legislature did not use in sub-section (1) the same language as it used in sub-section (2).

9. I hold that the offence committed by the applicant for which he has been convicted in this case was neither a third nor even a second offence within the meaning of clauses (iii) and (ii) of sub-section (1).

10. The sentence inflicted upon the applicant is exorbitant. If Section 16 (1)(ii) had applied there was no option for the Magistrate but to inflict the sentence but since he can be punished only under Section 16(1)(i) for which no minimum sentence is laid down, the present sentence can be reduced on the ground of being excessive.

11. I alter the conviction of the applicant from that under Section 16(1)(ii) to one under Section 16(1)(i) and reduce the sentence to the imprisonment already undergone (Sri P.N. Misra states

that he has undergone imprisonment for about six months) and a fine of Rs. 500/-, in default rigorous imprisonment for three months. He is allowed two months to pay the fine in the Court of the Magistrate concerned, failing which he shall surrender himself, and the Magistrate also shall issue a non-bailable warrant to take him in custody, to undergo the sentence in default.

Conviction altered and sentence reduced.