

ALLAHABAD HIGH COURT

Municipal Board

Vs.

Jhamman Lal

Criminal Appeal No. 2424 of 1959. , against order of Addl. S.J. Moradabad

(V.D. Bhargava and J.N. Takru, JJ.)

21.09.1959. 22.07.1960

JUDGMENT

V. D. Bhargava, J.

1. This is an appeal against acquittal in a case under Section 7/16(b) of the Prevention of Food Adulteration Act.

2. The Food Inspector reached the shop of Jhamman Lal on 26-2-1958 at about 2 p.m. There were four drums of sarson oil at the shop and also mungphali oil which was exposed for sale. He asked Jhamman Lal, respondent No. 1 to give him a sample of mustard oil. But Jhamman Lal instead of complying with the request of the Food Inspector left the shop and promised to come shortly. The Food Inspector waited for some time, but Jhamman Lal did not turn up. Tota Ram, who appears to have been also sitting on the shop was then asked by the Food Inspector to supply the sample. He said that sample could only be given by Jhamman Lal and that he was going to call Jhamman Lal. He also left the shop. The Food Inspector waited for an hour and a half, but neither Tota Ram nor Jhamman Lal came back. The Food Inspector had gone with witnesses Bhola (P.W. 3), Ram Sarup, Rafi Uddin (P.W. 2) and Mohammad Ismail (P.W. 4). He thereafter made a report against Jhamman Lal that Jhamman Lal prevented the Food Inspector from obtaining sample from him and Tota Ram had made the statement that the sample would be given by Jhamman Lal. So far as these facts are concerned, they have been proved by the prosecution witnesses. On behalf of Jhamman Lal defence had been produced to the effect that the Food Inspector had never gone to his shop to ask for a sample.

3. The trial Court believed the prosecution story and convicted both Jhamman Lal and Tota Ram under Section 7/16(b) of the Prevention of Food Adulteration Act. The accused filed an appeal and the Sessions Judge allowed the appeal on the ground that in order to prevent sample being taken there should have been some overt act. It was further held that it was open to the Food

Inspector in the absence of Jhamman Lal to take a sample from the tin and therefore, it could not be said that the Food Inspector had been prevented from taking the sample. On these grounds the Sessions Judge allowed the appeal and set aside the conviction and sentence against both the accused. The Municipal Board aggrieved by that decision filed this appeal in this Court.

4. The case was argued by Mr. Iqbal Ahmed, counsel for the appellant and Mr. P.C. Chaturvedi as amicus curia e in support of the contention of the appellant.

5. Section 10(1) of the Act gives power to the Food Inspector :

"to take samples of any article of food from :-

(i) any person selling such article." Section 10(4) also provides that :

"If any article intended for food appears to any Food Inspector to be adulterated or misbranded, he may seize and carry away or keep in the safe custody of the vendor such article in order that it may be dealt as hereinafter provided." Section 16 reads as follows :

If any person –

(b), prevents a Food Inspector from taking a sample as authorized by this Act." It has been urged by Mr. P.C. Chaturvedi that when a person leaves the shop he "Prevents the Food Inspector from taking a sample as authorized by this Act", because one of the methods authorized by this Act by which he can take sample under this Act is from any person selling such article. If the person, who was selling the article, by his conduct disappears, then, in that event he is prevented from taking sample in the manner authorized by this Act.

6. On behalf of the respondent it has been urged that the Food Inspector was not prevented from taking the sample because under Sub-Section (4) of Section 10 he could have seized the article and carried it away. The argument on behalf of the respondent does not appear to be correct. The powers under Sections 10(1) and 10(4) are entirely different. Section 10(4) does not deal with taking of samples at all. Section 10(1) only deals with the taking of the sample. Thus Section 10(4), in our opinion is really meant not for the purpose of taking sample. If the Food Inspector thinks that there is some article of food which is adulterated then under Section 10(4) he may remove the entire stock from the shop so that that food may not be sold till there has been a final decision about it. The only provision for taking sample is the one contained in Section 10(1). It is quite true that he could have taken away the entire stock, but that would not be taking a sample.

7. Apart from this fact, even if there were two methods of obtaining sample, one under Section 10(1) and the other under Section 10(4), it is not necessary that the prevention to be 'prevention' under Section 16(b) should have been prevention in both the methods before action could be taken against the accused. Therefore the contention of the respondent, that there was no prevention in taking the sample is not correct.

8. It was contended by learned counsel for the respondent that before there could be prevention there should be some kind of overt act. If a person disappears from the shop, in our opinion, he has done an overt act by means of which he has made it impossible for the Food Inspector to obtain a sample from him. Apart from this fact we do not think that in cases of prevention an overt act is necessary. In *Public Prosecutor v. Murugesan*¹, 'where a person by his action effectively prevented the officer from taking the sample' it was held :

¹ AIR 1954 Mad 199

"No overt act was necessary to make out 'preventing' under Section 14(3) of the Act."

Reliance was placed by learned counsel on a decision in *Bishan Dass Telu Ram v. State*², where it was held by a learned single Judge that :

"Refusal to give the sample even on payment is not the same thing as prevention which need not have an element of obstruction but involves some act which hinders an Inspector from taking a sample."

The learned single Judge distinguished the case reported in *Cort v. Ambergate Etc., Ry. Co*³, where it was held that :

" To prevent' does not mean only an obstruction by physical force but it may involve a threat."

9. With respect we might say that the learned single Judge did not consider the point that by disappearance, the accused had made it impossible for the Food Inspector to obtain sample "from the person selling such article", which he was entitled to obtain under Section 10(1) and thereby he had prevented the Food Inspector in taking the sample as authorized by the Act. We think that the opinion of the appellate court was not correct. If a person either by an overt act or by his omission prevents the Food Inspector from obtaining sample from him he would be guilty under Section 16(b). So far as Jhamman Lal is concerned there cannot be any doubt that he prevented the Food Inspector from taking the sample from him.

10. As regards Tota Ram, it is not clear from the evidence that he was selling the oil and, therefore, if he had refused to give sample, it cannot be said that he had prevented the Food Inspector from taking sample from any person who was selling such article.

11. We, therefore, set aside the acquittal of Jhamman Lal and restore the order of conviction passed and the sentence imposed on him by the trial court. He has been convicted under Section 7/16(b) of the Prevention of Food Adulteration Act¹ and that conviction is maintained and also the sentence of fine of Rs. 200/-. He is allowed one month's (30 days) time to pay the fine. So far as Tota Ram is concerned, the appeal is dismissed.

Appeal partly allowed.

² AIR 1957 Pun 99

³20 LJ QB 460