

## ALLAHABAD HIGH COURT

Narain Das

Vs.

State (Allahabad)

Criminal Revn. No. 1966 of 1960. , against order of temporary S.J. Mathura,

(V.G. Oak and Kailash Prasad, JJ.)

15.11.1960. 17.05.1961

### JUDGMENT

#### **Kailash Prasad, J.**

1. One Narain Das was found in possession of some tins of adulterated Ghee. He was prosecuted under Section 16(1) (a) of the Prevention of Food Adulteration Act. He pleaded in defense that the Ghee was not kept for sale by him, but was with him only as security for the money which he had advanced to a Hathras firm styled Basant Lal Hukam Chand. The learned Magistrate, who tried the case did not accept the defense and convicted Narain Das under Section 16(1)(a) of the Act and sentenced him to six months' simple imprisonment and a fine of Rs. 500/-. His conviction and sentence were confirmed in appeal by the Temporary Sessions Judge of Mathura. Narain Das came in revision to this Court. The revision was heard by a learned Single Judge. He accepted the plea of the accused that the Ghee which was stored by him was not for sale but was kept with him as security for money which he had advanced.

2. The question, therefore, arose whether Narain Das can be held guilty of an offence under Section 16 of the Prevention of Adulteration Act if the storing of the Ghee by him was not for sale but was merely for security.

3. Certain cases were cited before the learned Single Judge bearing upon the question. A decision of this Court in *Sunder Lal v. State, Criminal*<sup>1</sup> which was decided on 19th August, 1959 and which is not a reported case, is to the effect that storage of adulterated articles was punishable regardless of the purpose for which the articles were stored. In *'Food Inspector v. Punsai Desai*<sup>2</sup>, and *'In re V. Govinda Rao*<sup>3</sup>, it was held that it is only storage for sale that is prohibited under the Act. The learned Single Judge was of the view that the decision of this Court in Criminal Revn. No.1052 of 1958 (Supra) required reconsideration. He, therefore, referred the following question for decision by a larger Bench:

'Whether an offence under Section 16(1) (a) of the Prevention of Food Adulteration Act is committed by a person who stores adulterated food for

<sup>1</sup> Revn. No.1052 of 1958      <sup>3</sup>1960 Cri LJ 886: AIR 1960 And Prad 366

<sup>2</sup>1959 Cri LJ 712: (AIR 1959 Ker 190)

some purpose other than sale.'

4. We have therefore to answer that question.

5. Section 7 of the Prevention of Food Adulteration Act prohibits storing of adulterated food and it is punishable as an offence under Section 16(1)(a). Section 7 of the Act reads-

'No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute:-

(i) any adulterated food;

(ii) any misbranded food;

(iii) any article of food for the sale of which a license is prescribed, except in accordance with the conditions of the license;

(iv) any article of food the sale of which is for the time being prohibited by the Food (Health) Authority with a view to preventing the outbreak or spread of infectious diseases; or,

(v) any article of Food in contravention of any other provision of this Act or any rule made there under.'

The relevant portion of Section 16 runs-

'(1) If any person -

(a) whether by himself or by any person on his behalf imports into India or manufactures for sale, or stores, sells or distributes, any article of food in contravention of any of the provisions of this Act or any rule made there under.....he shall, in addition to the penalty to which he may be liable under the provisions of Section 6, be punishable.....'

6. The definition of 'adulterated' as given in Section 2 of the Act is very comprehensive. Under this definition, an article may be adulterated even though it is not injurious to health. Mixtures commonly made of different articles of food for domestic use would come within the definition of the term 'adulterated'. Milk diluted with water for purposes of feeding infants' and patients would also come within the definition of 'adulterated.' The verb 'store' is a word of general import. It means to keep or lay up for future use. If a mother keeps milk diluted with water for feeding her infant child or to administer it to an ailing child, it will amount to storing of adulterated milk. To treat such an act on the part of the mother as an offence will certainly lead to an absurdity. It is a well recognized rule of interpretation that endeavour should be made to avoid any absurdity in the interpretation of a section.

7. Under Section 7 manufacture of adulterated food is not prohibited. What is prohibited is its manufacture for sale. There appears no reason why manufacture of adulterated food should be treated differently from its storage. The expression 'or store' is preceded by the words 'manufacture for sale' and is followed by 'sell.' Therefore, the context in which 'store' is used indicates that it means storing for sale. It must be read as taking colour from the expression 'manufacture for sale' and 'sell' with which it is associated in the Section.

8. In order to carry out the purpose of the Act, and detect and check the mischief of adulteration, which Section 7 is designed to prevent, officers have been appointed who are known as Food Inspectors. Provision has also been made in the Act for the establishment of a Central Food Laboratory and for appointment of Public Analysts to whom food samples can be sent for analysis. Sub-section (2) of Section 10 empowers a Food Inspector to enter and inspect any place where any article of food is manufactured, stored or exposed for sale and take samples of such articles of food for analysis. Sub-section (4) of Section 10 provides that if any article intended for food appears to a 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 with as provided under subsequent provisions. The language of these provisions suggests that the Act is designed to prevent sale of adulterated food.

9. In most cases adulteration in an article of food can be found only by analysis, The Food Inspector can send a food sample for analysis to the Public Analyst under Section 11 of the Act. Another provision for utilizing the services of the Public Analyst is to be found in Section 12. It reads –

'Nothing contained in this Act shall be held to prevent a purchaser of any article of food other than a Food Inspector from having such article analyzed by the Public Analyst.....'

To entitle a purchaser to get a food sample analyzed by the Public Analyst lends further support to the conclusion that the purpose of the Act is to prevent adulterated articles being put to sale. When an article is on the market for sale, it may reach any member of the public. Public can be saved from adulterated food if such food is prevented from being put on the market for sale. Hence it is clear that the storing prohibited under sec.7 is the Storage for sale.

10. If possession of adulterated food for purposes other than sale was an offence, then the person who keeps such food for destruction or for ridding it of defects and impurities before selling it, would be guilty. So presumably would be a local authority in whose favor an order of forfeiture is made under Section 11(5)(a) or a person to whom the food has been returned under Section 11(5)(d). Obviously this could not be the intention of the Act.

11. We are, therefore, of the view that the word 'store' in Section 7 of the Act means storing for sale and storing for purposes other than sale does not constitute an offence under Section 16(1) (a).

12. Our answer to the question referred by the learned Single Judge is in the negative.  
Answer accordingly.