CALCUTTA HIGH COURT

Sanker Lal Agarwalla

Vs.

Corporation of Calcutta

Criminal Revn. No. 1236 of 1961

(D.N. Das Gupta, J.)

24.05.1962

ORDER

D.N. Das Gupta, J.

1. This Revisional Application is directed against the order of a learned Municipal Magistrate of Calcutta rejecting the petitioner's objection that he is not liable to be tried again for having committed an offence in respect of which he was tried once before and convicted.

2. The question involved is not only interesting out one of some public importance. The prosecution case is that the petitioner Shankarlal Agarwalla is the proprietor of a firm dealing in ghee etc. having its godown at 151 A, Cotton Street, Calcutta. On the 11th August, 1959, three Food Inspectors of the Corporation of Calcutta, namely, Sri S.S. Kundu, Sri A.B. Mazumdar and Sri A.K. Poddar visited the godown some time between 10 o'clock in the morning and took three samples of ghee of 12 ounces each from three lots of tins. After complying with the necessary formalities they sent the samples to the Public Analyst for analysis. On analysis the samples were found adulterated. Thereafter three complaints were filed before the Municipal Magistrate of Calcutta in respect of the three lots of tins of ghee from which the samples were taken. In case No.1721D of 1959 the offence complained of is as follows.-

> "Storing and keeping for sale ghee (Bisweswar) on 11-8-59 which on analysis was found that it does not con form to the standard in respect of B.R. reading moisture and Reichert value. Further it contains sesame oil. Hence it is adulterated. F.I. No.7305/48. Lab. No.1286. Report No. S/175".

This complaint was at the instance of Sri S.S. Kundu, Food Inspector and it was filed before the Municipal Magistrate on the 11th September, 1959. The complaint is said to be in respect of the lot of five tins of "Biswaswar" brand ghee of one seer each from which sample of 12 ounces was

taken by Sri Kundu.

3. Another complaint was filed on the same day namely, the 11th September, 1959, by the Food Inspector A.B. Mazumdar and the offence complained of is as follows:-

> "For keeping for sale and selling cow ghee (Lakshmi Brand) on 11-8-59, sample of which on analysis is found that the sample of cow ghee does not conform to the Standard in respect of B.R. reading. Reichert value due to the presence of excessive amount of foreign fat containing sesame oil. It is therefore highly adulterated. F.I. No.55/6543. Lab. No.1285. Analyst Report No.SD/ 671".

This complaint was in respect of "Lakshmi" brand ghee which was in three containers, one container of five seers and two containers of 21/2 seers each. From this lot 12 ounces of sample were taken by Food Inspector A.B. Mazumdar.

4. There was another lot of 10 seers of cow ghee without any brand from which 12 ounces of sample were taken by Food inspector A.K. Poddar. That case was for keeping for sale and selling cow ghee. In that case which had been filed on the 28th August, 1959, the present petitioner pleaded guilty and on that plea he was convicted on the 4th December, 1959, under Section 7(i) read with Sec, 16(1) (a) (i) of the Prevention of Food Adulteration Act, 1954, by a learned Municipal Magistrate of Calcutta and sentenced to pay a fine of Rs. 150/-.

5. On the petitioner's behalf it is argued by Mr. Butt that the offence in all the cases is one and the same, namely, the offence of storing for sale or selling adulterated ghee on the 11th August, 1959, at about 10.30 0' clock in the morning. Mr. Dutt further contends that the stock of ghee was kept in the petitioner's godown which is a very small place beneath the staircase and that the offences could not be distinct offences simply because three Food Inspectors happened to go to the godown and take three samples from two lots of ghee of 2 brands and one lot of ghee without' any brand, the three guishing them. Mr. Dutt contends that in Appendix .B' to the Rules under the Prevention of Food Adulteration Act the standard of quality of ghee has been prescribed and that the Act does not make any distinction between different brands. The Act does not provide different standards for different brands of .ghee' like "Bisweswar", "Lakshmi" etc. The main contention of Mr. Dutt is that the petitioner having once been convicted in respect of the offence of storing for sale and for selling adulterated .ghee' at 151-A, Cotton Street, Calcutta, on the 11th August, 1959, at about 10.30 A.M., he cannot be put on trial a Second time in respect of the same offence although three different samples were taken from three lots of tins arranged brandwise.

6. On the other hand it is argued by Mr. Basu appearing on behalf of the Corporation of Calcutta that the offences are distinct offences and that three prosecutions in respect of three offences are maintainable. Mr. Basu contends that the offences are distinct because the brand of ghee is different in the three cases and that in the case in which the petitioner was convicted the ghee was cow ghee whereas in one of the present prosecutions it is not known whether the ghee is cow

ghee or buffalo ghee. Then Mr. Basu has attempted to distinguish the present two cases from the previous case by saying that In the previous case the offence was one of keeping for sale and selling whereas in one of the present prosecutions the offence is only one of storing and keeping for sale, although in the other case the offence is for keeping for sale and selling cow ghee. I am not impressed by these arguments of Mr. Basu. After all these petty differences do not matter at all.

7. The main question is whether the offence in the three cases is one and the same offence or whether the offences are distinct offences. On analysis the whole thing comes to this: On the 11th August, 1959, at about 10.30 O'clock in the morning the petitioner was found having stored for sale ghee which according to the prosecution was adulterated and for having sold the same. Therefore, the offence is one and comes within section 7 of the Prevention of Food Adulteration Act which excluding what is unnecessary for the purpose of this Revisional application is as follows:

> "No person shall ..... store, sell ..... any adulterated food."

By no stretch of imagination can it be said that the offences are distinct simply because three Food Inspectors Instead of one happened to go to the godown and simply because each of the three Inspectors took samples from three lots and there were three reports of the Public Analyst.

8. In order to explain the underlying principles Mr. Dutt has referred to certain decisions, one of which is reported in *Ishan Muchi v. Queen-Empress*[1], The accused in that case were charged with having received property stolen from different persons and for having retained them in their possession. Two cases were started against them and they were convicted in both the cases. Their Lordships set aside the convictions in the second trial holding that,

> "Here there is nothing but possession of stolen property found concealed established; and this is consistent with only one offence having been committed, so far as receiving is concerned; but in truth the offence proved is only the retaining of stolen goods." The gist of the decision is that although the accused persons were in possession of articles stolen from different persons, even then the offence is one and the same, namely, the offence of receiving or retaining stolen property. Mr. Dutt has referred to another case reported in *Ganesn Sahu v. Emperor*[2], The headnote is,"A person was found in possession of several articles of stolen property. He was acquitted in respect of some of them for which he was prosecuted. The different articles were stolen from different persons but there was no evidence that they were received at different times:

Held, that he could not be tried In respect of other property found in his possession on the same date and a second trial was illegal under section 403 of the Code of Criminal Procedure." A similar point was considered in the case of *Emperor v. Anant Narayan*[3], by Wadia and Sen, JJ. In

that case the accused was found to have misappropriated a sum of Rs. 655-0-6 which was later repaid by him. Two complaints were filed against the accused. In the first he was charged under section 409 for having misappropriated two sums of Rs. 10/- and Rs. 40/- out of the sum of Rs. 655-0-6 from 19th March to 19th June 1941 and forged two receipts with respect to those amounts. In the second complaint the accused was charged under section 409 with criminal breach of trust in respect of the sum of Rs. 572-15-8 out of the Rs. 655-0-6 committed between 25th April and 19th June, 1941. In the trial for the first two offences the accused was acquitted. In the trial for the third offence the accused claimed to be tried lend at the same time

[1]ILR 15 Cal 511 [3] AIR 1945 Bom 413

[2]37 Cal LJ 326 : (AIR 1923 Cal 557)

objected that in view of his previous acquittal the proceedings were barred under section 403 and that he was entitled to acquittal. Their Lordships held that the plea of autrefois acquit was not raised late land that even though the plea of autrefois acquit under section 403 was not technically available to the accused, the principle of it was available to him in the interest of Justice and that the accused should not be tried again in respect of the third offence and should be acquitted. In that case referring to a decision of Henderson, J. reported In *Jagadish Prosad v. Emperor*[4], Sen, J. observed as follows:

> "In that case there were two accused persons charged with conspiracy to commit criminal breach of trust and also criminal breach of trust with regard to specific sums of money. When the case came on for trial the prosecution split up the case to be tried into four separate trials. In the first case, both the accused were found guilty under section 409 and, in the second trial also, the two accused were convicted under the said section. It was held that though on a technical ground the two conspiracies of which the accused were found guilty were not the same, yet it, was really impossible to distinguish them and that further the method of splitting up the charges as adopted by the prosecution was Improper."

Then Sen, J. quoted with approval the following observations of Henderson, J. in that case :

> "We cannot imagine a more harassing method of proceeding with the prosecution than that adopted in this case. Three items might have been selected as the subject-matter of separate charges. Then it would have been possible upon a verdict of guilty to impose a sentence that would be sufficient. There would then have been no necessity for proceeding with the trial of any more charges. We entirely disapprove of this method of proceeding with an Indefinite number of trials and imposing sentences to take effect one after the other."

9. The facts in this case would appear from the evidence of the two Food Inspectors who have been examined on behalf of the Corporation of Calcutta. The evidence of the two Food Inspectors, namely, Sri S.S. Kundu and Sri A.B. Mazumdar is substantially the same. Mr. Basu points out that there is a slight difference about the time, namely, that Sri Kundu has said that he went to the place at 10 or 10-30 A.M. but Sri Mazumdar has said that the search was held at 10-

30 or 11 A.M. There is no substance in this argument. The evidence is that all the Inspectors went at the same time although they went inside the room one after another. I am unable to agree with Mr. Basu that that means that they did not go at the same time or that they did not go together. It would have been impossible for the three Inspectors to enter through the door together. There is no substance in that contention of Mr. Basu. All of them went together, seized the ghee and took the samples at the same time. Food Inspector Kundu has said that after entering into the room he found 20 tins of ghee inside the godown, that is, just beneath the staircase (it seems the number is 18 and not 20). It is not the evidence of any of the Food Inspectors that after they entered into the godown and before they left any fresh batch of tins was brought into godown. The number of tins was the same all along; there was no addition. At the time when the samples were taken and ghee was seized the petitioner was in possession of all the tins in question in these cases. The fundamental thing is that the offence is the same,

[4] AIR 1938 Cal 697

namely, the offence of storing or selling ghee, which according to the prosecution was adulterated, at a particular hour of a particular day. In that view the splitting up of a single act of storing into different acts according to brands and the launching of separate prosecutions cannot be justified and is not warranted by law. In view of the provisions of Section 403 of the Code of Criminal Procedure the subsequent prosecutions, that is, the prosecutions in question in the present Revisional application are barred. The matter being of some public importance, I have heard the arguments at some length; I have listened to the arguments of Mr. Basu, learned Advocate for the Calcutta Corporation with care and attention but I have not been able to understand why on the facts and in the circumstances dealt with above the Corporation of Calcutta thought it either expedient or necessary to start three separate cases against the petitioner when one case would have been sufficient for the purpose of bringing the offender to justice. Be that as it may, the instant prosecutions are not maintainable in view of the petitioner's conviction on the 4th December, 1959, referred to earlier in the Judgment and the present proceedings must be quashed and are, accordingly, quashed.

10. The proceedings for destruction of the ghee in question in the two instant cases are not affected by this Judgment and shall continue In accordance with law.

11. In the result, the Revisional petition is allowed and the Rule is made absolute.

Petition allowed.