

GUJARAT HIGH COURT

State of Gujarat

Vs.

Asandas Kimmatrai Kevalramanni

Criminal Appeal No. 602 of 1962

(V.B. Raju, J.)

28.08.1963

JUDGMENT

V.B. Raju, J.

1. This is an appeal by the State against the acquittal of the respondent, who was prosecuted under Sections 16(1)(a) and 7(v) of the Prevention, of Food Adulteration Act. The respondent runs a restaurant in Nadiad called "Manmohan Restaurant". He sold 1½ seers of adulterated Dahi (curd) to the complainant, the Food Inspector of Nadiad Borough. Municipality in the presence of Fanchas and on analysis it was found to contain 50 per cent fat deficiency. It was proved by the prosecution and admitted by the accused that the complainant Food Inspector had come with the Panchas to his restaurant and, that he had asked for a sample of Dahi. He also admitted that the Food Inspector had given Ex. 15 to him and that after giving Ex. 15 the complainant had purchased 1½ seers of Dahi from him and divided it into three parts. The respondent also admitted that the Food Inspector gave one of the parts of the sample of Dahi to him. The accused further admitted that he was given the Price of Dahi and the receipt is Ex. 16. In the face of these admissions, the learned Magistrate acquitted the respondent on the ground that the respondent had not stored Dahi for sale but for preparing 'Lachhi'. The learned Magistrate relied on *Naraindas v. State*¹, and referred to the observations of that High Court that if the storage is not for sale, a mother who keeps milk diluted with water for feeding her infant child of giving it to an ailing child, would commit an offence of storing adulterated food. For these reasons, the learned Magistrate acquitted the respondent. Hence this appeal by the State.

2. The word "adulterated" is defined in Section 2 of the Prevention of Food Adulteration Act, which will hereinafter be referred to as the Act. Section 10 of the Act gives powers to the Food inspector to take samples of any article of food from any person selling such articles, or from any person who is in the course of conveying, delivering or preparing to deliver such article to a purchaser or consignee, or from a consignee after delivery of any such article to him. The Food

Inspector has no power of taking samples of any article of food unless it is covered by these three clauses. If the respondent was pot selling Dahi but was merely selling Lachhi, the Food inspector had no power to take the sample of Dahi which according to the respondent was stored by him for the purpose of converting it into

¹ AIR 1962 All 82

Lachhi. If really the Dahi of which 1½ seers was sold by the respondent to the Food Inspector was not intended for sale, the Food Inspector had no power of taking a sample of that article and the respondent should have refused to give him the sample. In fact, the respondent says that he had sold 1½ seers of Dahi after receiving the notice, Ex. 15, from the Food Inspector. By Ex. 15, the Food Inspector clearly told the respondent that he was taking a sample of Dahi for the purpose of analyzing under the Act. After having receives Ex. 15, the respondent sold 1½ seers of Dahi to the Food Inspector.

3. Section 7 of the Act reads as follows :

"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 of any rule made there under."

It is contended by the learned counsel for the respondent that the respondent had stored Dahi for conversion to Lachhi and not for sale and it is contended that "storage" (in Section 7 of the Act) must mean only storage of articles intended for sale and he has relied upon The *Public Prosecutor v. Kandasamy Reddiar*, AIR 1959 Madras 333 and AIR 1962 Allahabad 82 (supra). But Section 7 of the Act uses the words "manufacture for sale or store, sell or distribute". The word "store" is not qualified by the words "store for sale". Although the words "for sale" are used after word "manufacture" they are not used after the word "store" in the same clause. The Legislature did not use the expression "manufacture or store for sale, sell or distribute". In the Allahabad case the following observations are made :

"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.

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 color from the expression 'manufacture for sale' and 'sell' with which it is associated in the section."

4. As the words 'for sale' do not follow the word 'store' in Section 7, it is unnecessary to interpret the word 'store' as meaning 'storage for sale'. When a mother stores some article to be given to her infant child, she does not store it as milk but as milk and water, which itself can be called as an article of food. It may be called milk to which water is added or water to which milk has been added. The article which a mother keeps may be, in popular parlance, called milk but it is not milk. That would be an article of food as defined in Section 2(v) of the Act. If a person keeps milk and water and stores it as milk and water, he commits no offence. But if he stores milk and water as milk, that would be a different thing altogether. A mother does not store milk and water which she intends to give to her infant child as milk as understood in the trade or milk business. She stores it as milk and water to be given to her infant child or she stores it as water to which milk has been added. A mother is careful to see that what she gives to her infant conforms strictly to the standards of infant milk. She gives to her infant pure unadulterated infant's milk. Infant's milk is itself an article of food.

5. 'Milk', 'infant's milk', 'diluted milk' and 'milk and water' are four different articles of food. A person who stores an article as 'milk and water' commits no offence. But he does commit an offence if he stores milk and water as milk in the strict sense. A trustee of a trust for the free distribution of pure milk to hundred children everyday may store adulterated milk for such free distribution. It is, therefore, not necessary to interpret the word 'store' as meaning 'store for sale'.

6. The learned counsel for the respondent also relies on AIR 1959 Madras 333 (supra), where it is observed that the first essential requisite to be established is that the milk from which the Inspector gets a small quantity from the vendor as sample is intended for sale. But it is difficult to say how this can be an essential ingredient for the prosecution under Section 7 of the Act. Section 7 of the Act has already been quoted above and even one act of sale or distribution would come within that section. A sale to the Food Inspector would be a sale as recognized by the learned judges of the Madras High Court themselves. In the Madras case it is observed that what is given by the accused to the Inspector is undoubtedly a sale. If an article of adulterated food is sold even to the Inspector, that would be an offence under Section 7 of the Act and it is

not necessary for the prosecution to establish that the sample was taken out of a larger quantity which was also intended for sale.

7. As already observed, no sample should be given to an Inspector by a person who is not selling an article of food. Or who comes otherwise within the scope of Section 10 of the Act.

8. In the Instant case, 1½ seers of Dahi was sold after Ex. 15 was given to the respondent, that is, after the respondent knew that action under the Prevention of Food Adulteration Act was proposed to be taken against him. I, therefore, hold that when a sample of food is sold to the Food Inspector, it is not necessary to prove that the sample was taken out of a larger quantity, which was also intended for sale.

9. In the instant case, the sale to the Inspector is proved by the prosecution and admitted by the accused. The accused is, therefore, clearly guilty under Section 7 of the Act.

10. The appeal is allowed, the acquittal of the respondent is set aside and he is convicted under section 7 of the Act and sentenced to pay a fine of Rs. 25 (twenty-Five), in default one week's simple imprisonment.

Appeal allowed.