KERALA HIGH COURT

Food Inspector

Vs.

Punsi Desai

Criminal Appeal No. 149 of 1957, Kozhikode, in C.C. No. 115 of 1957

(Sankaran and Raman Nayar, JJ.)

30.09.1958

JUDGMENT

Raman Nayar, J.

1. On a complaint made by the Municipal Health Officer, Kozhikode, who in his capacity as a Food Inspector appointed under Section 9 of the Prevention of Food Adulteration Act, (Central Act 37 of 1954) has been authorized under Section 20(1) thereof to institute prosecutions, the accused, a wholesale merchant of Kozhikode, dealing in pepper among other merchandise, was tried by the Additional First Class Magistrate, Kozhikode, for an offence punishable under Section 16 (1)(a)(i) read with Section 7 of the Act, the accusation against him being that he stored for sale 62 bags of pepper which was both adulterated and misbranded within the definitions in Section 2 (i)(1) and (ix)(d) of the Act. He was acquitted by the learned Magistrate on the ground that it had not been proved that the pepper in question was stored for sale, and the complainant has brought this appeal against the acquittal by special leave under Section 417 (3) of the Criminal Procedure Code.

2. (From the complaint, the judgment and. other proceedings in the case, one would think that there were two accused persons, but the name of Punsi Desai and Sons shown as the name of the 1st accused is only the name in which the 2nd accused, Punsi Desai, does his business. The 2nd accused is the sole proprietor of the business and there is in reality no firm. The name of the 1st accused will therefore be struck off and the person named as the 2nd accused will be regarded as the sole accused in the case.)

3. The following facts are proved and are not disputed : On 10-1-1957, P.W. 1, a Sanitary Inspector of the Kozhikode Municipality and a Food Inspector under the Act, went to the accused's place of business and inspected it in the presence of the accused. He found there 62 bags of pepper (along with other stocks of the commodity) some of which were completely felted

and the rest of which were being filled. Thirteen of these bags bore the label, "510 Best Pepper Calcutta;" 18 the label, "Ashnk Calcutta,' 13 the label, "Nalini Best Pepper Calcutta;" and the remaining 18 the labal, "Jaya Calcutta."
He took two samples from each of these four lots in accordance with the provisions of the Act and the rules made thereunder. On analysis the two samples taken from the first lot were found to contain 40 per cent. of deteriorated and light berries and 3.8 per cent, and 3.6 per cent, respectively of mineral oil; the sample is taken from the second lot were found to contain 1.1 per cent. and 0.9 per cent, of mineral oil; the samples from the third lot were found to contain 40 per cent, of deteriorated and light berries and 3 per cent, and 3.3 per cent, respectively of mineral oil; and the samples taken from the fourth lot were found to contain 1.2 per cent, of mineral oil.

4. The maximum permissible limit for deteriorated and light berries in pepper is 8 per cent. in accordance with the standard of quality prescribed by clause A. 05.07 in Appendix B to the rules made under the Act, and that the pepper in the four samples found to contain 40 per cent. of deteriorated and light berries was an adulterated article of food within the definition in Section 2(i)(1) read with Section 2 (v) of the Act, is not disputed. It follows therefore that the accused did store- adulterated food.

5. It was also the case of the complainant that the pepper in all the eight samples was mis-branded in that it contained varying quantities of mineral oil, a substance foreign to pepper. It was argued before us that the presence of the mineral oil makes the pepper "misbranded" within the definition in clauses (d) and (j) of Section 2(ix). But there is no evidence in support of the allegation in the complaint that the addition of mineral oil was to make it appear that the pepper was better or of greater value than it really was so as to attract clause (d). Nor is there any evidence to show that the mineral oil was an artificial flavoring or coloring matter, or a chemical preservative so as to attract clause (j). And so far as the evidence goes-it would appear that it is a common practice in the trade to smear pepper with mineral oil in order to keep away weevils and other pests, in other words, that the oil is used as a sort of physical preservative. We do not think that it has been established that the pepper stored by the accused was misbranded, but that makes little difference to the case, since in any event, part of it at least, was adulterated.

6. The learned magistrate found that the accused had stored pepper which was both adulterated and misbranded, but he took the view that before the accused can be convicted it should be shown that the pepper was stored for sale, in other words that it was ready for sale. Accepting the evidence of P.W. 2, a neighboring businessman, who had been called in by P.W. 1 to serve as a witness for the sampling, to the effect that the stock from which P.W. 1 took the samples had not been garbled and was not ready for sale, he acquitted the accused. According to this witness, as soon as pepper is bought by dealers it is smeared with white oil. Then it is cleaned and the light berries separated' to make it ready for sale, this process being known as garbling. Apparently the learned magistrate was of the view that large percentage of light and deteriorated berries in the pepper sampled was due to the fact that it had not yet been garbled. The light berries had rot been

separated. The accused had still to undertake that process before getting the pepper ready for sale, and hence it could not be said that the pepper was stored for sale.

7. It has been strenuously argued on behalf of the complainant that storage simpliciter of adulterated food is an offence under the Act and that the learned magistrate was wrong in thinking that the purpose of sale was a necessary ingredient. We shall deal with that matter later. For the time being we shall assume that the learned magistrate was right in thinking that the storage must be for sale before it can be an offence. Even so we consider that the offence alleged has been made out for, we are unable to accept the finding of the learned Magistrate that it has not been shown that the storage was for sale.

8. P.W. 1's evidence that the pepper of which he took samples was in bags labelled in the manner already described has not been controverted. Some of the bags (he could not say which), were completely filled, while some were being filled. It will be remembered that the four samples found to contain 40 per cent of deteriorated and light berries were from the bags from the first and third lots bearing the labels, "510 Best Pepper Calcutta" and, "Nalimi Best Pepper Calcutta". All the bags bore the name; of the city of Calcutta, and from these facts we think it proper to presume, under Section 114 of the Evidence Act, that the accused who is admittedly an exporter of pepper had packed or was packing pepper in bags for the purpose of exporting it to Calcutta in the course of sale it would follow that the pepper in question was stored by him for sale.

9. It is remarkable that the accused when questioned at the commencement of the case merely said that he had committed no offence and that when questioned later, under Section 342 Criminal Procedure Code, as to whether he had anything to say with reference to the evidence against him, replied that he had nothing to say. P.W. 1 said in his chief-examination that he was told that the bags of pepper in question were intended for safe. He did not say who told him this, but from the context it would appear that it must have been the accused. He was not cross-examined with reference to this part of his evidence, and it was not put to him, or otherwise suggested in any way that the accused had told him that the pepper in question was not for sale but was only being got ready for the purpose. Exts. P-1 series, P-2 and P-3 are counterfoils of notices issued by P.W. 1 to the accused in connection with the sampling and the seizure of pepper. All of them have been signed by the accused in token of the receipt of the originals. The accused was fully aware that the samples of pepper were being taken by P.W. 1 with a view to his prosecution in case they proved to be adulterated. And if, as P.W. 2 has stated, the pepper was not pepper kept ready for sale hut was, as surmised by the learned magistrate, pepper which was being garbled for the purpose of ridding it of defects and impurities so that it may conform to the standard of quality prescribed, one would have expected him to protest to P.W. 1 that that was so. Again, one would have excepted him to say so when questioned at the trial. It seems to us apparent that the accused himself had at no time such a case, and we are inclined to attach little weight to P.W. 2's answer in cross-examination that the stock of popper in question was stock that was not ready for sale. P.W. 2 only came in just then from his place of business near by, and how

he could have known that the pepper in the bags in question was pepper which the accused intended to garble and make ready for sale thereafter, is more than we can see. The accused was the one person who could, and if it were true would, have said that the pepper was not for sale. But he chose to say nothing about the matter either at the time of the sampling or at the time of his trial. Nor did he adduce any evidence - the persons working in his premises could have given evidence on the point - to show that the pepper had not been got ready for sale. We do not think - the evidence of P.W. 2 notwithstanding - that the presumption we have drawn has, in any way, been rebutted.

10. It has been argued that the evidence of P.W. 1 himself shows that the pepper in question was not pepper kept ready for sale. P.W. 1 has given- evidence in a rather muddle-headed fashion and it is necessary to extract the relevant portion of his deposition in full to see what it really means.

> "Chief Examination :
> x x I found 62 bags of pepper there. Many were already filled and some were being filled. I was told that they were intended for sale x x
> "Cross-examination :
> x x Before export light berries have to be excluded and the pepper processed. This pepper was said to have been processed. They were processing this pepper and oiling it. I took the pepper which were being processed also into custody. I cannot say how many bags were processed. I cannot say whether all the bags I seized were processed bags. They were filling pepper in the bags. I found some already filled and other bags being filled. x x x x Processed bags had marks on them. All the bags had marks on them. x x x x x There were four varieties. All of them appeared to have been processed. I hove not mentioned anywhere that they were processed bags. There was unprocessed pepper also in this godown.

If you suggest that the bags were stocked there for the: purpose of processing I deny it,

X X X

Re-examination :
By processing I mean sieving, that is removing the dirt etc. There was no dirt etc. in the quantity I purchased. After sieving this stock there was some other pepper left there which the party said had not been sieved.

All the bags I seized had been packed and labeled and were ready for transport."
11. As we understand it, what this evidence means is that what P.W. 1 calls the processing of pepper was going on at the time P.W. 1 inspected the premises of the accused that after this so called processing the processed pepper was being filled into bags, the markings on which showed that they were for export, that some of these bags were completely filled while some others were

being filled, and that the pepper sampled and seized by P.W. 1 was the pepper that had already been put into these bags after being processed. This evidence supports the presumption drawn by us and in no way negatives it.

12. With regard to the markings on the bags P.W. 2 no doubt said in cross-examination that bags purchased second-hand would have several old marking's, but in the absence of any statement by the accused at any time that the pepper in question was not kept ready for sale, or that the markings found on the bags were not his markings but were some old markings, we attach no value to the statement.
13. On our finding that the pepper in question was stored for sale it is not, strictly speaking, necessary for the purpose of this case to decide whether storage simpliciter or, to put it somewhat differently, storage otherwise than for sale, of adulterated food is an offence under the Act. But, since we are told that this is a question which frequently arises in the subordinate courts and that the main, purpose of this appeal is to obtain a ruling with regard to it, we propose to decide this question.

14. For the content of the offence we have to go to Sections 16 and 7 of the Act. The relevant portion of Section 16 runs as follows :

> "16. (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 of any rule made thereunder,
> X X X X X

he shall, in addition to the penalty to which he may be liable under the provisions of Section 6, be punishable –

> X X X X X"

The prohibition is expressed in S. V in the following Terms :

> "7. 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;
> X X X X X".

The corresponding offence in the several State enactments which the Central Act replaced is somewhat differently defined, and Section 5(1) (b) of Madras Act 3 of 1918 may be taken as an example :

> "5. (1) Every person who -
> (a) x x x x
> (b) manufactures, stores or offers for sale or bawks about or sells any food which is not of the nature, substance or quality which it purports, or is represented to be :
> X X X X X

shall be punished x x x x

And there is a presumption enacted in Sub-section (2) of the same section in the following terms :

> "In every prosecution for an offence against this section, the court may presume that any food found in the possession of a person who is in the habit of manufacturing or storing like articles for sale, has been manufactured or stored by such person for sale".

15. It is argued for the complainant that the Central Act which was passed with the avowed object of making more stringent provision for the prevention of the adulteration of food deliberately departed from the State Acts which it replaced with that object in view. (Also, it is pointed out, from the English Food and Drugs Act, 1938 which like the current Act of 1955, the fetter however later than the Central Act which is of 1954, expressly states that the possession prohibited is possession for the purpose of sale). Section 5(1)(b) of the Madras Act, for example, had been judicially interpreted so as to attach the qualifying words, "for sale", not mere to the word, "offers" which immediately precedes them but also to the earlier words "manufactures" and "stores", in other words, as if the section read, "manufactures for sale; stores for sale, or offers for sale". The intention was to make storage of adulterated food an offence irrespective of whether it was for sale or not, and that is why in the prohibition found in Section 7 of the Central Act the qualifying words, "for sale" appear immediately after the word, "manufacture" and before the words, "or store, sell or distribute" so as to make it clear that they qualify only manufacture and not sale or distribution. And it was because storage simpliciter was prohibited that the presumption embodied in Section 5(2) of the Madras Act which we might straightaway observe is little more than what a Court would normally presume under Section 114 of the Evidence Act, was dropped as being no longer necessary. Had the ingredient, "for sale", been an element of the offence this presumption, so useful for establishing that element, would have been enlarged rather than dropped.

16. On the other hand it is argued by learned counsel for the accused - and the learned Public Prosecutor supports him - that the element, "for sale" is a necessary ingredient of the offence whether the offence be manufacture, storage or distribution, and that the words, "store" and, "distribute" in Section 7 must be read as taking colour from the associated words "manufacture for sale" and "self appearing in the same section. It is essentially the sale of adulterated food that the Act seeks to prevent; and, for the purpose of making effective provision to that end, it not

merely prohibits the act of sale but also acts like manufacture, storage and distribution leading to sole. On the principle of ejusdem generis the general words, "store" and, "'distribute" found in Section 7 should be read as qualified by the particular words "for sale"' and "sell" preceding them. Therefore, it is only storage for sale that is prohibited under the section.

17. We are inclined to agree although we must confess that the matter is not altogether free from difficulty. We think on the whole, that the words, "for sale" must be read into the words, "store" and "distribute." In the first place we are completely at a loss to understand why manufacture of adulterated food should be placed in a more favorable position than the storage or distribution of such food, why manufacture could be prohibited only if the food is for sale while storage and distribution are prohibited even if the food is not for sale. And the saving in favour of manufacture otherwise than for sale would be perfectly useless unless there is a simultaneous disposal by destruction or otherwise. For, the moment the process of manufacture is completed, there would be storage of the adulterated food to which the prohibition would apply if the word, "store" were not to be read as, "stored for sale."

18. The definition of, "adulterated" in the Act is very wide, and mixtures commonly made of different articles of food for domestic use such as, for example, of ghee and cocoanut oil, or of ground coffee and coriander, would come within the definition. The verb "store" is a word of general import, and none of the dictionaries to which we have been referred would justify the argument at one stage advanced on behalf of the accused that there is a particular sense of the word in which it applies only to stocks held for sale. Therefore, it would follow that a mixture of ghee and cocoanut oil or of coffee and coriander kept for domestic purposes would come within the prohibition, and it certainly cannot have been the intention of the Act to make such storage an offence. Likewise milk diluted with water would be "adulterated" within the meaning of the Act, and the distribution of diluted milk to the patients in hospital or the children in a creche would he an offence since it would amount to the distribution of adulterated food if the words, "for sale" were not to qualify the word, "distribute" in Section 7. It is no answer to say that there is no machinery in the Act or elsewhere for bringing such offences to light, sections 10 and 12 of the Act which make provision for the purpose being confined to food sold or held for sale. Surely the legislature cannot have intended to make a criminal of every innocent house-holder and then let him escape the consequences by omitting to make provision for catching him. And, although we have not examined the position carefully it would appear that a third offence would be cognizable so that there could be a police investigation - with all the powers of search and the like incidental thereto - followed by a prosecution in accordance with Section 20 of the Act. On the other hand it can with greater plausibility be argued that the machinery provided in Section 10 - see Sub-Section (2) thereof which says that "any food inspector may 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" is a measure of the mischief which Section 7 is designed to prevent.

19. We might also point out that on the interpretation placed on Section 7 by learned Counsel for the complainant, even a person who is able to establish that he was keeping the adulterated stock of food for destruction or for ridding it of defects and impurities before selling it so that it might be brought into conformance with the standard of quality and purity prescribed (thus ceasing to be adulterated) would nevertheless be guilty. So presumably would be a local authority in whose favour 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).

20. As stated in the preamble, the Act is "an Act to make provision for the prevention of adulteration of food," and the word "adulterate" implies an clement of deceit. It means, according to the definition in Chambers's Twentieth Century Dictionary, "to debase, falsify by mixing with something interior or spurious;" and although the Act does prohibit the use of unwholesome or noxious adulterants, its primary object is to safeguard the purse rather than the health or the palate of the general public. It might be that, in order to more effectively serve its purpose, the Act makes liability in respect of the offences created by it absolute, and dispenses with the element of deceit, or, to put it somewhat differently, presumes that element. But that the need for the element of deceit is not altogether ignored is clear from Section 19(2) which provides for a purchase under a warranty as a sufficient defense. It does not seem to us that it is the object of the Act to make storage or distribution otherwise than for sale any more an offence than such manufacture.

21. These are our reasons for thinking that the words, "for sale" should be read into the words, "store" and, "distribute" appearing in Section 7 of the Act.

22. In the result we allow the appeal, convict the accused under Section 16 (1)(a)(i) of the Act and sentence him to pay a fine of Rs. 1500 (one thousand five hundred); in default, to suffer rigorous imprisonment for one month.

23. Regarding the disposal of the 62 bags of pepper seized it has been argued that since, in any view of the matter, the pepper was adulterated the learned Magistrate should have dealt with it under Sub-Section (5) of Section 11 of the Act instead of directing it to be returned to the accused which under Sub-Section (6) of the same section could only be done if he found that the pepper was not adulterated. The difficulty in making an order under Sub-Section (5) is that only eight samples were taken from 62 bags and there is no knowing which of the bags were sampled. We have found that four of the samples were not adulterated and therefore it is impossible to say which of the 62 bags contain adulterated pepper. In the circumstances we think that the only workable order to pass would be to direct the magistrate to return all the 62 bags to the accused after taking a bond from him for an appropriate sum undertaking not to sell the pepper or to store it for sale without having first rid it of the deteriorated and light berries and brought it up to the prescribed standard.
Appeal allowed.