

# **BOMBAY HIGH COURT**

Narsinha Bhaskar Chitale

Vs.

State of Bombay

Criminal Revision Application No. 1179 of 1957

(Miabhoy, J.)

08.11.1957

## **JUDGMENT**

### **Miabhoy, J.**

1. This is an application under Section 435 Criminal Procedure Code, by the petitioner Narsinha Bhaskar Chitale, who has been convicted by the learned Special Judicial Magistrate, First Class, Municipal Corporation, Poona, for the offence under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954, and sentenced to pay a fine of ₹ 300, in default, to suffer rigorous imprisonment for three months, and whose conviction has been upheld by the learned Additional Sessions Judge, Poona, who has reduced the sentence from ₹ 300 to ₹ 150.

2. This revision petition raises a short question relating to the interpretation of the word "butter" as used in Appendix B to the Prevention of Food Adulteration Rules, 1955, framed by the Central Government, after consultation with the Central Committee for Food Standards, under Sub-section (1) of Section 23 of the Prevention of Food Adulteration Act, 1954. The facts leading up to the present revision application are not in dispute. The petitioner is a dealer in butter. On September 6, 1956, the Food Inspector, Poona Municipal Corporation, visited the shop of the petitioner and purchased from him 12 ounces of butter. This butter was divided, as usual, into three parts, one of which was given to the petitioner. One of the other two parts was examined by the Public Analyst. The result of his examination was that the butter contained moisture to the extent of 22.7 per cent. The prosecution case was that this percentage was above the limit laid down by the Central Government in the Prevention of Food Adulteration Rules, 1955. Therefore, the prosecution alleged that the article which the petitioner had sold was an adulterated article. This contention of the prosecution was based upon the definition of the expression "adulterated article" as given in Section 2(i)(l) of the aforesaid Act. That definition is in two parts. The first part of the definition says that an article of food shall be deemed to be adulterated if the quality or purity of the article falls below the prescribed standard. I am not concerned in this petition with this part of the definition. The second part of the definition states that an article of food shall be deemed to be adulterated if its constituents are present in quantities which are in excess of the prescribed limits of variability. It is not disputed that the limit of

variability in respect of butter is prescribed by the Central Government under the Prevention of Food Adulteration Rules, 1955. The prescription is to be found in A. 11.05 which is to be found at page 1475 of the Bombay Government Gazette dated October 13, 1955, Part IV-C. A. 11.05 first defines what butter is and, then, proceeds to state that such butter shall not contain more than 16 per cent, of moisture. The petitioner has not disputed the report of the Public Analyst that the sample which was purchased by the Food Inspector contained 22.7 per cent, of moisture. Therefore, it is also not disputed that the butter did not come up to the standard as mentioned in A. 11.05. It is conceded that the sample, if it falls within the definition of butter as given in A. 11.05, would come within its mischief. Section 7 of the Act prohibits a person, inter alia, from selling any adulterated food, and Section 16(1)(a) punishes a person who sells adulterated food. Therefore, it is not disputed by the petitioner that, having regard to the fact that the butter which was sold by him did not come up to the standard mentioned in A. 11.05, the petitioner would be guilty of having contravened the provisions of Section 7 of the Act and render himself liable under Section 16(1)(a) of the Act. But the contention which was urged by the petitioner in both the lower Courts was that the butter which he had sold was not butter within the meaning of the definition given in A. 11.05 of Appendix B to the Prevention of Food Adulteration Rules. Therefore, the short question which the Courts below had to decide was whether the butter which was sold by the petitioner was butter within the meaning of the definition given in A. 11.05. The contention put forward by the petitioner was rejected by both the lower Courts. They came to the conclusion that the butter which was sold by the petitioner came within the definition of the word "butter". The definition is as follows:

"Butter means the product prepared exclusively from the milk or cream of cow or buffalo, or both, with or without the addition of salt and annatto....

The admitted fact is that the butter which was supplied to the Food Inspector was prepared from curd. The contention of the petitioner is that the butter, supplied by him, having been prepared from curd, cannot be said to have been prepared from out of either milk or cream. Therefore, the main question which requires to be considered in the present revision application is whether butter which is prepared from out of curd does or does, not come within the purview of the definition of the word "butter" as given aforesaid.

3. In deciding this point, the first important point which has to be borne in mind is that the definition is exhaustive and is not inclusive. The second important point which is to be noticed is that the word "milk" itself is defined in A. 11.01, and that definition is as follows:

"Milk means the normal clean and fresh secretion obtained by complete milking of the udder of a healthy cow, buffalo, etc.

Therefore, the word "milk" as used in the definition of the word "butter" has got to be read in conjunction with this definition of the word "milk." If the definition of the word "butter" is read in conjunction with the definition of the word "milk", then, the result which one obtains is that butter means the product prepared exclusively from normal clean and fresh secretion obtained by complete milking of the udder of a healthy cow or buffalo. The second part of the definition of the word "butter" is that butter means the product prepared exclusively from cream. The word "cream" is also defined in A. 11.10 and that definition is as follows:

"Cream means that portion of milk rich in milk fat which has risen to the surface of milk on standing and has been removed or which has been separated from milk by centrifugal force.

Therefore, reading the definition of the word "butter" as given in A. 11.05 in conjunction with the definitions of the words "milk" and "cream" as given in A. 11.01 and A. 11.10, the result which we obtain is that butter is that product which is obtained from normal clean and fresh secretion obtained by complete milking of the udder of a healthy cow, buffalo, etc., or that product which is prepared from that portion of milk, rich in milk fat, which has risen to the surface of milk on standing and has been removed or which has been separated from milk by centrifugal force. The word "curd" has also been defined in A. 11.06 and that definition is as follows:

"Whole milk dahi or curd means the product obtained from fresh whole milk either of cow or buffalo by souring. It shall not contain any ingredient not found in milk.

Therefore, the argument of the petitioner is that the substance which he sold was a substance which was prepared from curd ; it was not a substance which was prepared from milk or cream. If the matter is looked at from the aforesaid standpoint, there is no doubt whatsoever that there is considerable force in the argument advanced on behalf of the petitioner. The three words "milk", "cream", and "curd" having been defined and the definitions being exhaustive, there is considerable force in the argument that the definition of the word "butter" does not contain a product which is obtained from curd, and it refers only to a product which is prepared from milk or cream. This argument is further reinforced by the fact that butter is that which is exclusively prepared from milk or cream. The accent is on the word "exclusively". The argument, however, of the learned Additional Assistant Government Pleader is that the word "milk" as used in the definition of the word "butter" does not exclude curd. The argument is as follows. He contends that, before one prepares butter, one has got first of all to take fresh whole milk, and, before one obtains butter, that fresh whole milk has to undergo an intermediary stage or a process which is that of obtaining or getting curd from the fresh whole milk. Therefore, it is contended that, when butter is prepared from curd, what is prepared is not from curd alone, but the thing which is prepared is from a substance which is first milk and which, thereafter, becomes curd. The argument, in my opinion, contains a fallacy and that fallacy consists in ignoring the fact that curd is not milk, but that it is a milk product. Milk and milk products are two different things. The rules themselves make a clear distinction between milk and milk product. This is quite clear from the heading at A. 11. That heading is "Milk and milk products". Then there are a number of definitions beginning from A, 11.01 to A. 11.13. The definitions from A. 11.01 to A. 11.03 contain the definition of "milk", and the rest of the paragraphs contain the definitions of milk products. Therefore, in my opinion, when the Central Government used the word "milk" in the definition of the word "butter", the Central Government could not have intended to refer to milk products which have been separately defined. The Central Government must have intended to use the word "milk" in the sense in which it was defined in A. 11.01. There is also one more argument which strengthens the aforesaid reasoning. When defining the word "butter", the Central Government has not merely stated that it is a product which is prepared from milk, but it has also stated that it is a product which is derived from cream. If milk products were intended to have been included in the term "milk", then, in that case, the Central Government would not have

used the word "cream", because from the definition of the word "cream" as given in A. 11.10 it is quite clear that cream is more of milk than curd is. Curd, as the definition in A. 11.10 shows, is obtained by souring milk, and cream, as the definition in A. 11.10 shows, is a portion of the milk itself. Therefore, in my opinion, when all the aforesaid definitions are read together, it is impossible to come to the conclusion that the Central Government intended by the use of the word "milk" to include the word "curd" therein. That the Central Government was conscious, of the fact that curd was something different from milk, is also to be found from the definition of the word "ghee" which the Central Government has given in A.

11.14. This definition was added by the Central Government and first published by the State of Bombay in Notification No. PFA. 1056-51628-D dated August 18, 1956, in the Government Gazette Part IV-C at page 1158, and that definition is as follows:

"Ghee means the pure clarified fat derived solely from milk or from milk curds or from cream to which no colouring matter or preservative has been added.

Therefore, the word "milk" has been used here in conjunction with both the words "curd" and "cream". The Central Government has clearly expressed here its intention that ghee is that product which is derived from either milk or curd or cream. Therefore, the contention of the petitioner derives support from the fact that whereas the word "curd" is used as one of the products from which ghee could be prepared in the definition of "ghee", that word has not been used when the Central Government defined the word "butter".

4. The main argument of the learned Additional Assistant Government Pleader was that if the word "butter" were to be construed so as to exclude butter prepared from curd, then, a major quantity of butter which is prepared in the country would be taken away from the purview of the prescribed standard, and, consequently, the intention of the Central Government in enacting the aforesaid Rules would be frustrated. Therefore, the learned Additional Assistant Government Pleader alternatively contended that the definition of the word "butter" should be so construed as to bring all products from milk, including curd, within that definition, I have given my anxious thought on this subject. The question for consideration is whether the word "milk" as used in the definition of "butter" should be given an extended meaning, that is, a meaning which is not assigned to it by the Central Government itself when it defined the word "milk" in A. 11.01. The argument of the petitioner is that a Full Bench of our High Court has definitely laid down the principles for construing a penal statute and, having regard to the fact that the consequence of the proposed construction would be that the act of the petitioner would become punishable under Section 16, the definition should be confined strictly within its limits and should not be given an extended meaning, so that an act, which does not come within the plain and natural meaning thereof, is brought in it by a rule of construction. The Full Bench ruling which is referred to is the case of *Tolaram Relumal v. Stated*<sup>1</sup>. The relevant remarks are to be found at p. 376 in the judgment of his Lordship Chagla C.J. The relevant observations are as follows:

<sup>1</sup>(1953) 55 Bom. L.R. 366 F.B

"Mr. Lulla is perfectly right when he argues that if two possible and reasonable constructions can be put upon a penal provision, the Court must lean towards that provision which exempts the subject from penalty rather than one which imposes a penalty. It is also correct that the principle of construing a statute in order to suppress a mischief and to advance the object of the legislation does not apply to a penal statute. It is

not competent to the Court to stretch the meaning of an expression used by the Legislature in order to carry out the intention of the Legislature. A penal statute must be construed according to its plain, natural and grammatical meaning.

Further on, the learned Chief Justice has made a reference to the case of *Howell v. Falmouth Boat Construction*<sup>2</sup> and observed that a statute should not be so construed that a man is put in peril on an ambiguity. Thereafter, the learned Chief Justice has referred to a passage from the judgment of Lord Macmillan in *London and North Eastern By. Co. v. Berriman*<sup>3</sup> and observed that the test laid down therein is the correct test to apply where a Court is construing a penal statute. The passage which is quoted is as follows (p. 295):

"it must be borne in mind that while the statute and rule have the beneficent purpose of providing protection for workmen, their contravention involves penal consequences under Section 11 of the Act. Where penalties for infringement are imposed it is not legitimate to stretch the language of a rule, however beneficent its intention, beyond the fair and ordinary meaning of its language.

Though the aforesaid Full Bench ruling was reversed by the Supreme Court in *Tolaram Relumal v. State of Bombay*<sup>4</sup> the observations which were made by the Full Bench for the construction of penal statutes have been approved by their Lordships of the Supreme Court. They quote with approval the aforesaid passage from Lord Macmillan.

5. The learned Additional Assistant Government Pleader, however, relied on a passage in Maxwell on Interpretation of Statutes, 10th edn., at p. 262. He contended that the aforesaid rule did not apply to the construction of a beneficent legislation like that relating to food adulteration. Maxwell states as follows:

"The rule which requires that penal and some other statutes shall be construed strictly was more rigorously applied in former times when the number of capital offences was very large, when it was still punishable with, death to cut down a cherry-tree in an orchard, or to be seen for a month in the company of gipsies, or for a soldier or sailor to beg and wander without a pass. Invoked in majority of cases in favorem vitae, it has lost much of its force and importance in recent times, and it is now recognized that the paramount duty of the judicial interpreter is to put upon the language of the legislature, honestly and faithfully, its plain and rational meaning and to promote its object.

Then Maxwell quotes Day J. in *Newly v. Sims*<sup>5</sup> and the quotation is as follows:

"I cannot concur in the contention that because these acts (against adulteration)

<sup>2</sup>[1951] 2 All. E.R. 278      <sup>4</sup>[1955] 1 S.C.R. 158, S.C. 56 Bom. L.R. 1206

<sup>3</sup>[1946] A.C. 278      <sup>5</sup>(1894) 63 L.J.M.C. 229

impose penalties, therefore, their construction should, necessarily, be strict. I think that neither (greater nor less strictness should be applied to those than to other statutes.

The aforesaid passages from Maxwell do nothing further than to enunciate the fundamental canon of interpretation of statutes viz. that a statute should be interpreted according to its ordinary and natural meaning. I fail to see how that canon helps the learned Additional Assistant Government Pleader in the submission which he has made in this case. His submission is that the word "butter", as used in the aforesaid definition, should be given an extended meaning. The aforesaid two passages relied upon by him not only do not support him, but militate against such a contention. The passage quoted from the Full Bench ruling deals with a situation different from the one which is dealt with by the aforesaid two passages from Maxwell. The principles enunciated by the Full Bench ruling come into play only when there are two possible and reasonable constructions which can be placed upon a penal provision. In that contingency, the Full Bench has laid down that the Court must lean towards that construction which exempts the subject from penalty. What the learned Additional Assistant Government Pleader wants me to do in this case is to throw over-board the main principle of construction of statute, namely, that a statute should be construed according to its plain, natural and grammatical meaning. He wants me to give an extended meaning to the word "butter". In my opinion, the moment one attempts to do the latter, one throws over-board not only the main principle of construction of statute, but also does exactly that which is prohibited by the aforesaid Full Bench ruling. Therefore, in my judgment, the aforesaid two passages from Maxwell do not support the submission of the learned Additional Assistant Government Pleader. On the contrary, they negate it.

6. There was one more argument which was advanced by the learned Additional Assistant Government Pleader, and that argument was based upon the definition of the word "butter-milk" contained in A. 11.03. That definition is:

"Butter-milk means the product obtained after removal of butter from curds by churning or otherwise.

It was contended that this definition showed that the Central Government was conscious of the fact that butter-milk was a product which was derived from curd by churning, I am unable to appreciate as to how the aforesaid definition helps the learned Additional Assistant Government Pleader in support of his argument that the word "curd" should be added in the definition of butter when construing the word "butter" as used in A. 11.05. On the contrary, the aforesaid definition shows that the Legislature was conscious of the fact that butter-milk was derived from butter prepared from curd by churning. In spite of the aforesaid consciousness, the Central Government has not used the word "curd" in the definition of the word "butter". Therefore, in my opinion, that legitimate inference would be that the Central Government intended the definition to apply only to a product which was derived from milk or cream and not from Curd.

7. Therefore, in my opinion, having regard to the definitions of the words "milk", "cream" and "ghee", as given by the Central Government, it is impossible to construe the word "milk" to include the word "curd". In my opinion, curd is a milk product ; it is not equivalent to milk. It is a product derived from milk, but it is not milk itself. Milk is a substance which is clean and fresh. Curd is a soured substance.

8. It is impossible to speculate as to what reasons the Central Government had in mind in

excluding a product derived from curd from the definition of butter. It is true that mostly butter is derived in India from curd. But the Central Government might have thought that butter derived from curd might not be able to reach the standard which is laid down in this definition. The petitioner has placed materials on the record which show that, according to one Government of India publication, deshi butter ordinarily contains 20 to 25 per cent, moisture and, according to a municipal authority, no prosecution should be launched even if the moisture is between 16 to 20 per cent. The Central Government may have been aware of the opinion expressed in the aforesaid publication that deshi butter ordinarily contains 20 to 25 per cent, moisture. This may be one of the reasons which may have induced the Central Government to exclude curd from the definition of "butter". In my opinion, if one were to add the word "Curd" on the ground that the intention of the Central Government was to include butter prepared from curd, then, one would be doing something which may not probably have been intended by the Central Government. If, in fact, the Central Government intends that butter prepared from curd also should be included in the definition of the word "butter" and that such butter also should conform to the standard laid down in A. 11.05, then, in my opinion, it is a clear case in which the Central Government must express its intention clearly by amending the definition of butter and including in it the word "curd".

9. Having regard to all the aforesaid considerations, I have come to the conclusion that the prosecution has failed to establish that the butter which was sold by the petitioner came within the mischief of the definition of the word "butter". Therefore, the butter sold by the petitioner cannot come within the mischief of the definition of adulterated article given in Section 2(i)(1) of the Prevention of Food Adulteration Act. That being so, unless and until the prosecution adduce evidence to show that the butter in question fell within any of the other clauses of Section 2, the offence against the present petitioner cannot be said to have been brought home. Such is not the case of the prosecution. The prosecution intended to get the petitioner punished only on the ground that the constituents of the butter were in excess of the prescribed limits of variability. The prosecution having failed to established that, in my opinion, the revision application deserves to be allowed.

10. I make the rule absolute. I set aside the conviction of the petitioner for the offence under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954, and the sentence imposed upon him. I acquit him of that offence, and further order that fine, if already paid, should be refunded to him.

Application allowed: Conviction and sentence set aside.