

BOMBAY HIGH COURT

Sadashiv Tatoba Gatade

Vs.

State, (Bombay)

Criminal Revn. Appln. No. 1692 of 1958

(Chainani, C.J., S.T. Desai and Tarkunde, JJ.)

13.04.1959

JUDGMENT

Chainani, C.J.

1. The question referred to the Full Bench is 'whether the expression 'butter' within the meaning of rule A. 11.05 in the Rules framed under Section 23 of the Prevention of Food Adulteration Act includes butter prepared from curd?' In order to answer this question, it is necessary to consider the relevant provisions of the Act and the Rules. The Act was enacted in 1954 in order to make provision for the prevention of food adulteration. Clause (1) in Section 2 of the Act defines the term 'adulterated'. This clause contains sub-clauses (a) to (1), which lay down the different circumstances in which an article of food shall be deemed to be adulterated. For instance, under sub-Clause (a), an article of food is to be deemed to be adulterated if the article sold by a vendor is not of the nature, substance or quality demanded by the purchaser and is to his prejudice, or is not of the nature, substance or quality which it purports or is represented to be. Under sub-Clause (1) with which we are concerned in this case, an article of food is to be deemed to be adulterated if the quality or purity of the article falls below the prescribed standard or its constituents are present in qualities which are in excess of the prescribed limits of variability. The word 'prescribed' is defined in clause (xii) as meaning prescribed by rules made under this Act. The rule making power is conferred upon the Central Government by Section 23 of the Act. Clause (b) in sub-section (1) of this section empowers the Central Government to make rules defining the standards of quality for, and fixing the limits of variability permissible in respect of, any article of food. In exercise of the powers conferred by Section 23, the Central Government has made the Prevention of Food Adulteration Rules, 1955. Rule 5 of these Rules states that the standards of quality of the various articles of food specified in Appendix B to these rules are as defined in that Appendix. Appendix B does not, therefore, lay down the standards of quality of all articles of food, but only of those articles which are specified in this Appendix. The heading of Appendix B is 'Definitions and Standards of Quality.' Rule A. 11 in this Appendix contains

provisions with regard to milk and milk products. Rule A. 11.01 defines milk as meaning 'the normal clean and fresh secretion obtained by complete milking of the udder of a healthy cow, buffalo, goat or sheep during the period following at least 72 hours after calving or until colostrum free whether such secretion has been processed or not.' Rule A. 11.03 defines butter-milk as meaning the product obtained after removal of butter from curds by churning or otherwise. Rule A. 11.05 is in the following terms : '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 and shall contain not less than 80 percent of milk fat and not more than 16 per cent. of moisture. No preservative is permissible in butter.' Rule A. 11.06 defines whole milk, dahi or curd as meaning the product obtained from fresh whole milk either of cow or buffalo by souring, and states that it shall not contain any ingredient not found in milk. Cream is defined in Rule A. 11.10 as meaning 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.

2. The question, which we have to decide, is whether butter prepared from dahi or curd can be said to be butter prepared from milk within the meaning of Rule A. 11.05.

3. On behalf of the petitioner-accused it has been urged by Mr. Adik that the rules contain separate provisions with regard to milk products and prescribe different standards for such products, that curd is a milk product and not milk, that Rule A. 11.05 also deals with butter prepared from a milk product, viz. cream, and that the fact that the rule refers separately to cream only also indicates that the rule making authority intended to exclude from the purview of the rule butter prepared from other milk products such as curd. Stress has also been laid on the word 'exclusively' and it has been contended that the rule applies only to butter prepared directly from milk and cream, but not to butter made from curd. Reliance has been placed on *Narsinha Bhaskar Chitale v. State of Bombay*¹, in which Miabhoy J. held that butter prepared from out of curd does not come within the purview of the definition of the word 'butter' given in A. 11.05 of Appendix B to the Prevention of Food Adulteration Rules, 1955.

4. In appreciating these arguments, it is important to note that the words used in Rule A. 11.05 are 'exclusively from milk or cream' and not 'directly from milk or cream'. The emphasis is, therefore, on the basic material from which butter is prepared and not on the process by which it is made. Dahi is prepared from milk by souring it. Butter prepared from dahi can, therefore, be said to be butter prepared from milk itself, after it has undergone the process of souring. The two well known and widely prevalent methods of preparing, butter are by souring milk and then churning the product so obtained, viz. curd, or by souring cream and churning it. There is, also, third method, which is used in some dairies, and that is to produce butter directly from milk itself. In all these three cases, the basic material from which butter is made is milk. Only the processes adopted for making it are different. In one case it is produced from milk directly. In the other two cases, cream and curd are first prepared and these are then churned to obtain butter. The preparation of cream or curd is only an intermediate process in the manufacture of butter

from milk. Butter made from dahi or curd is therefore also butter made from milk.

5. It is also difficult to understand why the process, by which an article is prepared, should make any difference as to whether it falls or does not fall within the scope of the Act and the rules. In almost all places in this country, outside the bigger towns, butter is prepared not directly from milk, but from dahi or curd. The object of the Act is to prevent the sale of adulterated butter, and it is impossible to believe that either the Legislature or the rule making authority could have intended to exclude butter prepared from dahi,

¹60 Bom LR 434

which, as I have stated, forms the bulk of the butter which is sold in this country, from the purview of the Act and the rules made under it. It is well settled that so far as possible the Court should adopt that interpretation, which will promote and further the object and policy of the legislation and suppress the mischief which the statute was enacted to prevent. In Rule A. 11.03, the substance left, after churning curd and separating butter-milk, is referred to as butter. The provisions of this rule also make it clear that the rule making authority intended that the rule should also apply to butter prepared from dahi or curd.

6. Cream, like curd, is a milk product. Rule A. 11.05 refers to cream but not to curd. It does not contain the words 'or curd' after the words 'or cream'. Mr. Adik has, therefore, contended that the intention clearly was to make provision only for butter prepared From milk or cream and to exclude butter obtained from curd. This argument cannot be accepted for the reasons which I have given above It seems to us that reference was made to cream in this rule by way of abundant caution and not in order to exclude butter prepared from curd. According to the ordinary meaning of the word 'butter', it would include butter prepared from curd. In fact, in common parlance, butter prepared from dahi or curd would be regarded as butter prepared from milk. The language used in rule A. 11.05 is not such as to exclude the ordinary meaning of the word 'butter'.

7. With respect, therefore, we do not agree with the view taken in 60 Bom LR 434. In our opinion, Rule A. 11.05 applies also to butter prepared from dahi or curd. The reply to the question referred to the Full Bench will, therefore, be in the affirmative.

Answer in the affirmative.