

## PUNJAB AND HARYANA HIGH COURT

Mangal Mal

Vs

The State

(Weston, J.)

07.09.1951

### ORDER

**Weston, C.J.**

1. The applicant one Mangal Mal, a Halwai of Nurpur in the Kangra District, was prosecuted before the Additional District Magistrate, Dharamsala, under Section 13(1)(a) of the Punjab Pure Food Act. He was convicted on the 26th of June 1950 and sentenced to pay a fine of Rs. 300/- or in default to undergo two months' rigorous imprisonment. He appealed to the Sessions Court and his appeal was dismissed by the Additional sessions Judge on the 2nd of January 1951.

2. The finding of fact arrived at by both the Courts is that on the 31st of January 1950 the Food Inspector took a sample of oil which the accused was said to have exposed for sale at his shop as Sarson oil. The sample was sent to the Public Analyst who reported that it consisted wholly of linseed oil.

3. Section 13 of the Punjab Pure Food Act, 1929, so far as material is as follows:

"13(1) No person shall:

(a) sell any adulterated food unless he has complied with such rules as may be prescribed in this behalf;"

Section 4 contains a definition of adulteration.

This section reads :

"4. For the purposes of this Act any food shall be deemed to be adulterated :

(i) if it contains or is mixed or diluted with any substance which diminishes in any manner its nutritive or other beneficial properties as compared with such food in a pure and normal state or

which in any other manner operates or may operate to the prejudice or disadvantage of the purchaser or consumer;

(ii) if any substance or ingredient has been extracted or omitted therefrom and by reason of such extraction or omission the nutritive or other beneficial properties of the food as sold are less than those of the article in its pure and normal state, or the purchaser or consumer is or may be in any other manner prejudiced thereby;

(iii) if it contains or is mixed or diluted with any substance of lower commercial value than such food in a pure and normal state;

(iv) if it does not comply with the standard prescribed by any rules made under this Act."

4. In the rules made by the Act Sarson oil appears as an article of food and certain specifications as to saponification value and iodine value are stated. Linseed oil does not appear in the Rules, and I assume, as stated by the learned Additional Sessions Judge, that it is not generally used for food. There is no evidence, however, as to whether the linseed oil offered by the accused did or did not comply with the specifications as to saponification and iodine value stated in the rules. This is not a matter which has been mentioned in the judgment of the Courts below. These judgments have proceeded on the basis that to offer linseed oil as Sarson oil is adulteration of food within one or other of the Clsues (i), (ii) and (iii) of Section 4. I cannot understand how it can be said to fall within any one of these three clauses. There is no question of mixture or dilution, extraction of substance or ingredient. On the facts found it is a clear case of cheating or at least of attempted cheating but the conviction under the Punjab Pure Food Act cannot be supported.

5. It is suggested by learned Advocate for the State that I should alter the conviction to one under Section 420 of the Indian Penal Code. Section 237 of the Code of Criminal Procedure applies to cases mentioned in Section 236. An offence under Section 420 of the Indian Penal Code is not one of those made triable in a summary way by Section 260 of the Code of Criminal Procedure, and quite clearly in the sum mary trial, which in fact was held, a conviction under Section 420 of the Indian Penal Code could not have been recorded. Apart from other arguments which might well have force, on this ground alone it is not open to me to consider alteration of the conviction to one under Section 420 of the Indian Penal Code. I, therefore, accept this revision application and set aside the conviction and sentence. The fine which I understand has been paid will be re funded.