

PUNJAB AND HARYANA HIGH COURT

Rameshwar Dass

Vs

State (P & H)

Criminal Revn. No. 207-D of 1965

(R.S. Narula, J.)

24.07.1965. 15.04.1966

JUDGMENT/ORDER

R. S. Narula, J.

1. Rameshwar Dass - petitioner is admittedly the proprietor of 'Aggarwal Dairy at Kamla Nagar, Subzi Mandi, Delhi. It is also not disputed that under the said name and style the petitioner is carrying on the business of sale of milk and manufacture and sale of cream and butter. On 12th December, 1962, P. W. 1 Shri Hans Raj Sud, Food Inspector, Municipal Corporation, Delhi, along with some Food Inspectors, peons etc., and a supervisor raided the shop of the petitioner and took therefrom two samples of cream - One sample of milk and one sample of the disputed article which was described by the raiding party as desi Ghee. A memo (Exhibit P. B.) was prepared by the Food Inspector in connection with the taking of the specimen of ghee from the shop of the petitioner for getting the same analysed. Memo (Exhibit P. C.) was prepared regarding the taking over of the said sample. This Memo, is on a printed form in English and Hindi and was filled in by the Food Inspector. Under the Hindi version which is not filled in and is blank the Food Inspector got the signatures of the petitioner in Urdu. According to the printed certificate in English filled in by the Food Inspector in form Exhibit P. C. the petitioner had declared that he had stored for sale ghee on 12-12-1962 when the Food Inspector purchased the sample for analysis under the Prevention of Food Adulteration Act (hereinafter called the Act). At the same time the Food Inspector also obtained from the petitioner receipt (Exhibit P. A.) for Rs. 3.15 nP. on account of the alleged cost of 450 grams of ghee taken by the Food Inspector for purposes of analysis. All the four specimen were got analysed from the Public Analyst. The disputed sample was forwarded by the Food Inspector along with Memo (Exhibit P. D) dated 12-12-1962 to the Public Analyst. No adulteration or defect was found with the two specimens of cream and the one specimen of milk. The disputed sample was tested as for desi ghee and was found to be highly adulterated with foreign refined groundnut oil to the extent of 91.7 per cent. The report of the Public Analyst is Exhibit P. E. Upon receipt of the Exhibit P. E., the Food Inspector submitted preliminary report (Exhibit P. F.) dated 28th December 1962 for prosecution. In that report it was stated that the sample of ghee had been found adulterated according to the report of the Public Analyst and that this being an offence under Section 7/16 of the Act, the petitioner may be prosecuted for the said offence.

In the said preliminary report it was specifically stated that ghee weighing 46 kilograms (including can) was seized under Form IV of R. 10. The can from which the specimen of the disputed article was taken was sealed by the Food Inspector and was left with the petitioner at the time of obtaining the sample on 12th December 1962.

2. In exercise of the powers of the Municipal Corporation delegated to him under Section 20 of the Act Shri Ganga Ram, Municipal Prosecutor, filed a complaint dated 18-2-1963 against the petitioner. In the said complaint it was specifically noted that the Food Inspector had at the time of obtaining the sample also seized the can from which the sample of ghee had been obtained, that it weighed, along with its contents, 46 Kilograms and that orders of the Court were also sought about the disposal of the said seized can and its contents. This was said to be the second offence committed by the petitioner under the Act as he was alleged to have already been convicted under Section 7/16 of the Act by the Court of Shri Harish Chander, Sub-Divisional Magistrate, Delhi, on 16th June, 1962 and having been fined a sum of Rs. 125 on a plea of guilty in relation to the sample of milk which was stated to have been found adulterated.

3. The case of the petitioner is that he was not selling any ghee nor was he storing any ghee for sale. According to him, the petitioner had kept groundnut oil for making some soap on the mezzanine floor of his premises and not in the shop. The can from which the disputed specimen was obtained and which can had been admittedly seized by the Food Inspector under Section 10 (4) of the Act was also produced by the petitioner in Court and it was found to carry an inscription of 'Oil'. Further defence of the petitioner is that immediately after the raid the petitioner sent the written complaint (Exhibit D. W. 1/C) dated 12-12-1962 to the Health Officer of the Municipal Corporation which was admittedly received by the office of the Corporation on 15th December, 1962. In that application the petitioner had stated that two specimen of cream, one of milk and one of oil kept for making soap had been obtained by the Food Inspector from the petitioner's shop on that date, viz., 12-12-1962 and that the petitioner had subsequently come to know that the Food Inspector had described the specimen of oil as that of real ghee. The petitioner also emphasized in the said application that he had shown to the Food Inspector that it was written on the can from which the oil was taken that this oil was not meant for being consumed as Food. The petitioner further mentioned in the complaint that the number of phial in which the disputed specimen had been obtained was 624. In that application the petitioner prayed for investigation being made into his complaint as the petitioner was a poor man The original complaint bears the seal of the Municipal Corporation of Delhi and the initials of the receiving official along with date. It is a matter of regret that the Corporation authorities did not appear to have taken any action on the said complaint and did not investigate into the allegations made by the petitioner in this behalf.

4. By judgment dated 24th December. 1964 the Court of Shri D. B. Kapoor, Magistrate 1st Class. Delhi, convicted the petitioner under Section 7/16 (1) (a) (ii) of the Act for selling highly adulterated ghee and in view of this second offence of the petitioner sentenced him to one year's rigorous imprisonment. The can containing the remaining "ghee" which had been taken into possession from the petitioner and was lying in Court was directed to be forfeited to the Government.

5. The petitioner's appeal against his conviction and sentence was dismissed by the Court of Shri Mohinder Singh Joshi, Additional Sessions Judge, Delhi, on 24th July, 1965 on the finding that

the petitioner had stored the ghee for sale. This revision petition is directed against the said judgment.

6. It is firstly contended by Shri Bipon Behari Lal, learned counsel for the petitioner that the article in question was never represented by the petitioner to be the ghee and that the same never even purported to be such and to say that the article in dispute was adulterated ghee. According to the petitioner, the can in question had been brought by the Food Inspector from the mezzanine floor which is in the residential portion of the petitioner's house. The Food Inspector as P. W. 1 denied this allegation. The only alleged independent eyewitness was P. W. 4 Ram Niwas, who admitted in his cross-examination that there is a mezzanine floor in the shop and that he was definite that some cans had been brought down from the said mezzanine floor though he was not definite whether the can in dispute was from amongst those or not. Inder Singh D. W. and Talewar Sharma D. W. 4 had clearly deposed that the disputed can had been brought down by the Food Inspector from the upper floor residential portion of the petitioner's house. In any case it is not disputed that the can which was in Court bears the engraving showing that its contents were oil. The Food Inspector P. W. 1 has stated that when he went to the shop of the petitioner he found the latter selling milk and that on his arrival at the shop the witness declared to the petitioner that he was a Food Inspector and that he would take samples. According to P. W. 1, the petitioner told him that he was also having desi ghee for sale and thereupon sold to the Food Inspector 450 grams ghee worth Rs. 3-15. P. W. 1 is not supported in this version by the alleged independent witness Ram Niwas P. W. 4. Ram Niwas P. W. 4 states that he was called by the Food Inspector from the shop of Bhatia to witness the taking of samples and that the Food Inspector had told him that he was taking samples of cream and ghee and that he had told him that it was desi ghee. None of the witnesses has stated that the petitioner was either selling or displaying for sale the contents of the disputed can. In fact on a careful consideration of the entire evidence it appears to me that the can in question had been brought from the mezzanine floor and was not part of the articles displayed for sale in the shop.

7. According to the definition of 'Food' contained in Section 2 (v) (a) of the Act. it includes any article which ordinarily enters into, or is used in the composition or preparation of human food. It is common knowledge that even groundnut oil can be used for such purposes. I am, therefore, of the opinion that the seized article is food within the meaning of the Act. Food is said to be adulterated, according to Section 2 (i) (a) of the Act, if the article sold by a vendor is not of the nature, substance or quality of which it purports or is represented to be. There is no reliable evidence of the petitioner having represented the disputed article to be ghee. The inscription on the can also shows that it did not purport to be ghee. In any case the sample was taken under Section 10 of the Act and the article was not otherwise sold. But the article is definitely adulterated within the meaning of Section 2 (i) (c) of the Act as the small quantity of ghee of about 8 percent has been added to the groundnut oil which is a substance which injuriously affects the quality of ghee. I have, therefore, no hesitation in upholding the finding of the Courts below to the effect that as desi ghee the disputed article was adulterated. But the question still remains whether the article in question was stored by the petitioner as desi ghee or not and whether it was stored for sale or not.

8. Section 7 of the Act prohibits every person from manufacturing for sale, storing, selling or distributing any adulterated food. The opening part of the section 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)... "

There is no doubt that the petitioner was storing the disputed article which I have held to be adulterated food. Mr. P. C. Khanna, learned counsel for the State has argued that this is enough to hold the petitioner guilty of violation of the prohibition contained in Section 7 (i) of the Act and therefore the conviction of the petitioner under Section 16 of the Act should be maintained. Mr. Bipon Behari Lal, on the other hand, has argued that mere storage of adulterated food is not an offence unless the storage is also for sale. At first sight the argument of Mr. Khanna appears to be attractive. Upon a mere literal construction of the opening part of the section it appears that whereas manufacture of adulterated food is prohibited only if the manufacture is for sale and whereas the sale itself or distribution of adulterated food etc. is also prohibited by the section, the storage which is prohibited is not only 'storage for sale' but storage for any purpose whatsoever. On a more careful approach to the question, however, it appears that the construction sought to be placed on the section by Mr. Khanna would lead to oddities and absurdities. According to the said construction storage of adulterated food in the kitchen of a house-hold would be violative of the provisions contained in Section 7 of the Act and would be punishable under Section 16 thereof. This could never have been the intention of the legislature. It is settled rule of interpretation of statutes that even words may be added and the construction of a sentence may be changed in order to obtain a harmonious construction of a statutory provision and in order to avoid absurdities and oddities obviously not intended by the legislature. Applying those principles, I hold that the 'storage' in the opening part of Section 7 of the Act means storing for sale and not for any other purpose. In the view I have taken of this matter I am supported by the judgment of a Division Bench of the Allahabad High Court in *Narain Das v. State*², It was held in that case that the word 'store' in Section 7 of the Act means storing for sale and storing of adulterated food for purposes other than sale (e.g. merely as security) does not constitute an offence under Section 16 (1) (a) of the Act. I am also fortified in the construction which I have placed on the word 'store' contained in Sections 7 and 16 of the Act by a Division Bench judgment of the Kerala High Court in *Food Inspector, Kozhikode v. Punsai Desai*², In that case it was held that the words 'for sale' in Section 7 should be read into the words 'store' and 'distribute' appearing in that section. On that basis the Kerala High Court held that it is only storage for sale which is prohibited under Section 16 of the Act and not storage simpliciter. Adulteration implies an element of deceit. It does not intend to prohibit a householder from adulterating any food for consumption or even for distribution otherwise than by way of sale. Any other construction of the word 'store' in Section 7 would mean that misbranded container of food contained in a private house would render the owner or occupier of the house liable to the punitive actions prescribed by the Act. A reference to Clauses (iii) and (iv) of Section 7 also indicates that the opening words of the section are intended to apply to articles manufactured or stored for sale or actually sold or distributed by way of sale.

9. Section 16 of the Act which prescribes the penalties also uses the same phraseology. The petitioner has been punished under Section 16 (1) (a) of the Act. The said provision reads as follows:

"16. Penalties,

(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, or

xx xx xx xx xx

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

(i) for the first offence, with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both;

(ii) for a second offence with imprisonment for a term which may extend to two years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the Judgment of the Court, such imprisonment shall not be less than one year and such fine shall not be less than two thousand rupees;

xx xx xx xx xx."

For the reasons already given by me in connection with the interpretation of the word 'store' as contained in Section 7 of the Act, I hold that the word 'store' in Section 16 (1) (a) of the Act - also has reference to storage for sale only and not to storage simpliciter. A reference to Clause (g) of Section 16 (1) of the Act shows that penalty has to be imposed on any person who gives to the purchaser a false warranty in writing in respect of any article of food sold by him. Section 19 (2) of the Act exonerates a vendor of having committed an offence if he proves that the article of food was purchased by him as the same in nature, substance and quality as that demanded by the purchaser and with a written warranty in the prescribed form, if any, to the effect that it was of such nature, substance and quality. The second clause of sub-section (2) of Section 19 provides that a vendor would not be deemed to have committed an offence if he proves that he had no reason to believe at the time when he sold the article that the food was not of such nature, substance and quality, or if he proves that he sold it in the same State in which he purchased it. Of course the said defenses are subject to certain provisions contained in Section 19 of the Act. The heading of Section 19 is 'defense' which may or may not be allowed in prosecutions under the Act. Sub-section (1) of that section provides that certain defenses would not be available in a prosecution for an offence pertaining to the sale of any adulterated or misbranded article of food.

The whole scheme of the Act appears to safeguard against the manufacturers and sellers deceiving the public by passing off adulterated food or misbranded article of food to unwary and innocent purchasers. The prohibition against storage of adulterated or mis-branded or objectionable food is a mere projection of achieving the same object and does not appear to be intended to attain any different objective. On the facts and in the circumstances of this case and in view of the evidence on record, I hold that the learned Additional Sessions Judge was in error in upholding the conviction of the petitioner for storage of the adulterated ghee without there being any clear and definite evidence to prove that the petitioner was storing the alleged article for sale. The finding of the learned Additional Sessions Judge about the 'ghee' having been kept 'for sale' is not supported by any independent and reliable evidence. This being so, and in the view I have taken of the interpretation of Sections 7 and 16 of the Act the conviction of the petitioner for storing the article cannot be maintained.

10. Mr. Bipun Behari Lal has next contended that the entire proceedings against the petitioner based on the taking of sample under Section 10 (2) of the Act without complying with the mandatory requirements of sub-section (7) of that section are vitiated on that account and the conviction of the petitioner is liable to be set aside on that additional ground. Section 10 of the Act reads as follows:

"10. Powers of food inspectors.

(1) A food inspector shall have power-

(a) to take samples of any article of food from-

(i) any person selling such article;

(ii) any person who is in the course of conveying, delivering or preparing to deliver such article to a purchaser or consignee;

(iii) a consignee after delivery of any such article to him; and

(b) to send such sample for analysis to the public analyst for the local area within which such sample has been taken;

(c) with the previous approval of the health officer having jurisdiction in the local area concerned, or with the previous approval of the Food (Health) Authority, to prohibit the sale of any article of food with a view to preventing the outbreak or spread of any infectious disease.

(2) 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.

(3) Where any sample is taken under Clause (a) of sub-section (1) or sub-section (2) its cost calculated at the rate at which the article is usually sold to the public shall be paid to

the person from whom it is taken.

(4) If any article intended for food appears to any food inspector to be adulterated or misbranded, he may seize and carry away or keep in the safe custody of the vendor such article in order that it may be dealt with as hereinafter provided.

(5) The power conferred by this section includes power to break open any package in which any article of food may be contained or to break open the door of any premises where any article of food may be kept for sale;

Provided that the power to break open the door shall be exercised only after the owner or any other person in occupation of the premises, if he is present therein, refuses to open the door on being called upon to do so:

Provided further that the food inspector shall, in exercising the powers of entry upon and inspection of any place under this section, follow, as far as may be, the provisions of the Code of Criminal Procedure, 1898, relating to the search or inspection of a place by a police officer executing a search warrant issued under that Code.

(6) Any material found in the possession of a manufacturer of any article of food or in any of the premises occupied by him as such and being apparently of a kind which may be employed for purposes of adulteration and for the possession of which he is unable to account to the satisfaction of the food inspector, may be seized by the food inspector and if necessary a sample of such material submitted for analysis to a public analyst.

(7) Where the food inspector takes any action under Clause (a) of sub-section (1), sub-section (2), sub-section (4) or sub-section (6), he shall, as far as possible, call not less than two persons to be present at the time when such action is taken and take their signatures.

(8) Any food inspector may exercise the powers of a police officer under Section 37 of the Code of Criminal Procedure, 1898 for the purpose of ascertaining the true name and residence of the person from whom a sample is taken or an article of food is seized.

(9) Any food inspector exercising powers under this Act or under the rules made thereunder who-

(a) vexatiously and without any reasonable grounds of suspicion seizes any article of food: or

(b) commits any other act to the injury of any person without having reason to believe that such act is necessary for the execution of his duty, shall be guilty of an offence under this Act and shall be punishable for such offence with fine which may extend to five hundred rupees. "

It is admitted by the prosecution and is not disputed by the learned State counsel that the sample in question was obtained by the Food Inspector under Section 10 (2) of the Act and not under

Section 10 (1) of the Act. In either case it was necessary for the Food Inspector to call not less than two persons to be present at the time when action under Section 10 (2) of the Act was taken i.e., before the disputed sample was obtained and to take signatures of those two persons on the Memo, prepared at the spot unless it was impossible for the Food Inspector to secure the presence of at least two such persons. It has been held by a Division Bench of this Court Shamsher Bahadur and Gurdev Singh, JJ. in *State v. Sadhu Singh*³. that when Section 10 (7) of the Act enjoins that the sample be taken in the presence of two persons, it clearly contemplates that the evidence relating to the taking of sample must be above board, and the witnesses in whose presence the sample taken should be independent and disinterested so as to inspire confidence. Their Lordships also held in that case that the two persons mentioned in Section 10 (7) of the Act must not be under the influence of the Food Inspector. Gurdev Singh, J. held in that case (with which observations Shamsher Bahadur, J. agreed) that the use of the word 'shall' in sub-section (7) of Section 10 of the Act leaves no doubt that the provisions of the sub-section are mandatory, and not merely directory and that it is the duty of the Food Inspector to comply with the same unless it is impossible to secure the attendance of two persons at the time he takes a sample or does any of the acts mentioned in that sub-section. It has been clearly laid down by the Division Bench in Sadhu Singh's case, AIR 1962 Punjab 548 that law does not vest discretion in the Food Inspector to associate or not to associate at least two persons at the time of taking the sample, but it must be due to circumstances beyond his control that his failure to call two persons to witness the taking of sample would be excused. In the instant case the provisions of sub-section (7) of Section 10 have obviously not been complied with. Only one person viz., Ram Niwas P. W. 4 instead of the prescribed number of persons required by the statute was called to witness the taking of the sample. The memo, prepared at the spot does not indicate that no second person was available. On the contrary the evidence of the Food Inspector and the other prosecution witnesses shows that other independent witnesses were available but were not called. It has been admitted by almost all the witnesses that the shop is surrounded by other inhabited houses and that no effort was made by the Food Inspector to call anyone from those houses. Even Ram Niwas P. W. 4 is not a kind of witness who would fall within the qualifications ascribed to a proper witness by the Division Bench of this Court in Sadhu Singh's case, AIR 1962 Punjab 548. Admittedly Ram Niwas is also a Dairy keeper from whom sample had been obtained by the Food Inspector. He was prima facie under the influence of the Food Inspector and was not a proper witness to be associated for the purposes of satisfying the requirements of Section 10 (7) of the Act. The criticism of Mr. Bipon Behari Lal, Advocate against Ram Niwas being a stock witness of the Municipality for prevention of food adulteration cases may or may not be correct. Of course the witness cannot be congratulated on the evasive attitude he took in reply to questions put to him about the previous occasions on which he had given evidence for the prosecution in such cases. Be that as it may, the mere fact that at the time the witness was himself at the mercy of the Food Inspectorate, disqualified him from acting as a proper witness under Section 10 (7) of the Act particularly when no second witness had been called in. I am not only bound by the judgment of the Division Bench in Sadhu Singh's case. AIR 1962 Punjab 548 but I am also in respectful agreement with the ratio of that judgment. Following the same I hold

that the prosecution of the petitioner is vitiated in this case on the additional ground that the disputed sample was obtained without complying with the mandatory requirements of Section 10 (7) of the Act.

11. Even otherwise on the evidence produced in this case it is not proved beyond doubt that the petitioner was storing the disputed article 'for sale' at the relevant time. That being so, he is entitled to acquittal.

12. In fairness to Mr. Bipon Behari Lal, learned counsel for the petitioner, I must notice two other arguments advanced by him. He urged that the complaint is bad as Exhibit P. H., copy of the resolution, authorising Shri Ganga Ram, Asstt. Municipal Prosecutor, to file a complaint under the Act has not been properly proved. He states that if the resolution P. H. is found to be proved, the requirements of Section 20 are clearly satisfied. No objection to the mode of proof of the copy of the resolution was raised at the time when the resolution was sought to be proved by mere production of the attested copy. That being so, I do not consider it proper to allow this objection being raised for the first time at this stage.

13. The last argument of Mr. Bipon Behari Lal relates to the question of sentence imposed on the petitioner on the basis that he had committed an offence under the Act for a second time. In the view I have taken of this case on its merits, it is useless to go into this argument of Mr. B. B. Lal merely for academic purposes.

14. In the circumstances, I allow this petition and set aside the judgments of the Courts below and the conviction and sentence imposed on the petitioner and acquit him of the charge under Section 7/16 of the Act. He is already stated to be on bail and need not surrender to the same.

Petition allowed.

Cases Referred.

1AIR 1962 All 82
2AIR 1959 Ker 190
3AIR 1962 Pun 548