

(1962) 11 CAL CK 0010
In the Calcutta High Court
Case No : Criminal Appeal No. 557 of 1960

Aswini Kumar Khan and Another	Vs	APPELLANT
The Corporation of Calcutta		RESPONDENT

Date of Decision : 21-11-1962

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 2

Citation : AIR 1963 Cal 460

Hon'ble Judges : Debabrata Mookerjee, J; D.N. Das Gupta, J

Bench : Division Bench

Advocate : A.K. Dutta and Prasun Chandra Ghose, Chitta Ranjan Das, for the Appellant; N.C. Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

Debabrata Mookerjee, J.—This appeal is from convictions u/s 16(1)(a)(i)/7(i) of the Prevention of Food Adulteration Act made by a Municipal Magistrate, Calcutta. Appellant Aswani Kumar Khan has been sentenced to pay a fine of Rs. 2,000/-, in default to suffer simple imprisonment for three months; the other appellant Satish Chandra Pat has been sentenced to two months' rigorous imprisonment and to pay a fine of Rs. 200/-, and in default of payment of the fine he has been sentenced to a further term of rigorous imprisonment for one month.

2. The two appellants Aswani and Satish are owner and seller respectively of an Oil Stores at 49, Strand Road, Calcutta. Aswini carries on business on wholesale basis in mustard oil and other kinds of edible oil including groundnut oil. Appellant Satish is employed as the seller in the business.

3. On the 5th of August, 1959, a Food Inspector of the Municipality visited the shop and took two samples one each of mustard oil and groundnut oil. Appellant Satish was present in the shop. The samples were taken in accordance with the prescribed procedure and the barrels from which the two oils were taken were

seized. In due course the samples were sent for chemical test by the Public Analyst. Upon a report being received that the sample of mustard oil was found good, the barrel from which that sample had been taken was released. The Analyst's report having disclosed that the other sample of groundnut oil was adulterated, the present prosecution was commenced.

4. Four witnesses were examined on behalf of the prosecution to establish the charge against the appellants. The defence denied that the sample of ground-nut oil was adulterated and contended that the sample had not been taken in accordance with the prescribed procedure. It was also the defence case that the groundnut oil in the shop was not meant for human consumption but was intended for sale for industrial purposes. In aid of the case made that groundnut oil used to be sold by the firm for non-edible purposes, a witness was called and some evidence was adduced.

5. Upon a consideration of the evidence the Magistrate concluded that the groundnut oil was adulterated and in that view convicted and sentenced the appellants as stated above. He further directed the seized barrel of groundnut oil to be destroyed. The defence case that the oil in question was not meant for human consumption was accordingly negatived.

6. The only question agitated in this appeal is whether on the evidence and the findings reached the convictions can be maintained. In order to be able, to appreciate the contention it is necessary to review very briefly the evidence of the assistant analyst who deposed in the case. He stated that the sample had been analysed under the direction and supervision of the Public Analyst and his findings had been incorporated in the report Ext. 4. That report contained the opinion that the sample of groundnut oil contained linseed oil and, therefore, the oil had not been solely expressed from, groundnut and as such the oil was adulterated. He added that the standard of quality, prescribed in the rules for groundnut oil, had been satisfied but he had recourse to another test called Hexabromide Test which was a specific test for detecting linseed oil, and this test disclosed that the sample contained linseed oil and was, therefore, adulterated. According to the appellants the Public Analyst was not entitled to travel beyond the limits for determining the standard of quality of particular oils prescribed in the statutory rules. It has been argued that once that standard of quality was satisfied it was not permissible for the analyst to devise a new test for himself and pronounce the oil bad by relying upon such unauthorised test. This contention requires examination.

7. Before we turn to the rules it will be useful to notice the definition of the word "adulterated" in Section 2 of the Act. It would be unnecessary for the present purpose to take into account all the clauses of the definition. It would suffice if we took into account Clauses (a) and (1) of Section 2(i) of the Act.

"2(i) An article of food shall be deemed to be adulterated: "

(a) if the article sold by a vendor is not of the nature, substance or quality

demanding 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;

(1) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities which are in excess of the prescribed limits of variability."

8. Thus an article of food would be adulterated within the meaning of (a) if it is not of the nature, substance or quality which it purports or is represented to be. An article of food would also be adulterated if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities which are in excess of the prescribed limits of variability.

9. The appellants' contention is that in this instance the rules having prescribed the standard of quality of groundnut oil and the evidence of the assistant analyst having been that the sample conformed to that standard, no further examination or investigation as to the quality or purity of the article was permissible and the Public Analyst was bound to report that the sample was good.

10. By virtue of the provisions contained in Sub-section (2) of Section 4 and Sub-section (1) of Section 23 of the Act, the Central Government have promulgated certain rules which have statutory effect. Those rules are in several parts. Part III deals with definitions and standard of quality. Rule 5 appearing in this part says "Standard of quality of the various articles of food specified in Appendix B to these rules are as defined in that appendix." Appendix B sets out the definitions and standards of quality of various kinds of food amongst which are included groundnut oil and linseed oil. The standards for these two kinds of oil read as follows:

"A. 1703. Ground-nut oil (moongh-phali-ka-tel) means the oil expressed from clean and sound ground-nuts (*Arachis hypogaeae*). It shall be clear, free from rancidity, suspended or other foreign matter, separated water, added colouring or flavouring substances, or mineral oil. It shall conform to the following standards :

(a) Butyro-refractometer reading at 40°C -- 54.0 to 57.1

(b) Saponification value -- 188 to 198

(c) Iodine value -- 85 to 99

(d) Unsaponifiable matter -- Not more than 1.0 per cent.

(e) Free fatty acid as Oleic acid -- Not more than 3.0 per cent.

(f) Beilier test (turbidity temperature 39°C to 41°C --

A. 1704. Linseed Oil (*Alsi-ka tel*) means the oil obtained by process of expressing clean and sound linseed (*Linum usitatissimum*). It shall be clear, free from rancidity, suspended or other foreign matter separated water added, colouring or flavouring substances, or mineral oil. It shall conform to the following standards:

- (a) Butyro-refractometer reading at 40oC -- 69.5 to 74.3.
- (b) Saponification value -- 188 to 195.
- (c) Iodine value -- Not less than 170
- (d) Unsaponifiable matter -- Not more than 1.5 per cent.
- (e) Free fatty acid as Oleic acid -- Not more than 2.0 per cent.

11. It would thus appear that ground-nut oil in order to be pronounced good has to conform to the standard prescribed; but the rule set out above would clearly show that its first part relates clearly to the question of purity of the oil. The quality of the oil is thereafter to be determined with reference to the standard prescribed. Similarly in the case of linseed oil, the first part of the rule is devoted to the question of purity and the second part to the question of quality.

12. The appellants' contention is that once it is found that the standard of quality prescribed by the rule in respect of a given oil is satisfied, there is an end of the matter and the Public Analyst is not permitted to make any further investigation which is not authorised by the rules. In this instance when the assistant analyst found that the sample in question came within the limits prescribed for the standard of quality in respect of groundnut oil, he should have straightway reported that the oil was good and not carried on further investigation for the purpose of pronouncing on the question whether the oil was adulterated or not. We are unable to agree with this contention.

13. The appellants* argument seems to equate quality with purity. As far as we can see quality and purity are not synonymous although from the popular point of view they seem to be one and the same. Indeed the Act itself has made and maintained the difference between quality and purity. It contains reference also to the nature and substance of an article of food. The definition of the word "adulterated" clearly indicates that the Legislature intended to emphasize that quality and purity are distinct things. That appears to us to be the correct view and we are not prepared to say that the use of the word "purity" in Section 2(i) (1) is a matter of pure surplusage. Similarly in Clause (a) we find the words nature, substance or quality. Thus it seems reasonable to hold that the nature of an article of food, its substance or its quality are different things and they do not mean and imply the same things. It may well be that a particular article of food conforms to the standard of quality prescribed in the rule; at the same time it may be deficient in nature or substance, that is to say, it may not be pure. A reference to the table of standards of quality set out above would at once show that in the case of groundnut oil as well as linseed oil there are certain important prefatory observations; in the case of groundnut oil the analyst is directed to see whether the oil is expressed from clean and sound ground nuts. He is required to see if it is clear and free from rancidity and to find out whether there is any foreign substance, colouring matter or other things in it. These instructions appear to us to cast an imperative duty upon the Public Analyst to determine

whether the thing under examination is pure. The directives are clearly referable to the analyst's statutory duty to determine the nature, substance or purity of the thing under analysis. It would, in our view, involve a misreading of the rule if we were to completely omit from consideration the instructions relative to determination of the nature, substance or purity of the article in question. This clearly shows that ground-nut oil must be obtained only from clean and sound ground-nuts; besides the oil must be clear and free from foreign matter. On the evidence the sample was found to contain admixture of linseed oil. Surely that attracts the mischief of the definition of adulterated food and under Sec. 7 of the Act no one can sell, store or distribute any kind of adulterated food. We do not think the Public Analyst would be doing his duty completely in accordance with the rules if he were merely, in the case of groundnut oil, to confine his attention to the B. R. reading test, the Saponification value test, the Iodine value test and the other tests specified in the table. Obviously the six specific tests there prescribed have reference to the quality of the thing under examination. Whether a particular article of food is to be considered pure as distinct from the fact whether it conforms to the standard of quality, the analyst has to pay attention to the opening instructions in the rule. In the present case the assistant analyst deposed that he adopted Hexabromide test for the purpose of detecting the presence of linseed oil in the sample. According to him such test was specific for detection of linseed oil. There is nothing in the cross-examination of this witness which will indicate that the assistant analyst had misdirected himself in applying that test. The only criticism in the court below as well as before us was that he was not entitled to adopt any test beyond those prescribed in the rules for determining the standard of quality of the oil in question. We are clearly of the opinion that this contention is untenable.

14. A reference to the definition of the word "adulterated" contained in Section 2(i)(a) would show that the Legislature did not content itself by merely devising certain standards of quality. It took care to provide that an article of food must not only conform to the standard prescribed by the rules but must also be pure. We do not consider purity of food as being synonymous with its quality. It is quite conceivable that an article of food may conform to the prescribed standard and yet may be adulterated within the meaning of the Act. If an article of food is not of the nature, substance or quality which it purports or is represented to be, it attracts the mischief of the definition. There is no question in this case that the sample was seized from a barrel containing groundnut oil. It is not the appellants' case that there was no groundnut oil to be seized; their case was that that groundnut oil stored at the place was not meant for human consumption. Some evidence was produced on the appellants' behalf to prove this part of the case but that was disbelieved by the Magistrate and we have no reason to differ from his estimate. Indeed, it has not been argued before us that in view of that evidence, the Magistrate should have held that the groundnut oil found at the place was not intended for human consumption. A faint attempt was made before us to show that the sample was not offered for sale as a sample of

groundnut oil. But that position appears to us clearly untenable in view of the evidence on the record and the cases of the respective parties. According to the prosecution there was groundnut oil for the purpose of human consumption whereas according to the defence such oil was meant to be put to other uses. We hold that the oil from which the sample was taken was groundnut oil; at any rate, it purported to be groundnut oil and that being so it was not of the nature, substance or quality which it purported to be.

15. On the evidence given by the assistant analyst and believed by the Magistrate it seems clear that the sample was not derived exclusively from ground-nuts although it purported to have been so derived. This would clearly bring the case within the mischief of the definition of adulterated food contained in Section 2 of the Act.

16. A reference to the rules in the "B" schedule relating to groundnut oil and linseed oil would at once show that the figures prescribed for, determining the standards of quality allow of a range of variation. For example, if a sample of groundnut oil is found not to exceed 57.1 on B. R. Reading at 40°C or the (SIC) ficatio value ranges between 188 to 196, the sample would be quite good on these items so far as the standard of quality is concerned. Similarly in the case of Iodine value or of free fatty acid the allowable limit varies within a certain range. These allowances would clearly indicate that a sample oil may satisfy the standard of quality if it is within the permissible limits of variation; but before it can be finally pronounced good, it is to be found whether it is pure. We are not prepared to accept the contention that if a few drops of "linseed oil were poured into a barrel of groundnut oil, a sample taken from such barrel would at once exhibit upon analysis a chemical picture which would establish straightway that the sample was not groundnut oil. Indeed this part of the argument was not based upon any material on the record and we are not prepared to speculate on an aspect of the case which never occupied the attention either of the parties or of the court below.

17. The simple question which awaits our consideration is whether the assistant analyst was within his rights in investigating the question of purity of the sample after he was satisfied that it fulfilled the standard of quality prescribed in the rules. The analyst stated in this context that "the range prescribed is so very wide that adulteration is possible" and he accordingly undertook further investigation as to the nature or purity of the oil under examination. We are clearly of the opinion that a Public Analyst is quite entitled to determine the question of purity even if a sample satisfies the prescribed standard of quality. The view we take is based on the provisions contained in Section 2(i)(a) and (1) of the Act and we hold that the question of purity is not synonymous with that of quality of an article of food.

18. We accordingly hold that it was quite open to the Public Analyst to employ a test which was not forbidden either by the Act or in the rules, for the purpose of determining the question of purity or the nature of the oil under examination.

Indeed, in our opinion, the question of purity has to be determined and the Public Analyst is required to pronounce upon it, since quality and purity are not synonymous terms.

19. It appears however that there is no evidence in the case as to the extent of adulteration. It would have been better if there was some reliable evidence available on the point. Accordingly it has been urged on behalf of the appellants that the sentences passed in the case are severe. We think there is substance in this contention. We do not consider it necessary to send the appellant Satish Chandra Pal to prison. We accordingly set aside the sentence of imprisonment passed upon him but maintain the sentence of fine; in default of payment of the fine he will undergo simple imprisonment for one month. The sentence on the other appellant Aswini Kumar Khan also calls for reduction. We think that the ends of justice will be met if we reduce the sentence passed upon him to a fine of Rs. 1,000/- only; in default of payment of this reduced fine he will undergo simple imprisonment for three months.

20. The seized oil will be destroyed.

21. Subject to modifications as to sentences, the appeal is dismissed.

D.N. Das Gupta, J.

22. I agree.