

(1967) 06 CAL CK 0019
In the Calcutta High Court

Corporation of Calcutta

APPELLANT

Vs

Sankar Trading Co. and Another

RESPONDENT

Date of Decision : 20-06-1967

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16, 2, 7

Citation : (1968) CriLJ 1532

Hon'ble Judges : T.P. Mukherjee, J

Bench : Single Bench

Judgement

T.P. Mukherjee, J.—The Corporation of Calcutta filed this appeal with the leave of the Court u/s 417(3) of the Criminal P.C., against the acquittal of the respondents u/s 16(1)(a)(i), read with Section 7(1) of the Prevention of Food Adulteration Act, 1954, by a municipal magistrate of Calcutta, The subject matter of the prosecution was Ajowan or Psychotic which, according to the prosecution, was adulterated in the sense that it contained dirt and sandy matter which affect injuriously the nature, substance and quality of Ajowan.

2. The defence was that the article concerned was kept in the shop as a drug and not as an article of food.

3. Respondent No. 1 is a shop dealing in rise, spices and other food stuffs and respondent No. 2 is the proprietor who was present in the shop at the time it was visited by the food inspector find who sold the sample of Ajowen that was demanded by the food inspector.

4. The learned municipal magistrate found that the article in question was stored in the shop "for sale not as drug but as spice for food admixture in curries and in pan supari." He found, however, that prosecution had not succeeded in proving that the sample hid such extraneous matter in it in such quantity or had such extraneous harmful matter which affected injuriously the nature, substance and quality of the article. "On this finding, he acquitted the accused in the case.

5. Mr. Basu appearing in support of the appeal argued that, it having been found

by the learned magistrate that the article in question was stored as an article of food and not as a drug, thereby rejecting the defence case, he should have found on the report of the public analyst, ext. 5, which was not challenged in the cross-examination of the public analyst, P.W. 3, that the sample was adulterated.

6. Mr. Banerjee appearing for the respondents referred to the definition of the term "adulterated" in Section 2 of the Prevention of Food Adulteration Act, to Rule 5 of the Rules framed under the Act and to Appendix B and argued that, no standard of quality having been prescribed in the Appendix for Ajowan, the allegation that the sample was adulterated could certainly not be proved by the evidence of the food inspector, P.W. 1, and the public analyst, P.W. 3. In this connection, he drew my attention to the evidence of the food inspector in cross-examination that Ajowan may be mixed up with sand and mud when collected and also to the evidence of P.W. 3, the public analyst, to the effect that he has doubts if dirt and sandy matter could be removed from Ajowan.

7. Section 2 of the Prevention of Food Adulteration Act, 1954 defines the circumstances under which an article of food shall be deemed to be adulterated. The circumstances are 12 in number and it is the last item in Section 2(i) which refers to the standard of quality or purity that may be prescribed and says that an article of food which falls below the prescribed standard should be deemed to be adulterated. Rule 5 of the Rules framed under the Act says that standards of quality of the various articles of food specified in Appendix B to the Rules are as defined in that appendix. Appendix B lays down the standard of quality and purity of certain articles of food. The position, therefore, is that articles of food which fall below the prescribed standard as in Appendix B are to be deemed to be adulterated; but articles of food are also to be deemed to be adulterated if they are attended with any of the circumstances mentioned in Clauses (a) to (k) of Section 2(i) of the Act.

8. Clause (a) of Section 2(i) is as follows:

(a) 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.

If it be so, the article of food shall be deemed to be adulterated. According to the report of the public analyst in this case, the sample in question was mixed with dirt and sandy matters which were found to constitute 3.61 per cent of the total ash amounting to 11.08 per cent. It is evident, therefore, that the Ajowan in question was mixed up with dirt and sandy matters. What was demanded was obviously Ajowan and what was sold was Ajowan mixed with dirt and sandy matter. What was supplied was to the prejudice of the purchaser and was also not of the nature, substance and quality which it purported or was represented to be.

9. Mr Banerjee has referred to the evidence of P.Ws. 1 and 3. On that evidence, he argued that it is the nature of Ajowan to be mixed up with dirt and sandy

matters and that in such a manner be to be inseparable from it. The evidence of P.W. 1, however, is that Ajowan grows in the ground. It may be mixed up with Band and mud when collected. It looked black and hence it was suspected." The evidence of P.W. 3 is to the following effect:

He has doubts if dirt and sandy matter could be removed from ajowan. He made no effort to remove such impurities.

What P.W. 1 stated was that Ajowan may get mixed up with sand and mud when collected. If so, it may also be mixed up deliberately. The evidence of P.W. 1 is not that dirt and sand are constituents of Ajowan as it cannot be. Either they get mixed up when collected on the ground or they are deliberately mixed with Ajowan subsequently. Even if they get mixed up with Ajowan when collected on the ground, a vendor has no right to sell Ajowan mixed with dirt and sand when a purchaser asks for Ajowan. That would be selling something not of the nature, substance or quality of the article that is demanded by the purchaser. The argument that the food inspector never demanded Ajowan free from dirt and sand is of no avail. Asking for Ajowan is not the same thing as asking for Ajowan mixed with dirt and sand. So far as the evidence of P.W. 3, the public analyst, is concerned, he said that he had doubts if dirt and sandy matters could be removed from Ajowan. I do not understand any basis for such a doubt. In any event, this witness having made no effort to remove the impurities, that evidence of his is of no value whatsoever.

10. The fact that no standard of quality or purity is prescribed for Ajowan in Appendix B of the Rules framed under the Prevention of Food Adulteration Act is immaterial. Appendix 6 does not include the standard of purity and quality of all possible articles of food and articles of food may be adulterated even though their standard of quality or purity is not prescribed. In the present case, the public analyst no doubt gave his opinion that the sample was adulterated on grounds which would bring it within the mischief of Clause (b) of Section 2(i) of the Act. In that portion of the opinion, the public analyst might not have been correct, because there is no evidence that the nature of the adulteration affected injuriously the nature, substance and quality of Ajowan. But the data furnished by P.W. 3 would clearly bring the sample within the mischief of Clause (a) of Section 2(i) of the Act and I find that there is nothing to the evidence P.W. 1 or of P.W. 3 which might disprove the prosecution allegation that the article of food in question in this case was adulterated. Neither of the two grounds given by the learned Magistrate in finding against the prosecution is acceptable. The first ground is that "the siliceous matter i.e. the sandy matter was only 3.61% as per report : Ex. 5," but that report does not give the total amount of dirt and sandy matter combined. The 3.61% matter that was found to be ash insoluble in HOI comprised: the remnants of both dirty and sandy matters. If it does not, if it comprises only sand, then the percentage would be higher. I do not think, however, that the extent of the percentage has anything to do with the finding on the question of adulteration. The other ground of the learned Magistrate is that

there is no evidence that any poisonous matter or any matter which adversely affects the human system, directly or indirectly, due to the taking of the sample was present in the sample. That is not necessary under Clause (a) of Section 2(i) of the Act. I find no materials on record to justify a finding that the sample in this case was not adulterated.

11. Of the two accused in the case, one is the shop and the other is the owner thereof. Nothing in the Prevention of Food Adulteration Act permits of the prosecution of a proprietorial firm as also of the proprietor.

12. The appeal, accordingly, is allowed in part. The acquittal of respondent No. 2 by the learned Municipal Magistrate in the case is set aside. He is found guilty u/s 16(1)(a)(i)/7(i) of the Prevention of Food Adulteration Act. He is convicted thereunder and is sentenced to pay a fine of Rs. 100/-, in default to suffer simple imprisonment for one month. The acquittal of respondent No. 1 will stand good.