

**(1971) 11 OHC CK 0021**  
**In the Orissa High Court**  
**Case No : Criminal Revision No. 49 of 1970**

Damodar Prasad Sharma

APPELLANT

Vs

State of Orissa

RESPONDENT

**Date of Decision :** 01-11-1971

**Acts Referred:**

Evidence Act, 1872 — Section 144

Prevention of Food Adulteration Act, 1954 — Section 10, 10(1), 16, 16(1), 7

**Citation :** (1971) 37 CLT 1210

**Hon'ble Judges :** S. Acharya, J

**Bench :** Single Bench

**Advocate :** R. Mohanty, for the Appellant; Standing Counsel, for the Respondent

## Judgement

S. Acharya, J.—The Petitioner stands convicted u/s 16(1)(a) of the Prevention of Food Adulteration Act (hereinafter referred to as the Act) for selling adulterated Jira, and has been sentenced there under to undergo R.I. for one month and to pay a fine of Rs. 500/- in default to undergo R.I. for one month.

2. The prosecution case, in short, is that adulterated Jira was stored for sale in the shop of the Petitioner. P.W. 1, the Food Inspector of the Bhadrak Notified Area Council, purchased, in accordance with the provisions of this Act, 300 grams of the said Jira on payment of Rs. 1.40 paise from the Petitioner on 15-10-1966 as per Cash memo (Ext. 2). The said Jira, as per the report (Ex. 3) of the Public Analyst, was found to be adulterated, not being in conformity with the required specifications.

3. The Petitioner in his defence denied the charge and asserted that he had not kept any adulterated Jira in his shop for sale, and that the Food Inspector, instead of taking a sample of Jira kept in his shop for sale, forcibly and by holding out threats of arrest, took on payment of Rs. 1.40 paise a sample of Jira from a bag kept in the inner apartment of his shop house.

The Jira in the said bag was not meant for sale as it did not belong to the

Petitioner but belonged to another businessman who had kept it for the time being in the custody of the Petitioner. In support of this assertion a defence witness has been examined, and I shall refer to his evidence latter.

4. The contention raised by Mr. Mohanty, the learned Counsel for the Petitioner, is that the conviction of the Petitioner cannot be sustained as on the evidence on record, properly construed, it is established that the Jira in question was not meant for sale, and there was no sale of the said Jira to the Food Inspector as the Petitioner was neither the owner nor had he the authority to sell or dispose of the same in any manner to anybody, other than returning it to the owner who had kept the same for the time being in the custody of the Petitioner.

5. The charge framed against the Petitioner is as follows:

That you, on or about 15-10-1966 at Chandan Bazar, stored adulterated Jira, as an article of human food in breach of the provisions of Section 7 of the P.F.A. Act, and thereby committed an offence punishable u/s 16(1)(a) of the P.F.A. Act and within my cognizance so the Petitioner has been charged only for storing adulterated Jira. Storing of adulterated food, in order to be punishable under the provisions of the Act, must be for the purpose of sale. The context in which the expression "or store" appears in Section 7 and 16 of the Act indicates that it means storing for sale. It has been held in a Full Bench decision of the Delhi High Court in *Delhi Corporation v. Laxmi Narain* AIR 1970 Del 144 (F.B.), that:

The juxtaposition in which the expression "or store" occurs in Sections 7 and 16 of the Act and the scheme of the Act do not leave any doubt that the intention of the storing being for sale was implicit in the word "store" as used in those sections.

In summing up, their Lordships have said:

The word "store" used in Sections 7 and 16 of the Act means the storing for sale.

It has been held by a Division Bench of the Allahabad High Court in *Narain Das Vs. State*, , that:

The expression "or store" is proceeded by the words "manufacture, for sale" and is followed by "sell". Therefore, the context in which "store" is used indicates that it means storing for sale. It must be read as taking colour from the expression "manufacture for sale and "sell" with which it is associated in the section.

Identical views on this aspect of the matter have been expressed in the decisions reported in *Food Inspector, Corporation Health Officer, Calicut Vs. Vijayasingh Padamshi*, , *Food Inspector, Kozhikode Vs. Punsai Desai*, , *In Re: V. Govinda Rao*, , *Municipal Board Vs. Lal Chand Surajmal and Another*, , *Rameshwar Dass Radhey Lal Vs. The State*, , *Giridhari v. Calcutta Corporation* AIR 1966 Cal 364. The decision in the last mentioned case refers to two other unreported Division Bench decisions of the Calcutta High Court wherein the same view is taken. A contrary

view has, however, been taken in the Division Bench decision in Shipping and Clearing (Agents) Private Ltd. Vs. Corporation of Calcutta and Another, , in which the learned Judges held that storing of an adulterated Article of food is by itself an offence and that it is not necessary that such storing ought to be for sale before the offence could be said to have been committed.

Sadasivan, J. in the decision reported in Punnen Thomas v. State AIR 1969 Kar. 81 (F.B.), took into consideration both the above mentioned two conflicting views and preferred, on good grounds, to follow the majority view taken in the batch of cases mentioned above. I am respectfully in agreement with the majority view expressed in The aforesaid decisions.

6. On the above majority view it is to be seen whether the said Jira, from which sample was taken by p.w. 1, was stored by the Petitioner for the purpose of sale.

7. P.W. 1, the Food Inspector, who effected the seizure, categorically admitted in his cross-examination that he did not take the sample in question from any stock kept in the Petitioner's shop where his other articles were exposed for sale. D.W. 1, apart from stating other things which shall be referred to later, testified to the fact that on the date of the seizure he had kept 80 bag of Jira, purchased by him from another person, in the inner apartment of the shop-house of the Petitioner. This witness has not at all been cross-examined and there is absolutely nothing on record to discard or discredit his testimony. In view of the above mentioned categorical admission of p.w. 1 and the unchallenged evidence of p.w. 1, the specific assertion of the Petitioner, that the bag from which p.w. 1 took the sample was not in the Petitioner's shop where his other articles were stored and exposed for sale, but was kept in the inner apartment of the shop-house, is established as true.

8. It was contended on behalf of the State that even if the said Jira was kept in the room adjoining the shop room, a presumption u/s 144 of the Evidence Act could be drawn that the said bag of Jira was kept stored there for the purpose of sale. Such a presumption can of course be drawn if the entire evidence on record justifies the same. Before drawing such a presumption and utilizing the same against the accused the Court should carefully examine the evidence on record to see if there is anything therein on which the said presumption is rebutted.

9. In the present case the Petitioner has asserted that the aforesaid bag of Jira was not meant for sale as it did not belong to him, and it belonged to another businessman who had kept it for the time being in the custody of the Petitioner. The Petitioner's above assertion gets support from the evidence of Sanatan Sethi d.w. 1, who has testified to the fact that on the date of seizure he had purchased a bag of Jira from one Kishan Lal. After purchasing the same he found that it contained dust and so he wanted to return the same to the said Kishan Lal. Finding Kishan Lal's shop closed he kept the said bag of Jira in the inner apartment of the shop-house of the Petitioner for the time being. This witness has not at all been cross-examined. Thus his evidence to the above effect goes

unchallenged and unassailed. There is nothing on record to discredit the reliability of this witness or the intrinsic merit of his testimony. It has also been suggested in cross examination to p.w. 3, the Inspector of Vigilance, that at the time the sample of Jira was seized, the Petitioner told him and the other persons present there that the Jira in question did not belong to him, and that some one else had kept the same with the Petitioner. It was also put to this witness that the Petitioner did not sell the Jira to p.w. 1 and that The sample of Jira was forcibly taken by p.w. 1.

10. The prosecution has not examined a single independent witness to corroborate the statements of p.w.s. 1 and 3, respectively the Food and Vigilance Inspectors, regarding all that happened and transpired during the actual seizure of the Jira. Both p.w.s. 1 and 3 admitted that outsiders were present at the time of The seizure. P.W. 2, the only outsider, examined by the prosecution, was admittedly not present at the Petitioner's shop when p.w. 1 actually seized the Jira, and so p.w. 3 could not say anything to the, above effect. Apart from the above there are material discrepancies on important particulars in the evidence of p.w.s. 1 and 3. While p.w. 1 categorically stated that the aforesaid bag : of Jira was not in the Petitioner's shop where his other Articles were kept exposed for sale, p.w. 3 stated that the said bag was in that particular portion of the Petitioner's shop. Because of the above deficiencies and unsatisfactory features in the prosecution evidence, it is difficult to place reliance on the same in preference to the unchallenged and unassailed evidence of d.w. 1, whose reliability also has not been questioned.

11. On a consideration of the facts established in this case as stated above, the above mentioned unchallenged and unassailed evidence of d.w. 1, the Petitioner's consistent assertion in this case and the unconvincing nature of the prosecution evidence, I am inclined to believe that the defence case, that the said Jira did not belong to The Petitioner and it belonged to d.w. 1 who merely had kept the same for the time being in The custody of the Petitioner, to be taken back by him (d.w. 1) afterwards is true. The Petitioner, therefore, was not the owner of the Jira in question and he had no right or authority to sell part with or dispose of the same in any other manner, other than returning the same to d.w. 1, its owner. On the above facts it cannot be said that the said bag of Jira was stored by the Petitioner for The purpose of sale. That being so, the Petitioner cannot be held guilty for storing adulterated Jira for the purpose of sale.

12. It has, however, been contended by The learned Counsel for the State that on the admitted fact that p.w. 1 took the said example of Jira on payment of money to the Petitioner, he can be held guilty for selling adulterated food, and on this account alone his conviction u/s 16(1)(0) of the Act is maintainable. There is no merit in this contention. The specific charge framed against The Petitioner, as stated above, was for storing adulterated Jira and not for selling the same. Moreover, on the evidence discussed above, he Jira in question was not meant for sale, it did not belong to the Petitioner and he was only the custodian of the

said commodity for a temporary period. He did not have any right or power to dispose of the same in any manner whatsoever other than returning the same to its owner, d.w. 1. He therefore did not have any power to dispose of or to part with, much less to transfer the property in The said commodity or any part of it in favour of p.w. 1, even on receipt of its price. P.W. 1 took a sample of the aid Jira and seized the same under the assumed exercise of his power u/s 10 of the Act. The Petitioner has consistently asserted that p.w. 1 took the sample of Jira by force and by holding out threats of arrest. Whether that assertion is true or not it is quite evident from the other facts established in this case that the Petitioner was compelled under the situation to part with the quantity of Jira taken by p.w. 1. On the aforesaid facts and circumstances the property in The said commodity did not pass to the p.w. 1 even though he took the same on payment of its price, and so it cannot be said that there was a sale of the said Jira by the Petitioner to p.w. 1 even under the provisions of the Act. There is, therefore, no merit in the aforesaid contention.

13. Apart from the above consideration, a food Inspector has the power u/s 10(1) (a) of the Act to take samples of any article of food from the following persons enumerated in Clauses (i) to (ii) thereunder.

(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.

The Petitioner, being merely a temporary custodian of the type as found above, does not come within any of the above three clauses. So the Food Inspector, p.w. 1, on the facts of this case was not legally competent to take a sample of the said Jira from the Petitioner.

14. On the above dissuasions and considerations, the Petitioner's conviction u/s 16(1)(a) of the Act is bad in law and cannot be maintained.

In the result, therefore, the conviction of the Petitioner u/s 16(1)(a) of the Act and the sentence passed there under are hereby set aside and he is acquitted of the same.

15. The revision accordingly is allowed.