

(1929) 01 CAL CK 0020
In the Calcutta High Court

Daulat Ram Bidhan Das

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

Date of Decision : 29-01-1929

Acts Referred:

Calcutta Municipal Act, 1923 — Section 3(31), 421
Evidence Act, 1872 — Section 106

Citation : AIR 1929 Cal 283

Hon'ble Judges : Suhrawardy, J;Graham, J

Bench : Full Bench

Judgement

Suhrawardy, J.—This rule has been pressed on one point. Some tins of ghee were found in a godown belonging to the petitioner and the article was ordered to be destroyed by the Municipal Magistrate u/s 421, Calcutta Municipal Act of 1923. It is not disputed that the ghee is adulterated and unfit for human consumption. It is also not disputed before us that it was in the possession of the petitioner and that if the contention of the petitioner before us fails it is liable to destruction u/s 420 or 421.

2. The point that has been argued in this case on behalf of the petitioner is that there is no evidence and that it has not been proved by the Corporation that the ghee seized was intended for human consumption. It is said that u/s 418 read with Sections 420 and 421 the article to be destroyed must be a thing intended for human consumption. The question therefore is whether the ghee was intended for human consumption. It is argued that u/s 418, Clause (2) if a prosecution is instituted under Chap. 28, Calcutta Municipal Act, the burden shall rest with the party charged to prove that the article is not intended for human consumption. It is submitted that in a case where there is no prosecution the onus will be on the party who seeks to exercise the power vested in him under Sections 420 or 421 to prove that the article was intended for human consumption.

3. It is necessary to refer to the facts of the case in order to see whether it lies in

the mouth of the petitioner to raise the point before us. It is admitted that the ghee was purchased somewhere in the Punjab and was being taken to Rangoon. In the course of its transit it was brought to Calcutta to the petitioner's godown for making some repairs to the tins. No question as to what use the ghee would ultimately be put to was raised before the learned Magistrate and it was tacitly admitted before him that it was intended for sale at Rangoon. The learned Magistrate remarks in his judgment "it is rather admitted that the ghee was intended for sale in Rangoon."

4. The point that has been raised before us seems to be an afterthought. Now to come to the question whether it is incumbent upon the Corporation to prove that the ghee was intended for human consumption. I do not agree with the contention that because Section 18, Clause (2) puts the burden upon the accused to prove that the article is not intended for human consumption in a case of prosecution under the chapter, it indicates that in all other cases the onus will be upon the Corporation to prove that it is intended for human consumption. Ghee is ordinarily intended for human consumption and it does not require the assistance of Acts or Statutes to presume that it is meant for human consumption. The reason why Section 418, Clause (2) indicates that it is for the party to prove that the article is not intended for human consumption is probably to meet an argument that may be raised on behalf of the accused under prosecution that the prosecution should ordinarily prove every element constituting an offence. It does not necessarily indicate that a Court cannot make a presumption where there is nothing to suggest otherwise. Sir Binod Mitter on behalf of the Corporation has argued that the action taken by the Corporation in this matter is a prosecution within the meaning of Section 418. There is a great deal to be said in support of this view but I do not think it necessary in the present case to decide the point as I am of opinion that the Court is entitled to take for granted, when it is not denied, that ghee is an article intended for human consumption. It is possible that it can be employed for remote or extraordinary purposes but the ordinary presumption that ghee is intended for human consumption is not a presumption of law but a supposition based on common sense when there is no assertion to the contrary. In this connexion our attention has been drawn to Section 106, Evidence Act, which says:

When any fact is especially within the knowledge of any person the burden of proving that fact is upon him.

5. It seems to me that this section read with the illustrations under it lays down nothing more than the ordinary rule of reasoning consistent with common sense. In my opinion, there is no substance in the point raised before us and this rule must be discharged. Let the order complained against be executed at once.

Graham, J.

6. I agree. Ghee comes within the definition of food as given in Section 3(31), Calcutta Municipal Act, and is ordinarily used for human consumption. That being

so, apart from anything contained in Section 418, Sub-section(2) of the Act, the ordinary presumption would be that the ghee was intended for human consumption. If the petitioner alleged the contrary it was for him to prove it. But apart from this view of the matter it may be observed that the word "prosecution" used in Section 418, Sub-section(2), does not necessarily connote prosecution for an offence, and where it is intended to be so used it is usual to state so in plain terms Prosecution in its wider or more general sense means a proceeding by way of indictment, or information, and as used in Section 418(2) it may include such proceedings as those taken u/s 421 of the Act. I agree that the rule should be discharged.