
(1988) 01 OHC CK 0006
In the Orissa High Court

Food Inspector, Berhampur Municipality	APPELLANT
Vs	
P. Mohan Rao and Others	RESPONDENT

Date of Decision : 20-01-1988

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 13, 14, 16, 19, 20

Citation : (1988) 65 CLT 426 : (1988) CriLJ 1534 : (1988) 1 OCR 142

Hon'ble Judges : V. Gopalaswamy, J

Bench : Single Bench

Judgement

V. Gopalaswamy, J.—This appeal is preferred against the judgment dated 23-12-1980 passed by the Chief Judicial Magistrate, Berhampur in 2(c)CC 195 of 1977 acquitting the accused persons (the present respondents) of the charge u/s 16(1)(a)(i) of the Prevention of Food Adulteration Act.

2. The prosecution case may be briefly stated thus : On 25-7-1977 at 5.00 P.M., P.W. 1 Niranjan Behera, the then Food Inspector, Berhampur Municipality, visited the business premises of respondent No. 2 (of which respondent No. 1 is the Managing Partner), a whole-sale dealer in Til Oil, and suspecting the Til Oil contained in the sealed tins to be adulterated, took a sample of 375 grams of the Til Oil from one of the tins, and after duly observing all the formalities, sent 1/3rd of the sample collected, to the Public Analyst for his analysis. At the time when P.W. 1 took the sample, revealing his identity to respondent No. 1, the latter produced the cash memo receipt Ext.3 showing the purchase of the Til Oil Tins in question from respondent No. 4 M/s Razzak Rice and Oil Mills and further disclosed before him (P.W. 1) that one Usman Haji Umar was the Manager of respondent No. 4. As the Public Analyst submitted his report (Ext.9) stating that the sample of Til Oil sent to him was adulterated, the Food Inspector (P.W. 1) initiated proceedings in the court of the S.D.J.M., Berhampur u/s 16(1)(a)(i) of the Prevention of Food Adulteration Act (hereinafter referred to as "the Act") against the respondents.

3. The respondents Nos. 1 and 2 took the plea that as they purchased the Til Oil

Tins in question from respondent No. 4, they are in no way liable, even if the oil contained in the tins is found to be adulterated. Respondent No. 1 has examined himself as D.W. 1 in support of his plea. Respondent No. 3 Ajit Shakoor is the present Manager of respondent No. 4. Respondents 3 and 4 took the plea that the Til Oil Tin in question was not purchased from them.

4. The prosecution has examined, in all, three P.Ws. to prove its case. The evidence of P.W. 1, the Food Inspector, shows that on 25-7-1977 at about 5.00 P.M. he visited the shop of respondent No. 2 which was in charge of respondent No. 1, and took a sample of Til Oil from a sealed tin which was labelled as M/s Razzak Rice and Oil Mills, Berhampur. It is in the evidence of P. W. 1 that as soon as he took the sample of Til Oil, respondent No. 1 stated before him that the oil was purchased from respondent No. 4 and produced the cash memo receipt Ext.3 regarding such purchase. The evidence of P.W. 1 shows that from the label of that sealed tin in question and the recitals in Ext.3 he was satisfied that the same was purchased from respondent No. 4, M/s Razzak Rice and Oil Mills. The statement of respondent No. 1 Mohan Rao, on oath, that the sample was taken from the tin of oil purchased by him from respondent No. 4 and that Ext.3 is the cash memo receipt regarding such purchase was not shaken in cross-examination by respondent Nos. 3 and 4. So, from the evidence on record, it can be safely held that the sealed Tin of Til Oil, from which the sample was taken by P.W. 1, was purchased from respondent No. 4.

5. u/s 19(2) of the Act, a vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated article of food if he proves that he purchased the article of food from any manufacturer with a written warranty in the prescribed form and that the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it.

Section 14 of the Act reads under:

Manufacturers, distributors and dealers to give warranty : No manufacturer or distributor of, or dealer in any article of food shall sell such article to any vendor unless he also gives a warranty in writing in the prescribed form about the nature and quality of such article to the vendor:

Provided that a bill, cash memorandum or invoice in respect of the sale of any article of food given by a manufacturer or distributor of, or dealer in, such article to the vendor thereof shall be deemed to be a warranty given by such manufacturer, distributor or dealer under this section.

A cash memo issued by the manufacturer to the vendor at the time of sale even if it does not contain details as to the nature and quality of the article sold by him, will be deemed to be a warranty in view of the proviso to Section 14 and will be a valid defence for the vendor by virtue of Section 19(2)(a)(ii). The proviso to Section 14 does not contemplate that the cash memo etc., should contain warranty in form VI-A as required under Rule 12-A, In the present case, the sample from the sealed tin of Til Oil was taken on 25-7-1977 and the same was

purchased on 19-7-1977 from respondent No. 3 under the cash memo Ext.3. Hence, in view of the provisions of Section 19(2) respondents 1 and 2 cannot be held liable u/s 16(1)(a)(i) of the Act as they purchased the oil in question from respondent No. 4 under the cash memo Ext.3 and were selling the same in the same state in sealed tins. So, the learned Magistrate was justified in acquitting the respondents 1 and 2 of the charge u/s 16(1)(a)(i).

6. The prosecution Report was filed against five accused persons. Respondents 1 and 2 are accused Nos. 1 and 2. The present respondent No. 4 is accused No. 3. Accused No. 4 is the present Manager, M/s Razzak Rice and Oil Mills. Accused No. 5 is Usman Hazi Uniar, Manager, M/s Razzak Rice and Oil Mills. On the relevant dates, Exts. 11/4, 16 and 16/2 are the intimations u/s 13(2) of Act sent by the C.D.M.O., Ganjam, Berhampur on 14-9-1977 to Usman Hazi Umar, Manager, M/s Razzak Rice and Oil Mills. On a perusal of the lower court records, it is seen that on 22-9-1978, the complainant filed a memo stating that Usman Hazi Umar; left the employment of respondent No. 4 after launching of the prosecution. The order-sheet dated 22-9-1978 shows that because of the; memo, the case against accused Usman Hazi Umar was split up and the case proceeded against the rest of the accused persons. From the above material, it is clear that the said Usman Hazi Umar was the manager of M/s Razzak Rice and Oil Mills on the relevant dates that is on the dates of purchase of the Tin of Til Oil by respondents 1 and 2 on 19-7-1977 and 25-7-1977, the dates when the sample was taken by P.W. 1. In any event, there is nothing on record to show that respondent 3 Ajit Shakoor was the Manager of Razzak Rice and Oil Mills on the relevant day that is on 19-7-1977. So, the charge against respondent No. 3 Ajit Shakoor u/s 16(1)(a)(i) of the Act in his Individual capacity is baseless and he is, therefore, entitled to an acquittal.

6A. So, it remains for consideration whether the acquittal of respondent No. 4 by the trial court is also justified. At the outset, the learned Counsel for the respondents 3 and 4 contended that as there was no valid sanction for prosecuting respondents 3 and 4, their prosecution is misconceived and unsustainable in law in view of the provisions of Section 20 of the Act.

7. Section 20A of the Act is an enabling provision. The object of Section 20A seems to be that the prosecution of a person impleaded as an accused in the course of a trial does not require a separate sanction and in that sense it is in the nature of an exception to Section 20 of the Act. In *Bhagwan Das Jagdish Chander Vs. Delhi Administration*, the Supreme Court held that there seems no logically sound reason why, if a distributor or a manufacturer can be subsequently impleaded, u/s 20A, he cannot be joined as a co-accused initially in a joint trial, if the allegations would justify such a course. So, considering the facts of the present case, there is nothing illegal in joining respondents 3 and 4 as co-accused initially in a joint trial along with respondents 1 and 2. Before a prosecution could be instituted u/s 16(1)(a)(i) of the Act against the respondents, the written consent of the C.D.M.O. for prosecuting them is necessary u/s 20 of

the Act. Ext. 10 is the sanction order given by the C.D.M.O. for launching prosecution against the accused persons. On a perusal of Ext. 10, it is seen that the C.D.M.O. did not give his consent for prosecuting respondents 3 and 4 as well. So, the trial against respondents 3 and 4 is vitiated for want of due sanction u/s 20 of the Act and respondents 3 and 4 are entitled to an acquittal on that score alone. When the attention of the learned Counsel for the appellant was drawn to this aspect, he fairly conceded that there is no sanction for prosecuting respondents 3 and 4, and they are entitled to an acquittal.

8. In the result, for the reasons stated, above I find no merit in the appeal and the same is, therefore, dismissed.