

(1965) 11 CAL CK 0010
In the Calcutta High Court
Case No : Criminal Appeal No. 460 of 1964

Giridhari Ballani	Vs	APPELLANT
Corporation of Calcutta		RESPONDENT

Date of Decision : 29-11-1965

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 10(1), 16(1), 2(13), 7

Citation : AIR 1966 Cal 634 : (1966) CriLJ 1410 : 70 CWN 511

Hon'ble Judges : S.K. Niyogi, J

Bench : Single Bench

Advocate : N.C. Talukdar and J.P. Shrivastava, for the Appellant; Prasun Ch. Ghose, for the Respondent

Final Decision : Allowed

Judgement

S.K. Niyogi, J.—This Appeal is by the accused Giridhari Ballani against his conviction under 16(1)(a)(i) read with Section 7(1) of the Prevention of Food Adulteration Act, 1954 by a Municipal Magistrate, Calcutta. He was sentenced on conviction to pay a fine of Rs. 400 in default whereof he has to undergo rigorous imprisonment for four months.

2. The appellant works as an accountant in a Jama temple situated at 27, Polok Street, Calcutta. P. W. 3 Mansuklal Dessi is an honorary secretary of the temple. On 20-8-63 a Food Inspector of the Calcutta Corporation visited the temple at about 3 P. M. to work out some information given by one Sk. Khoda Bux. The secretary of the temple (P. W. 3) arrived there on receipt of a message by phone and in his presence P. W. 1 seized four tins of ghee which were in the process of being removed from a room inside the temple. The appellant on getting information came there and he claimed before the Food Inspector that he was the owner of the ghee. P. W. 1 took two samples of the seized ghee in their presence after observing usual formalities required by law. The samples sent to the Public Analyst were found by the latter to be highly adulterated as will appear from the following report submitted by him:

"Physical Examination ? almost clear liquid on melting, odour of ghee present.

B. R. at 40? C ? 49.5

Moisture ? 0.09%

Baudouin test (for sesame oil) ? Positive

Coal tar dye ? absent

Annalts ? absent

Reichert value ? 4.84

Free fatty acid as oleic acid ? 0.44%

and am of the opinion that the sample of ghee (Lakshmi) having no Agmark, does not conform to the prescribed standard in respect of Butyro-refractometer Reading, Bondouin test and Rei-chert value due to the presence of excessive amount of foreign fat containing sesame oil. Hence it is highly adulterated."

3. The prosecution was thereafter launched by the Corporation of Calcutta against the accused Giridhari Ballani u/s 16(1)(a)(i) read with Section 7(1) of the Prevention of Food Adulteration Act (which for the sake of convenience we will heretoafter refer as simply the Act) on the allegation that the accused stored/exposed for sale ghee at 27, Polok Street which was found to be adulterated by the Public Analyst.

4. The appellant pleaded not guilty. He denied that he ever carried on any business in ghee. The defence set up was that the ghee in question was brought to the temple, where the accused worked, by a person from Messrs Ran-sukhdas Nathmala, a trader in ghee, at his instruction, for taking the ghee to the appellant's house for consumption in his family for the purpose of a feast to be held there to celebrate the birth anniversary of Mahabir Jain,

5. It has been urged by Mr. Talukdar that the learned Magistrate arrived at his finding that the appellant stored the adulterated ghee for sale for human consumption on inadmissible evidence and on mere surmises and conjectures not borne, out by the evidence on record.

6. I have been taken through the evidence on the record and I must hold that there is considerable force in the argument of Mr. Talukdar and the conclusion of the Magistrate in this respect cannot be sustained.

7. Sk. Khoda Bux has not been examined in this case and the written information (Ext. 1) said to have been supplied by him is clearly inadmissible in evidence. The learned Magistrate also wrongly took into consideration some statement said to have been made before P. W. 1 by P. W. 3 which was denied in the court by the latter. The Magistrate also seems to have been considerably influenced by the consideration that somebody was trying to remove the ghee from a room inside the temple when the accused himself had not yet come there. The Magistrate

also thought that there was no justification for the accused to have the ghee inside the temple instead of taking it to his house and that it was absurd that so much ghee should have been purchased by the accused for home consumption. He in this connection did not consider the probability or otherwise of the defence story in this respect being true as it was admittedly a festival day when the birth day of Mahabir Jain was being celebrated. These circumstances are hardly sufficient for holding that the accused was a dealer in ghee or that he stored ghee for sale, about which there is no direct evidence. It must, therefore, be held that the prosecution has failed to prove that the accused stored the ghee in the temple for the purpose of sale.

8. It has, however, been argued by Mr. Pra-sun Chandra Ghosh, learned Advocate for the Corporation of Calcutta, that storing simpliciter is an offence within the provisions of the Act, irrespective of the purpose for which the article of food might have been stored.

9. It will be useful to look into the relevant provisions of Section 7 and 16 of the Act in this connection. Section 7(1) of the Act provides that

"no person shall himself or by any person in his behalf manufacture for sale, or store, sell or distribute-

(i) any adulterated food;"

A person becomes liable to be punished u/s 16 of the Act if such person-

"1(a) Whether by himself or by any person on his behalf imports into India or manufactures for sale, or stores, as well as distributes any article of food in contravention of any provision of this Act or any rule made thereunder, . . ." Mr. Ghosh contends that the expression "store" in either of the sections is not qualified and relies in support of this contention on a decision of the Assam High Court by a single Judge of the said Court in *Bherudhan Charadia v. State*, AIR 1963 Assam 28. He has argued that the offence would be complete if it is proved that the appellant stored ghee and it was not necessary for the prosecution to prove that it was stored with a view to sell it in future. He has submitted that where the language of an Act is explicit and the intention of the Legislature can be clearly gathered from them, effect must be given to it whatever may be the consequences.

10 But in order to interpret a particular expression used in the language of an Act it is necessary to look into the context in which the particular word has been used.

"..... the primary duty of a court of law is to find natural meaning of the words used in the context in which they occur, that context including any other phrases in the Act which may throw light on the sense in which the makers of the Act use the words in dispute." (See Cases on Statute Law 6th Edition at page 67).

11. This very question arose for decision before a Division Bench of the

Allahabad High Court in *Narain Das Vs. State*, . The Division Bench in holding that the word "store" in Section 7 of the Act meant storing for sale and that storing for the purpose other than sale did not constitute an offence u/s 16(1)(a) (i), observed as follows at page 83:--

"Under Section 7 manufacture of adulterated food is not prohibited. What is prohibited is its manufacture for sale. There appears no reason why manufacture of adulterated food should be treated differently from its storage. The expression "or store" is preceded by the words "manufacture for sale" and is followed by "sale"."

Therefore, the context in which "store" is used indicates that it means storing for sale. It must be read as taking colour from the expressions "manufacture for sale" and "sale" with which it is associated in the Section 1 respectfully agree with the views thus expressed by the Allahabad High Court (See also *Food Inspector, Kozhikode Vs. Punsai Desai*, , *In Re: V. Govinda Rao*, and *Public Prosecutor v. Sami Venkataraman*, AIR 1958 Mad 382).

12. A Division Bench of this Court in *Jogesh Chandra Das v. District Board of Noida* in Revn No 632 of 1960 (Cal) (unreported) referred approvingly to the decision of the Kerala High Court mentioned above. In the said case it was held that the word "store" as appearing in Section 10 of the Act meant storing for sale, and not storing simpliciter. This was also the view expressed by another Division Bench of this Court in *Corporation of Calcutta v. Ghusiram Agrawalla* in Criminal Appeal No. 297 of 1991 (Cal) (also unreported), as will appear from following observations of this Court in the said case.

"It cannot be said to be the intention of the Legislature that mustard oil as such, irrespective of the purpose for which it was stored, if found adulterated, will come within the mischief of the section.

In my opinion interpretation of the expression "store" as appears either in Section 7 or Section 16 without reference to the purpose of storing is likely to lead to an absurd result. Endeavour should be made to avoid interpretation of the language of a section in a way that may lead to absurdity. The contention of Mr. Ghosh in this regard must, therefore, be repelled.

13. The next submission of Mr. Ghosh has been that in view of the definition of "sale" as given in Section 2(13) of the Act, even a forced sale to the Food Inspector for analysis will come within the mischief of Section 16 read with Section 7 of the Act, even though it be held that the ghee was not stored for sale. He has in this connection relied on *Municipal Board Vs. Lal Chand Surajmal and Another*, and *Municipal Committee, Ambala Vs. Basakhi Ram*, .

14. In *Municipal Board Vs. Lal Chand Surajmal and Another*, , while the Allahabad High Court recognised the fact that the accused could not be convicted for storing the milk in the shop as it was not stored for sale, it expressed the opinion that in view of the definition of "sale" as given in Section 2(13) of the Act, even

the sale of adulterated milk to the Food Inspector for analysis would be an offence u/s 7. With due respect I am unable to agree with the above view as expressed by (he Allahabad High Court. A Food Inspector is empowered u/s 10(1) (a) to take samples of any article of food from,

"(i) any person selling such article;

(ii) any person who is in 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,"

Under Sub-section (3) a Food Inspector is required to pay the cost of such article of food at the rate at which it is usually sold to the public when any sample is taken by him under Clause (a) of Sub-section (1). Again, under Clause (b) of Sub-section (1) of Section 10 when a Food Inspector takes sample under Clause (a) he is to send such sample for analysis to .the Public Analyst of the local area within which such sample has been taken. But in view of what has been stated above, it cannot be certainly said that the samples of ghee in question were taken by the Food Inspector under any of the circumstances stated in Clause (a). It cannot, therefore, be said that acquisition of ghee in the instant case by the Food Inspector was made under the powers conferred on him u/s 10 and cannot as such amount to a "sale" within the meaning of Section 2(13) of the Act. It follows therefrom that there can as such be no question of sending the samples to the Public Analyst under Clause (b) for analysis as the acquisition of ghee in the instant case was not, in the circumstances, made under the powers conferred on a Food Inspector by Section 10. Reference in this connection may be made to *Gulab Chand v. State*, 1963 (2) Cri LJ 589 (Raj).

15. In *Chairman of Suri Municipality v. Sisir Kumar Ghosh*, 66 Cal WN 102, also relied on by Mr. Ghosh, a Division Bench of this Court no doubt, held that the words of Section 2(13) are wide enough to cover a forced or compulsory sale (for analysis) as much as voluntary sale and that when a Food Inspector purchased for analysis a sample of the article of food in question from the accused the sale was complete within the meaning of the Act. But, as will appear from the above reported decision, this Court was of the further opinion that prosecution had at the same time to prove that the article in question was at the relevant time being carried for sale. It was thus observed by their Lordships at page 104,

"The learned Sessions Judge observed that he agreed with the contention put forward before him on behalf of the respondent that the conveying of the adulterated food by itself or for the purpose of sale had not been made an offence u/s 7 of the Act. In our view the learned Judge was wrong and we think that the provisions of the Act which we have read make it clear that the carrying (conveying) or having in possession for sale any adulterated (sic) is liable to be punished for infringement of Section 7 of the Act. If the learned Judge held that mere having in possession was not an offence under the Act, we would have agreed with him: but he clearly held that carrying or conveying, that is to say,

having in possession adulterated food even for the purpose of sale was not an offence."

Therefore, the conviction of the appellant u/s 16(1)(a)(i) read with Section 7(1) of the Act cannot be sustained and must be set aside.

16. The Appeal is accordingly allowed. The conviction of the appellant under the stated section and the sentence imposed on him there under are set aside and he is acquitted. Fines, if realized, shall be refunded.

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