
(1978) 09 AHC CK 0066
In the Allahabad High Court
Case No : Criminal Appeal No. 419 of 1976

G.P. Asthana, Chief Food Inspector	Vs	APPELLANT
Shri Kishan and Others		RESPONDENT

Date of Decision : 20-09-1978

Acts Referred:

Prevention of Corruption Act, 1947 — Section 6, 6(1)
Prevention of Food Adulteration Act, 1954 — Section 14, 14A, 16, 2, 20

Citation : (1979) ACR 44

Hon'ble Judges : S.C. Mathur, J

Bench : Single Bench

Advocate : Mahesh Chandra and Shashi K. Sinha, for the Appellant; S.S. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Mathur, J.—This appeal is directed against the order of acquittal passed by Sri. R.N. Awasthi, Judicial Magistrate, Lucknow, on 10-11-1975 in prosecution u/s 7/16 of the Prevention of Food Adulteration Act.

2. Respondents 2 and 3 Anand Behari and Suman Behari carry on sweetmeat business at Ban Wali Gali, P.S. Chowk, Lucknow. Respondent No. 1 Sri. Kishan is their servant, who sits at the shop on their behalf. On 2-10-1974 at about 3.30 P.M. Sri. G.P. Asthana, Food Inspector, Mobile Food Squad, Lucknow, the Appellant in the appeal, visited the said shop and after disclosing his identity purchased 1500 grammes of Malai Pan for sample and analysis. The sample so taken was sent to Public Analyst to U.P. Government for report. The letter which was sent to Public Analyst by the Appellant is Ext. Ka-4 on the record. A perusal of the letter indicates that the Public Analyst was required to test the sample for arrowroot. The report of the Public Analyst dated 8th October, 1974 is Ext. Ka-5 on record. In this report the test for starch was shown as positive. On the basis of this report the Respondents were prosecuted for offence u/s 7/16 of the Prevention of Food Adulteration Act. Consent for this prosecution, as

contemplated u/s 20 of the Act. was said to have been given by the Additional Nagar Swastha Adhikari on 20th October, 1974. The consent order is Ext. Ka-6. The complaint which was thereafter made by the Appellant to the Judicial Magistrate, Lucknow is Ext. Ka-7.

3. On behalf of the prosecution the Food Inspector, Sri. G.P. Asthana, the Appellant in this appeal, was examined. No other witness was examined on behalf of the prosecution. The Respondents also did not examine any witness. Apart from the oral testimony of Sri. G.P. Asthana, the prosecution relied upon the report of the Public Analyst in support of its case.

4. The learned Magistrate acquitted the Respondents on two grounds. Firstly, the learned Magistrate found that the sanctioning authority had not applied its mind while giving the consent for the prosecution u/s 20 of the Act and secondly, he found that mixing of starch in preparing milk products was not prohibited and, therefore, the Respondents could not be said to have violated any provision of the Act or the rules. The learned Magistrate in recording the first finding relied upon a decision of this Court in the case of *Chunni Lal v. State* 1973 ACR 254.

5. The above judgment of the learned Magistrate has been challenged by the Appellant's learned Counsel Sri. Mahesh Chandra. Sri Mahesh Chandra's argument was that the authority of the Court in *Chunni Lal's* case (*supra*) has no application to the facts of the present case and the learned Magistrate was in error in placing reliance upon it. In *Chunni Lal's* case (*supra*) the complaint made to the Magistrate and the consent given by the sanctioning authority were contained in one sheet of paper. On one side of this paper was the complaint made by the Food Inspector to the Magistrate and on the reverse side was the consent of the sanctioning authority. The consent order was a cyclostyled form in which blank spaces had been filled up by the Food Inspector. In these circumstances it was held by this Court that the filling up of blank spaces not by the sanctioning authority but by the Food Inspector indicated that the sanctioning authority itself did not apply its mind to the facts of the case and, therefore, there was no consent as contemplated u/s 20 of the Act which was a condition precedent to the launching of prosecution. In the present case the complaint and the consent order are not on one and the same sheet of paper. The consent order, Ex. Ka-6, is a cyclostyled proforma which had blank spaces. These blank spaces have been filled up in an ink different from the ink with which the sanctioning authority has appended his signatures it is common case that the blank spaces had not been filled up by the sanctioning authority himself. The sanctioning authority itself did not enter the witness box to prove that it applied its own mind to the facts with reference to which the prosecution was sought to be sustained. The question whether the consent contained in Ex. Ka-6, is valid for the purpose of Section 20 of the Act, has to be decided with reference to the contents of Ext. Ka-6 alone.

6. Sub-section (1) of Section 20 of the Prevention of Food Adulteration Act 1954 (hereinafter referred to as the Act) provides as follows:

20(1)-"No prosecution for an offence under this Act, not being an offence u/s 14 or Section 14A, shall be instituted except by, or with the written consent of, the Central Government or the State Government or a person authorised in this behalf, by general or special order, by the Central Government or the State Government.

7. There is no dispute that the Additional Nagar Swasthya Adhikari has been authorised to give consent u/s 20 of the Act. There are other enactments also under which sanction or consent is required before a prosecution is launched. One such enactment is Prevention of Corruption Act 1947. u/s 6 of this Act before a court takes cognizance of the offences prescribed in Sub-section (1) thereof, previous sanction is required of the authority referred to in this section. Wherever the law prescribes sanction or consent in respect of a prosecution the sanction or consent becomes a condition precedent to the institution of the prosecution. Such sanction is not a mere formality. The sanctioning or consenting authority is required to apply its mind to the facts with reference to which the prosecution is sought to be launched. That the sanctioning authority has actually applied its mind to those facts may be proved through the sanction order itself or through other evidence. If the sanction order refers to those facts then the order of sanction itself contains intrinsic evidence of the sanctioning authority having applied its mind to those facts. In the present case the order of consent, Ex. Ka-6, does refer to the evidence on the basis of which the sanction purports to have been accorded. The evidence which has been referred to in Ext. Ka-6 comprises of Form No. 6 prepared by the Food Inspector, the report of the Public Analyst and the report of the Food Inspector. The question for consideration, however, is whether the sanctioning authority, namely the Additional Nagar Swasthya Adhikari, has actually applied its mind to the evidence which has been referred to in Ext. Ka-6 or he merely appended his signatures upon the cyclostyled proforma which had already been filled up by some one else.

8. Mr. S.S. Sharma, the learned Counsel appearing on behalf of the Respondent, urged that the evidence of application of mind should either be contained intrinsically in the document of consent itself or it may be through other evidence. He further urged that the fact that the blank spaces had not been filled up by the sanctioning authority, but had on the contrary been filled up by some one else, prima facie indicated that the sanctioning authority himself had not applied his own mind and, therefore, there should have been some other evidence to prove that the said authority himself, applied mind while granting consent to the prosecution, in support of his argument he placed reliance upon a decision of this Court in the case of Krishna Lai v. State 1978 AWC 466 ACR 265. This was also a case where there was a printed form of consent containing blank spaces which had been filled up not by the sanctioning authority himself but by some one else. In respect of this document, P.N. Bakshi, J. observed as follows:

...In all fairness to the citizen, where liberty is at stake and who is liable to serious consequences of prosecution u/s 7/16 of Prevention of Food Adulteration

Act, the blank columns of this form granting sanction, should normally be filled in by the Medical Officer of Health himself, unless for adequate reasons it cannot be done. Such an action on his part would indicate that the Medical Officer of Health had personally applied his mind to the facts of the case before granting the requisite sanction. If somebody else fills up these blanks, as appears to have been done in the instant case, it would give rise to a reasonable suspicion that the signatures have been mechanically affixed to the document by the sanctioning authority without the application of his mind. To neutralise any such misgiving or suspicion in the mind of the accused applicant, I consider it very desirable that the order granting sanction on the prescribed form should be personally filled in by the sanctioning authority, otherwise such loopholes are bound to create confusion and provide ample material for argument on behalf of the convicted accused

9. I am in respectful agreement with the view expressed by brother Bakshi, J. The facts of the present case are very much akin to the facts of Krishna Lal's case (*supra*). Following the dictum laid down in Krishna Lal's case I hold that the prosecution has failed to prove that a valid consent as contemplated Under Section. 20 of the Act had been given by the sanctioning authority. Want of valid consent u/s 20 nullifies the entire prosecution and, therefore, the order of acquittal passed by the learned Magistrate was perfectly justified.

10. Before parting with this aspect of the matter I may point out the authorities in which it has been specifically laid down that the grant of permission is a serious matter and is not a mere formality-See AIR 1948 82 (Privy Council); *Madan Mohan Singh Vs. State of Uttar Pradesh*, .; 1957 AWR 132 (2) *State, v. Nathi Lal* ; 1961 AWR 317 *Budh Sagar Ram Udit v. State*. These authorities also lay down that evidence of application of mind may be contained intrinsically in the document of sanction of consent itself and where it is not so contained the fact of application of mind could be proved through other evidence. In the present case unfortunately the document of consent does not contain the intrinsic evidence of application of mind by the sanctioning authority. There is also no other evidence on record to prove application of mind. Therefore it has to be held that the prosecution of the Respondents was without valid consent.

11. In view of the above findings it is not necessary to consider the case on merits. However since my judgment may be subject matter of appeal before their Lordships of the Supreme Court, I proceed to decide the appeal on merits also. On merits the argument of Sri Mahesh Chandra was that the ingredients of Malai Ka Pan were Malai, Kaju (Cashewnut), crystal sugar (Misri). The report of the Public Analyst (Ex. Ka-5) showed that apart from the three ingredients mentioned herein, the Malai Ka Pan in question contained starch also. The addition of starch according to him meant adulteration within the meaning of the term as defined Under Clause (ia) of Section 2 of the Act. His contention was that since the article in question contained starch also it was the duty of the Respondents to declare to the purchaser that it contained this additional

ingredient also. Before I proceed to examine further contentions of the learned Counsel in this behalf it would be convenient to reproduce the relevant Sub-Clause of Clause (ia):

(ia) Adulterated-An article of food shall be deemed to be adulterated-

(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 it purports or is represented to be....

12. On the basis of the above definition the argument of the learned Counsel was that if the article sold was not of the nature, substance or quality demanded by the purchaser the article would be adulterated. In respect of Malai Ka Pan it was urged that the ingredients were only Malai, cashewnut and crystal sugar and therefore when starch was also mixed therewith, the article sold was not of the nature, substance or quality demanded by the purchaser and since it was not of the nature, substance or quality demanded by the purchaser it was to the prejudice of the purchaser.

13. Clause (ia) reproduced above is divisible into two parts. In the first place in order to constitute an adulterated article it should not be of the nature, substance or quality demanded by the purchaser and should be to his prejudice. In the second place the article should not be of the nature, substance or quality which it purports or is represented to be.

14. Under the first part no offence is made out if the article sold is merely not of the nature, substance or quality demanded by the purchaser. The purchaser should further suffer prejudice. The term "prejudice" denotes a sense of disadvantage. The customer should therefore suffer some disadvantage before the first part of Clause (ia) could be attracted. Disadvantage may be pecuniary or may be to the health. The primary object of the Prevention of Food Adulteration Act is to save the citizens from hazard to their health. If a narrow interpretation is put upon the term "prejudice" so as to connote only disadvantage to health, unscrupulous vendors would go scot-free by mixing substance of inferior quality which may not be necessarily injurious to health. The narrow interpretation is negated by the language employed in the second part of the same Clause. Under this part the prosecution is not required to prove any prejudice whatsoever, either pecuniary or otherwise. Under the second part the mere fact that an article is not of the nature, substance or quality which it purports to be or is represented to be, is enough to constitute offence of adulteration under the Act. If there were evidence on record to the effect that Malai Ka Pan could be prepared without use of starch and no customer expects starch therein it may be said that the Respondents are guilty of the offence of adulteration but there is no evidence on record to that effect. The trend of the cross-examination of the Food Inspector shows that the case of the Respondents was that starch was necessary to be used for giving stiffness to Malai so that proper folding could be done which is necessary for holding the contents inside the Pan-cashewnuts and crystal

sugar. The Food Inspector was, however ignorant of this quantity of starch and when he pleaded ignorance of this basic fact, a direct suggestion that without starch Malai Ka Pan could not be prepared at all was not made to him, but in his examination before the court below Appellant No. 3 stated that starch was necessary to be used for giving stiffness to Malai for proper folding.

15. My conclusion, therefore, is that the term "prejudice" in Clause (ia) connotes both pecuniary prejudice as well as prejudice from the point of view of health but if a certain substance is necessary to be used for proper preparation of an article and the use of that article is not specifically prohibited a vendor cannot be said to be guilty of the offence of adulteration as contemplated under the Act.

16. In the present case there is no evidence of the percentage of starch used. There is no evidence also that the starch used diminished the nutritive value of Malai. It is further nobody's case that the starch used was injurious to health. There is also no evidence to indicate that the use of starch reduced the money value of the Malai used in preparing the pan. Thus the prosecution has failed to prove that the customers suffered any monetary prejudice. It has also failed to prove that the customers suffered any prejudice from the point of view of health. No representation on the part of the Respondents has been proved to have been made that the article did not contain starch. In view of the fact that the use of starch appears to be necessary for proper folding of Malai in order to constitute it a pan, customer should expect such quantity of starch as is necessary for the purpose. It has not been proved that starch used in Malai Ka Pan in question was in excess of this quantity. Thus it cannot be said that the article sold was not of the nature, substance or quality which it purported to be.

17. The learned Counsel for the Appellant also placed reliance upon Sub-clauses (b), (c) and (d) of Clause (ia) of Section 2. Clause (b) would be attracted only when it is proved that the article contains any substance which injuriously affects the nature, substance or quality. In order to attract this Clause some injury to the nature, substance or quality is necessary to be proved which has not been done in this case. Sub-clause (c) would be attracted only when inferior or cheaper substance is substituted wholly or in part for the article. Here also the nature, substance or quality should be injuriously affected. Under this Sub-Clause it is further necessary that there should be substitution of original article by an inferior or cheaper article. In the present case there is no substitution of the original article by an inferior or cheaper substance and, therefore, Clause (c) also would have no application. Clause (d) would apply when the constituent of an article has been wholly or in part abstracted that is subtracted. In the present case nothing has been extracted from the Malai and, therefore Clause (d) also will have no application.

18. It may also be pointed out that no standard has been prescribed under the Act or rules framed thereunder for Malai Ka Pan. Offences have to be specifically prescribed. Offences cannot be inferred. Neither under the Act nor under the rules any offence is made out on the facts alleged by the prosecution.

19. In view of the above the acquittal of the Respondents by the learned court below is perfectly correct and the appeal has no merit.

20. The appeal is accordingly dismissed. The Respondents are on bail They need not surrender. Their bail bonds are cancelled and the sureties are discharged.