

(1950) 02 CAL CK 0022

In the Calcutta High Court

Case No : Criminal Revision Case No. 1156 of 1949

Health Officer, Serampore Municipality

APPELLANT

Vs

Shyam Sundae Sadhukhan

RESPONDENT

Date of Decision : 08-02-1950

Acts Referred:

Bengal Food Adulteration Act, 1919 — Section 21, 5, 5(1), 6(1), 6(2)

Citation : (1951) 1 ILR (Cal) 380

Hon'ble Judges : Sen, J;Chunder, J

Bench : Division Bench

**Advocate : Sudhansu Sekhar Mukherji and Sunil Kumar Basu, for the Appellant;
Narendra Kumar Basu and Sisir Kumar Basu, for the Respondent**

Judgement

Sen, J.—This Rule was obtained against an order acquitting the opposite party Syam Sundar Sadhukhan of a charge u/s 6(1) of the Bengal Food Adulteration Act. The order of acquittal was passed by Janab S.M.A. Meerza, Magistrate, First Class, Serampore. Against this order an application was made to the District Magistrate and it was rejected. The Health Officer of the Serampore Municipality then moved this Court and obtained this Rule against the order of acquittal.

2. The case is of a very simple nature and we are of opinion that the order of acquittal cannot stand. The accused has a shop in New Gate Street, Serampore, where he sells mustard oil. Samples of mustard oil exposed for sale in this shop were taken and sent to the Public Analyst. He has made a report which is Ex. 2. Therein it is stated inter alia that argemone oil was present in the sample. Upon this report being furnished the present prosecution was started.

3. The learned Magistrate acquitted the accused on grounds stated in his judgment, which we are not quite able to appreciate. There is the clear finding that argemone oil was present in the sample taken from the shop of the accused. This is the report of the Public Analyst and it does not seem to have been challenged. In the report certain other details have been given regarding the saponification value and the iodine content of the oil and from the report it

seems that so far as the saponification value and the iodine value are concerned the mustard oil conforms to the standard laid down by the law. It seems that it is on this ground that the learned Magistrate has acquitted the accused. He says further that the quantity of the argemone oil present has not been stated. He presumes from the fact that the saponification value and the iodine value are within limits that the percentage of argemone oil was necessarily very small. What grounds he had for such presumption we do not know. The two questions are quite distinct and we are not aware of the fact that there is any inter-relation between the presence of argemone oil and the saponification value and the iodine value in the oil. The learned Magistrate then goes on to say that it is a matter of common knowledge that argemone seeds are unavoidably mixed up with mustard seeds. After saying this he relies upon the case of *Mithan Lal v. Emperor* (1933) 149 Ind. Cas. 222 and says that in accordance with the above ruling the accused should be acquitted. Learned advocate appearing on behalf of the Petitioner points out to us Section 6(1)(v) of the aforesaid Act. According to that sub-section the law prohibits a person from selling exposing for sale, etc., mustard oil unless it is derived exclusively from mustard seeds. He then draws our attention to the provisions of Section 21 of the Act which says that any person contravening any of the provisions of the Act mentioned in the first column of the table just below the section shall be punished etc. Now, in the table we find in column 1, Section 6, Sub-section (1) and in column 2 we find the following words:

Sale etc., of milk, butter, ghee, wheat, flour, mustard oil or notified article which is not of the prescribed quality or is not labelled or marked in the prescribed manner.

4. He argues that it has been conclusively proved that the oil has not been derived exclusively from mustard seeds and that therefore the provisions of Section 6(1) of the Act have been disobeyed. It follows, he says, that the accused is punishable u/s 21 of the Act. Mr. Basu appearing on behalf of the accused relied upon Section 5(1)(b) of the Act. He also relied upon the preamble of the Act and certain notifications of the Government made under the provisions of the Act. His contention, put shortly, is that the presence of the argemone oil was minute and unavoidable and that consequently there should be no presumption that the oil was adulterated. That being so, he says, the order of acquittal is proper. In our opinion this contention cannot be upheld. Section 5(1)(b) deals with the sale of food and it says that where any article of food is unavoidably mixed with some extraneous matter in the process of collocation or preparation an offence shall not be deemed to be committed where such extraneous matter is found in the food. That section has nothing whatever to do with the provisions of Section 6(1)(v). Section 6(2)(v) is a distinct and separate section and it prohibits a person from keeping mustard oil unless it is derived exclusively from mustard seeds. In our opinion the case has nothing to do with saponification value or iodine content nor is it case in which the court has to consider when a presumption of adulteration should arise. Although it is framed

with the object of preventing adulteration of food, it is not a section which is governed by Section 5 it is a distinct section and its wording is in our opinion absolutely clear and incapable of misapprehension. It prohibits the storing, or keeping for sale of mustard oil which is not derived exclusively from mustard seeds.

5. We are of opinion, therefore, that the Court below has misdirected itself on the question of law. The matter is of serious public importance and we are of opinion that in the circumstances we should set aside the order of acquittal and direct a retrial in the light of the observations made above. The retrial shall be held by some other Magistrate who shall be appointed by the District Magistrate of Hooghly in this behalf.

Chunder J.

6. I agree.