

(1980) 08 AHC CK 0026
In the Allahabad High Court

Khedan Lal and Sons

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-08-1980

Acts Referred:

Constitution of India, 1950 — Article 226
Prevention of Food Adulteration Act, 1954 — Section 2
Constitution of India, 1950 — Article 226
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Prevention of Food Adulteration Act, 1954 — Section 2

Citation : (1980) AWC 481 : (1980) CriLJ 1346

Hon'ble Judges : Satish Chandra, C.J;H.N. Seth, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

H.N. Seth, J.—These four petitions under Article 226 of the Constitution, raise a common question of law, arising in similar circumstance, and they can conveniently be dealt with and disposed of by a common judgment.

2. M/s. Khedan Lal and Sons, Varahasi (petitioner in writ petition Nos, 4613, 6792, 316) is a partnership firm. It manufactures, sells, stores, supplies and distributes Zarda (chewing. tobacco) through various dealers in the State. Outside dealers also place orders for the supply of tobacco manufactured by the firm. Sri Nand Kishore proprietor of Agra Sughandhi Bhandar, Agra (petitioner in writ petition No. 3930) Bhagwan Das and Sons, Narhi, Lucknow, Hanuman Pd., Narhi Lucknow, Rajendra Pd., of Rana Bazar Baragaon Gonda, are some of the persons who deal in tobacco manufactured by M/s. Khedan Lal and Sons. In the month's of January and April, 1975, various Food Inspectors obtained from the aforesaid dealers, samples of tobacco manufactured by M/s. Khedan Lal and Sons which, on analysis, were found to contain colouring material, use of which is prohibited by the Prevention of Food Adulteration Act. Consequently, the petitioners are being prosecuted in various criminal cases at Lucknow, Gonda and

Agra for committing offences punishable under the Prevention of Food Adulteration Act.

3. The petitioners claim that tobacco manufactured by M/s. Khedan Lal and Sons is not "food" and does not fall within the purview of the Prevention of Food Adulteration Act. According to them, it has been so held in the cases of Abdul Karim v. State 1968 All WR 229 and Khedan Lal & Sons v. State of U. P. 1970 All WR 239. They contend that correctly interpreted the ratio of the decision in the case of State of U. P. v. Sri Ram Gupta 1972 All WR 058 also is that tobacco becomes food only when it is placed in Paan and not otherwise. The petitioners do not sell tobacco after placing it in Paan, accordingly the tobacco sold by them does not fall within the purview of Prevention of Food Adulteration Act. The respondents are misconstruing the decision in Sri Ram Gupta's case and are harassing the petitioners by repeatedly initiating criminal proceedings against them. The petitioners, therefore, pray that the criminal proceedings initiated against them be quashed and the respondents be asked not to harass them by initiating any fresh criminal proceedings against them in this regard.

4. The case of the respondents on the other hand, is that this Court has, in Sri Ram Gupta's case, clearly held that tobacco of the nature manufactured by M/s. Khedan Lal and Sons is "Food" and that the proceedings initiated against the petitioners under the Prevention of Food Adulteration Act are perfectly in order.

5. Although, the petitioners have in their petition, described the tobacco manufactured by Khedan Lal and Sons, as "Chewing Tobacco", respondents case in the counter-affidavit is that tobacco manufactured by M/s. Khedan Lal and Sons, described as "Pill Patti Zafrani and Tambacco Zafarani, is meant to be taken with Paan, In their rejoinder affidavit they have described the tobacco in question as "Chewing Tobacco", which in fact is Khane Ki Tambacoo i.e. tambacoo meant to be eaten. In other words they concede that the tobacco with which they had been dealing was meant to be eaten with Paan Crucial question that, therefore, arises for our consideration in these petitions is whether the tobacco which is taken with Paan is food within the meaning of the words as used in Prevention of Food Adulteration Act. We are in these cases not concerned with any other type of tobacco like tobacco which is used in cigarette etc. or which is used as snuff. In case it is held that the tobacco which is eaten with Paan is not "food" as defined in Prevention of Food Adulteration Act, it would fall outside the purview of that Act and the petitioners would be entitled to the relief claimed by them. If, on the other hand, it is found to be "food" the trial for ascertaining whether the tobacco manufactured or sold by the respective petitioners was adulterated and if so whether any of them is guilty of contravening the provisions of the Act, will have to go on and the present petitions would be liable to be dismissed.

6. The object of enacting Prevention of Food Adulteration Act obviously is not only to prevent fake or sub-standard articles food being mixed with food which is offered for sale but it also is to see that no such article which contains harmful or

sub-standard material enters into the preparation of food It is to cover all cases of injurious article of food entering the human body that Section 2(v) of the Act has given an extended meaning to the word "food" and has defined it thus:

(v) "Food" means any article used as food or drink for human consumption other than drugs and water and included:

(a) any article which ordinarily enters into, or is used in the composition or preparation of human food, and

(b) any flavouring matter or condiments,

So defined "food" means not only an article which normally a person eats or drinks with a view to nourish his body (as ordinarily understood) but also an article which normally is not considered to be food, but which ordinarily enters into or is used in the composition or preparation of human food. Accordingly such ingredients also would in the circumstances mentioned in Section 2(v) of the Act, be deemed to be adulterated and any person dealing in such ingredient can also be dealt with under the provision of the Act.

7. Authorities are more or less unanimous that tobacco of any type, (including tobacco of the type involved in these petitions), is not food in the ordinary sense of the word, namely, that it is not an article which is eaten with a view to provide nourishment to human body and that it is not consumed as food. The question, that, however, arises for our consideration is as to whether it is an article which ordinarily goes into or is used in the composition or preparation of human food i.e. in the composition or preparation of an article which is eaten with a view to provide nourishment to human body.

8. This question came up for consideration before a Division Bench of this Court in a group of criminal cases *State of U. P. v. Sri Ram Gupta* 1972 All WR 658. There was a difference of opinion between two learned Judges constituting the Bench. Gur Saran Lal, J., held that as tobacco in question went into the composition of and was ordinarily used in the preparation of pan (which has been held to be food as ordinarily understood) it is food within the extended meaning of the word as defined by Section 2(v) of the Act and. that persons dealing with such tobacco if found to be adulterated in one of the ways mentioned in Section 2(i) of the Act can be dealt with under the Act. Jag Mohan Lal, J., on the other hand, took the view that tobacco cannot be considered to be an ordinary constituent of paan and is not an article which ordinarily enters into its preparation. Accordingly it does not fall within the purview of the word "food" as defined by Prevention of Food Adulteration Act. The matter was accordingly referred to K.B. Srivastava, J., who after taking into consideration earlier decisions of this Court in the cases of *Abdul Karim v. State* 1968 All WR 220 and *Khedan Lal and Sons v. State of U. P.* 1970 All WR 239, ultimately agreed with Gur Saran Lal, J. and ruled that as tobacco ordinarily enters into the composition and preparation of pan which is "food", adulteration of such tobacco can also be dealt with under the provisions of Prevention of Food Adulteration Act. The

decision in Sri Ram Gupta's case has since been reported in 1972 All WR 658, and we see no good reason to take a view different from that taken by K.B. Srivastava, J., in the aforementioned case.

9. Learned Counsel appearing for the petitioner contended that according to the definition of the word "food" as contained in Section 2(v) of the Act chewing tobacco can be considered to be food only when it has been mixed with pan. According to him this is what was held by K.B. Srivastava, J., in Sri Ram Gupta's case 1972 All WR 658. Since the petitioner does not sell the tobacco by mixing it in pan, it cannot be said that his case fell within the purview of Prevention of Food Adulteration Act.

10. We are unable to accept this submission. According to the definition of the word "food" any article which ordinarily enters into or is used in the composition or preparation of human food also is food. The definition does not state that an article which ordinarily enters into or is used in the composition or preparation of human food becomes food only when it has actually been made an ingredient of some human food. In our opinion an article which ordinarily enters into or is used in the composition or preparation of food will remain food as defined by Prevention of Food Adulteration Act irrespective of the fact whether it has actually gone into the composition or preparation of human food or not. Accordingly once it is held that chewing tobacco of the nature involved in this case is an article which ordinarily enters into or is used in the composition or preparation of human food it would be food within the meaning of the Act even though it has not actually been sold by making it an ingredient of paan and it will fall within the purview of Prevention of Food Adulteration Act. We have carefully perused the judgment of K.B. Srivastava J., and we do not find anything therein to show that in the opinion of the learned Judge chewing tobacco becomes food only when it is actually placed in paan. As we read the judgment of K.B. Srivastava, J. it is clear to us that what the learned Judge held was that since chewing tobacco is an article which ordinarily enters into and is used in the composition or preparation of paan, it is food and comes within the sweep of Prevention of Food Adulteration Act.

11. As we find no merit in the point canvassed before us by the learned Counsel appearing for the petitioner, all these petitions fail and are dismissed, and the interim orders passed in these cases are vacated. In the circumstances, parties are directed to bear their own costs.