

(1972) 03 DEL CK 0033

In the Delhi High Court

Case No : Criminal Revision Appeal No. 151 of 1971

Lachman Dass

APPELLANT

Vs

Municipal Corporation, Delhi

RESPONDENT

Date of Decision : 13-03-1972

Acts Referred:

Citation : (1972) CriLJ 1531 : (1972) 8 DLT 454 : (1972) 2 ILR Delhi 461

Hon'ble Judges : V.D. Misra, J; D.K. Kapur, J

Bench : Division Bench

Advocate : S.K. Puri and D.C. Mathur, for the Appellant;

Judgement

V.D. Misra, J.

(1) This judgment will dispose of Criminal Revisions Nos. 151 and 152 of 1971 since common questions of law have arisen in both the cases.

(2) Lachman Dass, who is a petitioner in both the revisions, deals in Hing and for that purpose has a godown No. 2526, Chambaiwala Kalan, Phatak Habsh Khan, Delhi. On 22-5-1968 Dina Nath, Shanti Nath and H. K. Bhanot, Food Inspectors, visited the godown and called for the petitioner, and took samples of Hing and compounded Hing from different lots. These were sent to the Public Analyst and two samples of Hing and two samples of compounded Hing were found adulterated. The Municipal Corporation of Delhi filed three complaints u/s 7/16 of the Prevention of Food Adulteration Act, 1954, (hereinafter referred to as "the Act"), against the petitioner. Complaint No. 138/3 of 1968 pertained to the sample of Hing lifted by H. K. Bhanot, complaint No. 143/3 of 1968 pertained to the sample of compounded Hing lifted by Shanti Nath, whereas complaint No. 139/3 of 1968 pertained to samples of Hing and compounded Hing lifted by Dina Nath. The petitioner was convicted by the trial Magistrate in case No. 138/3 of 1968 on 11-8-1969. Thereafter, the petitioner made applications in other two pending cases praying that the proceedings be dropped on the ground that the petitioner had committed only one offence, i.e., storing for sale adulterated

articles of food. The Magistrate did not accede to the request of the petitioner and he went in revision to the Court of Session which dismissed his revision petitions. When this matter came before one of us, it was noticed that there was an apparent conflict between two unreported decisions of this Court, and keeping in view the importance of the question raised in the revision petitions, these were referred to a larger Bench, and that is how these are now before us.

(3) Mr. S. K. Puri, learned counsel for the petitioner, contends that there is no material difference between Hing and compounded Hing. He further contends that even if there is a difference between the two articles, the petitioner could not be tried in two cases separately in respect of the same article since the offence with which the petitioner is charged relates to storing of adulterated articles of food for sale. In support of his contention he relies on various decisions which may now be noted.

(4) Sanker Lal Agarwalla Vs. Corporation of Calcutta three Food Inspectors visited the godown of the petitioner, who was dealing in ghee, the same day and at the same time, and each took samples of ghee from three different lots of tins. Three samples were found adulterated. Thereafter, three complaints were filed in respect of the three lots of tins of ghee from which the samples were taken by each Food Inspector. One complaint was for "storing and keeping for sale .ghee (Bisweswar Brand)", whereas another complaint was for "keeping for sale and selling cow ghee (Lakshmi Brand)". The third complaint was for "keeping for sale and selling cow ghee". He was convicted in the last mentioned case.

(5) He raised the contention that having been convicted in respect of the offence of storing for sale and for selling adulterated ghee on a particular day and at a particular place and time, he could not be put on trial a second time in respect of the same offence for the three different samples were taken from three lots of tins arranged brandwise. The respondent attempted to distinguish the cases by saying, firstly, that the brand of ghee is different in three cases and that in the case in which the petitioner was convicted the ghee was cow ghee, whereas in one of the pending prosecutions it was not known whether the ghee is cow ghee or buffalo ghee. It was also contended that in the case already decided the offence was one of keeping for sale and selling, whereas in one of the pending prosecutions the offence was only one of storing and keeping for sale. The learned Single Judge held that "the fundamental thing is that the offence is the same, namely, the offence of storing or selling ghee, which according to the prosecution was adulterated, at a particular hour of a particular day. In that view the splitting up of a single act of storing into different acts according to brands and the launching of separate prosecutions cannot be justified and is not warranted by law. In view of the provisions of Section 403 of the Code of Criminal Procedure the subsequent prosecution, that is, the prosecutions in question in the present revision application are barred." It was also observed : "I have not been able to understand why on the facts and in the circumstances dealt with above the

Corporation of Calcutta thought it either expedient or necessary to start three separate cases against the petitioner when one case would have been sufficient for the purpose of bringing the offender to justice."

(6) In an unreported judgment of this court in *Dwarka Nath v. Municipal Corporation of Delhi*, (Criminal Revision No. 371-D of 1965), decided on 7-11-1967,(2) five Food Inspectors visited the premises of Mohan Ghee Laboratories and took samples of ghee from different containers of ghee and also seized those containers. The samples were found to be of standard quality but the containers were found to be not in conformity with Rule 32 of the Prevention of Food Adulteration Rules, 1955. This resulted into five separate complaints by the Municipal Corporation of Delhi and the accused was convicted and fined separately in respect of each complaint. When the matter came up before this Court in revision on recommendation from the Additional Sessions Judge that the conviction for different cases on the basis of samples obtained at the same point of time from different containers was not lawful, 1. D. Dua, J. (now the Hon'ble Judge of the Supreme Court) observed thus:

"IN my opinion, without going into the question whether or not it was technically lawful to start two cases on the basis of the statutory sale represented by the taking of samples by two different Food Inspectors at the same point of time from the same dealer out of two different containers, I would be inclined to hold that such prosecution did not entail separate penalties and that only one penalty would have met the ends of justice. I cannot help pointing out in this connection that the manner in which the different Food Inspectors have conducted themselves in taking more samples than one and initiating more cases than one, seems to reflect not the judicious and rational majesty of law, but an undignified and vindictive kind of attitude. One prosecution case showing that there were a large number of containers with the same legal infirmity would have served the purpose of gracefully vindicating the law and the cause of justice though in such a contingency the penalty might have been more substantial than the paltry and ridiculous amount of Re. 1.00 imposed by the learned Magistrate. Administration of Criminal Law demands a dignified and effective approach to serve the larger interests of the criminal administration and the judicial officers dealing with criminal cases would be well-advised to keep this aspect properly in view."

(7) In *Crepps v. Durben*, 1 Sm. L.C. 9th Edition, p. 692,(3) a person was convicted in four separate convictions for unlawfully exercising his ordinary calling of a baker by selling rolls on Sunday contrary to law, which laid down "that no tradesman or other person shall do or exercise any worldly labour, business, or work of their ordinary calling on the Lord's Day". A contention was raised that the nature of the offence was such that it could be committed once on the same day, and that if the accused had continued baking from morning till night it would still be but one offence. Lord Mansfield, accepting this contention, observed thus:

" THE offence is exercising his ordinary trade upon the Lord's Day; and that,

without any fractions of a day, hours, or minutes. It is but one entire offence whether longer or shorter in point of duration; so that whether it consists of one or a number of acts, the penalty incurred by this offence is five shillings. There is no idea conveyed by the Act itself that if a tailor sews on the Lord's Day every stitch he takes is a separate offence, or if a shoemaker or a carpenter work for different customers at different times on the same Sunday, that those are so many separate and distinct offences."

(8) In *The Apothecaries Company v. Jones*, (1893) 1 Q.B.D. 89 three separate actions were brought against the respondent alleging that thrice in one day he had acted and practiced as an apothecary, by giving advice and medicine to three persons, without having obtained a proper certificate entitling him to do so. In the first case the respondent was convicted and fined. In the remaining two cases the judgment was given in favor of the respondent by the trial Court on the ground that only one offence in law was made out. The material words of the Section were "If any person shall act or practice as an apothecary without having obtained such certificate, every person so offending shall for every such offence forfeit . 20." When the matter came up on appeal before the Queens Bench Division, following *Crepns v. Durben* (supra), (3) it was held that the offence committed was one,

(9) Mr. D. C. Mathur, learned counsel for the respondent-Corporation. contends that a sale to the Food Inspector of an article of Food for analysis is a sale under the Act and when the petitioner sold to the Food Inspectors Hing and compounded Hing, though at the same time, each transaction was a separate sale and so separate offences were committed if those samples turned out to be adulterated. He also contends the adulteration of food may be by various methods, and article of food may be adulterated because it does not conform to the specifications laid down under the rules or it may contain prohibited coal-tar dye, but the punishment would be different inasmuch as that whereas in the first case this Court will have a discretion to award a sentence less than the minimum of six months prescribed u/s 16 of the Act; in the second case no such discretion has been given to the Court. So where a person has been prosecuted and convicted in the first case he will escape the proper punishment in title second case; if the petitioner's contention are accepted. He also contends that Hing & compounded Hing are two different articles of food.

(10) The relevant provisions of the Act may at this stage be noted :- Section 2(xiii) defines "sale" thus:

"sale" with its grammatical variations and cognate expressions, means the sale of any article of food, whether C cash or on credit or by way of exchange and whether by wholesale or retail, for human consumption or use, or for analysis, and includes an agreement for sale, an offer for sale, the exposing for sale or having in possession for sale of any such article, and includes also an attempt to sell any such article".

(11) The relevant portion of Section 8 of the Act is in the following terms:

" NO person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute- (i) any adulterated food; XXX".

(12) The powers of Food Inspectors are given in Section 10 of the Act, and its relevant portions are in the following words :-

"(1)A food inspector shall have power- (a) to take samples of any article of food from- F (i) any person selling such article; x x x (b) to send such sample for analysis to the public analyst for the local area within which such sample has been taken; x x x (2) Any food inspector may enter and inspect any place where any article of food is manufactured, stored or exposed for sale and take samples of such articles of food for analysis. (3) Where any sample is taken under clause (a) of subsection (1) or sub-section (2), its cost calculated at the rate at which the article is usually sold to the public shall be paid to the person from whom it is taken; x x x x x x

(13) The relevant portion of Section 16, which prescribes the penalties for the offences, is in the following words:-

A."(1) If any person- (a) whether by himself or by any other person on his behalf imports into India or manufactures for sale, or stores, sells or distributes any article of food- (i) which is adulterated or misbranded or the sale of which is prohibited by the Food (Health) Authority in the interest of public health; (ii) other than an article of food referred to in sub-clause (i), in contravention of any of the provisions of this Act or of any rule made there under; x xx x ^ x x x

HEshall, be punishable with imprisonment for a term which shall not be less than six months but which may extend to six years, and with fine which shall not be less than one thousand rupees : Provided that- (i) if the offence is under sub-clause (i) of clause (a) and is with respect to an article of food which is adulterated under sub-clause (1) of clause (i) of Section 2 or misbranded under sub-clause (k) of clause (ix) of that section; or (ii) if the offence is under sub-clause (ii) of clause (a), the court may for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or of fine of less than one thousand rupees or of both imprisonment for a term of less than six months and fine of less than one thousand rupees."

(14) Section 7 prohibits inter alias the storing of any adulterated food which is made punishable by Section 16(1)(a). A food inspector is empowered u/s 10(2) not only to enter and inspect any place where any article of food is stored for sale but also to take Samples of such articles of food for analysis. It is true that sale to a food inspector of any article of food for analysis is a sale under the Act but the definition of "sale" in Section 2(xiii) shows that even "having in possession for sale" is included in it. Simply because there is a sale to the food inspector for analysis of any adulterated food lying in store, it cannot be said that

the offence is one of "selling adulterated food" and not of storing the same. Indeed unless an article of food is analysed and found adulterated, it cannot be said to be adulterated under the Act. And before analysis, as the Act shows, there has to be a sale. Where the circumstances of a case show that a person is charged with having "sold" any adulterated food, it may technically be correct to charge him separately for each such sale, but the situation will be materially different. where circumstances show that a person is being charged for having "stored" adulterated food.

(15) The petitioner was charged in case No. 139/3 of 1968 for having "on 22-5-1968 at 4 and 4-30 p.m. stored for sale Hing and compounded Hing at your godown No. 2526, Chamba Barwala Kalan, Phatak Habsh Khan, Delhi. In case No. 143/3 of 1968 the charge was that "on 22-5-1968 at 5 p.m. had stored for sale compounded Hing at your godown No. 2526, Chuaibarwala Kalan, Phatak Habsh Khan, Delhi". Similarly the charge in the third case was for having stored for sale Hing on 22-5-1968.

(16) The facts show that the petitioner was charged for having stored for sale on the day in question articles of food which were found adulterated. It is true that there were two different articles of food, inasmuch as Hing and compounded Hing have different constituents and for which separate standards have been laid down by the Rules. Whether the articles happen to be on, or different will not make any difference. The offence for which the petitioner is charged is storing for sale articles of food on a particular day. So the samples of one article of food lifted from various containers and found to be having different constituents should not make any difference. Similar is the case where more than one article of food, of which various samples are lifted and they are found to be adulterated, the offence will remain the same for having stored for sale articles of food in contravention of Section 7 of the Act on a particular day. The contention of Mr. Mathur that since each Food Inspector had paid for each sample bought by him, each sale was different from the other sale, and so the petitioner committed a separate offence in respect of each sample of food sold by him to the Food Inspector, cannot be upheld. According to him, even if more than one Food Inspector at the same time and place takes from a person more than one sample of the same article of food from the same container and each of the samples turns out to be adulterated with exactly same constituents, there will be more than one offence committed by the seller, and so separate prosecution can be brought. In respect of each offence, resulting in separate punishments. This seems neither the object of this Act nor the meanings of the various sections referred to above. It is true that the statute is not worded in the same language as in the Crepps case (supra) inasmuch as that whereas under the present Act the storing for sale of an adulterated article of food is prohibited, in the Crepps case a particular act was prohibited on a particular day. But this does not mean that if on the same day and at the same time various Food Inspectors lift samples of an article of food from the same container, the seller is committing various distinct and separate offences. The same reasoning would apply where

the samples are lifted by the Food Inspectors on the same date and at the same time of an article of food from various containers and it would make no difference if instead of lifting sample of one article of food, samples of various articles of food are lifted. The Apothecaries Company's case⁽⁴⁾ (supra) fully supports this conclusion. Similar was the view in *Sanker Lal Anggwal*⁽¹⁾ and *Dwarka Nalhease* (supra) ⁽²⁾.

(17) MR. MATHUR has cited a number of authorities for offences under the Indian Penal Code and also under the Code of Criminal Procedure to show that where separate and distinct offences are committed the general rule is to have separate trials in respect of each offence and a discretion is left to join more than one offences in one trial under circumstances mentioned in the Code of Criminal Procedure. He has thus referred to *Ranchhodlal Vs. State of Madhya Pradesh*, *Chudaman Narayan Patil Vs. State of Maharashtra*, ⁽³⁾ and *Alimuiddi Naskar and Others Vs. Emperor*, ⁽⁴⁾. In all these cases the accused was committing separate and distinct offences though of a similar nature and so separate prosecutions were held justified,

(18) Mr. Mathur also referred to *Channu Prosad Singh v. Emperor* AIR 1928 Pat 577 *Bubu Lal Mahton v. Ram Swan Singh* AIR 1930 Patna 26,⁽⁹⁾ and *Jitendra Nath Gupta and Others Vs. Emperor*, to show that before a person could take advantage of Section 403 of the Code of Criminal Procedure it has to be seen whether the accused is being punished twice for the same acts or omissions in respect of the exact terms of the charge and that the test of similarity is whether or not the evidence to obtain a legal conviction on the first charge was in substance the same as that necessary to sustain the second charge. In this context Mr. Mathur urges that the evidence in all the cases is different inasmuch as the Food Inspectors are different, the reports of the Public Analyst are different and the other documents relating to the lifting of the samples by the Food Inspectors are also different. I am of the view that this contention has no force. These authorities show that the evidence has to be "in substance" the same and not that the evidence should be the same. In the instant case the evidence "in substance" is the same which shows that at a particular time and on a particular day the petitioner was found to have stored adulterated food.

(19) The submission of Mr. Mathur that the seller may escape the rigours of law where constituents of various articles of food are found to be such that in one case the Court may have the discretion to award a sub-minimum sentence, whereas in another case the Court may not have such a discretion, presents no difficulty at all. If the Food Inspectors are not out to harass the sellers but are willing to keep up the dignity of law by enforcing it properly according to the spirit and object, more than one Food Inspector may go and raid a shop or a godown and lift as many samples as they wish provided they bring one prosecution against the seller for having stored for sale adulterated articles of food on the basis of all the samples found to be adulterated. The seller would neither escape the rigours of law nor would he be able to call it unnecessary and

uncalled for harassment.

(20) Mr. Mathur has also referred to an unreported judgment of this Court in *Om Parkash v. State* (Criminal Revision No. 232 of 1969), decided on 22-3-1971 , where a different view was taken. In this case a number of Food Inspectors took samples of milk which was carried for sale by the accused in a truck and out of which six were found adulterated. Only one complaint was filed and one sentence was awarded to the accused. When the accused came up in revision against his conviction and sentence a learned Single Judge of this Court remanded the case for retrial on each of six counts. In the judgment a hypothetical case which looks like storing lor "sale" was discussed. We find that the attention of the learned Jude was not drawn to various authorities discussed by us. In our opinion, in any case the observations made there in were obiter as the facts show that the case was not of storing adulterated food.

(21) We would, Therefore, allow these revision petitions and quash the proceedings in view of the petitioner having been already convicted of the same offence in the previous prosecution.