

(1994) 01 PAT CK 0011

In the Patna High Court

Case No : Criminal Misc. No. 4879 of 1992 (R)

L.M. Batra

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 13-01-1994

Acts Referred:

Citation : (1994) 01 PAT CK 0011

Final Decision : Allowed

Judgement

R.N. Sahay, J.—The petitioner at the relevant time was the General Manager of Hotel Ashoka, Ranchi, One Surendra Kumar, Food Inspector, visited the hotel on 21-1-1990 and purchased turmeric powder from the Store-in-charge for analysis. The sample on being analysed by the Chief Medical Officer, Ranchi, was found to be adulterated. It contained Lead Chromate which is injurious to health. The Food Inspector filed a prosecution report in the Court of Chief Judicial Magistrate, Ranchi no 5-4-1991 for taking cognizance u/s 16 of the Prevention of Food Adulteration Act. A copy of the analysis report was forwarded to the petitioner for necessary action. The Chief Judicial Magistrate took cognizance by order, dated 19-12-1991. The prosecution report was filed after sanction was accorded by the Civil Surgeon-cum-Chief Medical Officer, Ranchi.

2. The petitioner has impugned the legality of the prosecution and cognizance on several grounds. First ground is that the turmeric was not sold by the petitioner who was the General Manager, but by the Stores-in-charge. The second ground is that the turmeric was meant for internal consumption of the hotel and not meant for sale. The third ground is that the sanctioning authority has not applied his mind before according sanction. The last ground is that the petitioner was not given option to get the sample analysed by the Central Food Laboratory as provided u/s 13(3) of the Prevention of Food Adulteration Act.

3. The first question which arises for consideration is as to whether the sale to the Food Inspector was a "sale" within the meaning of Section 2(xiii) of the Act.

This defines "sale" as follows:

"sale" with its grammatical variations and cognate expressions, means the sale of any article of food, whether for 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.

It would appear from the definition of "sale" that a sale for the analysis can never be sale for "human consumption" but it is nonetheless sale within the meaning of the definition. To insist that an article sold for analysis should have been offered for sale for human consumption would frustrate the very object of the Act.

4. The Supreme Court in *The Food Inspector, Calicut Corporation Vs. Cherukattil Gopalan and Another*, , following the decision in *The Food Inspector, Calicut Corporation Vs. Cherukattil Gopalan and Another*, , held that sale of sample of a food article to Food Inspector amount to a sale as defined in Section 2(xiii).

5. There is, however, later decision of the Supreme Court given by three Judges wherein detail analysis of the words "store" and "sale" have been given, that is, *Municipal Corporation of Delhi Vs. Laxmi Narain Tandon and Others*, . In this case, samples of ice-cream, milk, curd and butter were taken from the hotel run by the accused and after analysis the Public Analyst found that they were sub-standard and as such "adulterated articles of food within the meaning of Section 2(i)(1) of the Prevention of Food Adulteration Act. It was, however, contended on behalf of the accused that those articles were sold to non-resident visitors or the public generally: that the hoteliers provide residential accommodations, services and other amenities, including meals, only to the resident customers against complete charge and that no rebate is allowed for if a resident customer chooses not to eat it. It was therefore, contended on behalf of the accused that, this was not an article of food which was sold or which was stored for sale. This contention on behalf of the accused was rejected by the Supreme Court by holding that clearly because these articles were served to the resident customer and were not separately charged, did not mean that they were not stored for sale or were not sold. The complete bills which were presented to the customer did include the cost of the articles which were served as a part of general services to the resident-customer. It was, therefore, held that these articles like ice-creams, milk, curd and butter were stored for sale.

6. However, analysing all the provisions of the Act, the Supreme Court pointed out allows: as follows:

Form a conjoint reading of the above referred provisions, it will be clear that the broad scheme of the Act is to prohibit and penalise the sale, or import, manufacture, storage or distribution for sale of any adulterated article of food. The terms "store" and "distribute" take their colour from the context and the

allocation of words in which they occur in Sections 7 and 16. "Storage" or "distribution" of an adulterated article of food for a purpose other than for sale does not fall within the mischief of this section.

The Supreme Court also pointed out that the construction which was placed upon the words "storage" and "distribution" was the correct one by reference to the other provisions of the Act. In particular, referring to Section 10 of the Act, as it then stood, they pointed out that a Food Inspector could enter and inspect any place where any article of food was manufactured, stored or exposed for sale, and take sample of such articles of food for analysis. If an article of food is not stored in the sense that it was stored for sale, the Food Inspector could not be acting within his powers to enter and inspect that place and take sample of that article. Unless that article is stored for sale, the Food Inspector will not be competent under the law to take a sample or on such sample being found adulterated, to validly launched prosecution therein. In short, they said: "The expression "stored" in Section 7 means "storing for sale", and consequently storing of an adulterated article of food for purposes other than for sale would not constitute an offence u/s 16(1)(a)."

6. In *The State of Maharashtra Vs. Udayram Rupram Oza*, , it was held that the Food Inspector u/s 10(2) of the Act was not authorised to take sample of any article which are stored in a hotel or restaurant for the purpose of using it as an ingredient in another preparation, as in the instant case. If that is so it must follow that the aforesaid sale made by the owner of such restaurant and hotel will not amount to a sale within the meaning of Section 2(xiii) of the Act. *Jahagirdar, J.* was of the view that he was bound to follow the later decision of the Supreme Court in preference to the earlier decision on the point because the later judgment was of a larger Bench consisting of three Judges and all the relevant provisions of the Act were considered by the Supreme Court.

7. In my view, therefore, the sale of turmeric to the Food Inspector did not amount to sale within the meaning of the Act and hence the prosecution of the petitioner is ultra vires to the Act and in my opinion the petitioner should not be prosecution u/s 16 of the Act because sample was not taken from the petitioner but from the Stores-in-charge who has not been prosecuted. There is no merit in the submission of *Sri D. Jerath*, Counsel for the Food Inspector that since the General Manager was over-all in-charge of the hotel, he would be liable to be prosecuted if the hotel used articles of food which were found to be adulterated. The petitioner cannot be prosecuted only because he is the General Manager of the hotel. It is not the case of the prosecution that the petitioner as General Manager was responsible for the purchase of articles kept in the stores.

8. The third ground of attack that the sanction for prosecution was improper has also force, the sanctioning authority has merely written sanction on the prosecution report. He has not written that he was satisfied from the report that the petitioner has committed offence punishable u/s 16 of the Act. It seems that sanctioning authority had not applied his mind before granting sanction.

However, this ground is not very important at this stage.

9. Section 13(2) of the Act provides that on receipt of the report of the analyst under Sub-section (3) to the effect that the article of food is adulterated, the Local (Health) Authority shall attend the institution of prosecution against persons from whom the sample of the article of food was taken, forward a copy of the report on the result of the analysis to such person or persons as the case may be, informing such person or persons that if it is so desired, either or both of them may make an application to the Court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Laboratory.

The requirements of Section 13(2) of the Act have been held to be mandatory, and the accused has got a valuable right to get the sample analysed by the Central Laboratory, as the report of the local health authorities is not sacrosanct, and may contain error.

10. Mr. Jerath, learned Counsel for the complainant has submitted that the copy of the report of the Analyst was forwarded to the petitioner and if he so wanted he could have applied to the Court to get the sample analysed by the Central Food Laboratory. In my opinion, mere forwarding the report to the accused cannot be said to be substantial compliance of the requirements of Section 13(2) of the Act, There is no dearth of authorities which say that under the amended Section 13(2) valuable right is given to the accused of receiving notice from local health authorities giving a copy of the report of the Public Analyst and also telling him that if he so desired he may get the sample analysed by the Central Food Laboratory by making an application to the Court. Non-compliance of this provision vitiates the entire proceeding. [See State of Kerala Vs. N. Soman, .]

11. The Courts have went to the extent of saying that the provision of sending the copy of the Public Analyst's report to the accused by registered post is also mandatory. Thus, the prosecution of the petitioner on all the four grounds is vitiated. This application, accordingly allowed and the prosecution of the petitioner in Case No. C (iii) Case No. 327/91 and the order, dated 19-12-1991 passed by the Chief Judicial Magistrate, Ranchi is quashed.