

(1964) 08 CAL CK 0001
In the Calcutta High Court

Messrs. Sen Mahasay and Another

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

Date of Decision : 20-08-1964

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 25, 25(1), 25(2)

Citation : 69 CWN 517

Hon'ble Judges : K.C. Sen, J

Bench : Single Bench

Advocate : Barun Kumar Roy Chowdhury and Madan Kumar Roy, for the Appellant; Nikhil Chandra Talukdar, for the Respondent

Judgement

K.C. Sen, J.—This Rule is directed against the order of Sri B. Moitra, the learned Senior Municipal Magistrate, of Calcutta whereby he has convicted the petitioners because of infringement of the provision of Section 442 of the Calcutta Municipal Act and has sentenced the petitioners to pay a fine of Rs.10/-, in default, to suffer simple imprisonment for five days.

2. The case for the prosecution was that the accused petitioner Messrs. Sen Mahasay and the petitioner No.2 Biswanath Sen were carrying on business of an eating house at premises No. 104, Rash Behari Avenue without a licence u/s 442 of the Calcutta Municipal Act. The defence was that the accused persons were not carrying on any business of eating house at the said premises but they have a sweetmeat shop mainly for selling various kinds of sweetmeats to the customers and occasionally some of the customers used to taste the sweetmeats sitting there before purchase. The petitioners duly obtained a licence under Rule 50 of the Rules made under the Prevention of Food Adulteration Act, 1954 and as such, no further licence u/s 442 is called for.

3. The learned Magistrate on a consideration of the evidence adduced in this case found that Section 442 of the Calcutta Municipal Act has not been repealed by virtue of the provision of Section 25 of the Prevention of Food Adulteration Act, 1954 inasmuch as the provision contained in Section 442 has got a separate

existence of its own untrammelled by the provision of Rule 50 of the Rules made under the Prevention of Food Adulteration Act. On facts the learned Magistrate has found that the evidence in the case was clear enough to show that the petitioners ran an eating house at the aforesaid premises and, therefore, as no licence was taken u/s 442 of the Calcutta Municipal Act they were liable to be convicted.

4. Mr. Barun Kumar Roy Chowdhury, the learned counsel appearing for the petitioner has urged before me that the learned Magistrate committed an error of law in finding that the provision of Section 442 should not be deemed to be repealed under the provision of Section 25 of the Prevention of Food Adulteration Act read with Rule 50 of the Rules made under this Act because the language in both of them are on the same footing and the primary object as envisaged in Section 442, of the Calcutta Municipal Act and Rule 50 of the Rules under the Prevention of Food Adulteration Act is that licence should be obtained for manufacture and sale of articles as mentioned in Rule 50 *ibid*. Mr. Roy Choudhury has referred to me Section 442, sub-section (1) which runs as follows:

No person shall without or otherwise than in conformity with the terms of a license granted by the Commissioner in this behalf, keep any eating-house, tea-shop, hotel, boarding-house, bakery, aerated water factory, ice factory or other place where food is sold or prepared for sale.

5. By referring to this section Mr. Roy Chaudhury contends that the expression "or other place where food is sold or prepared" must refer to eating house etc., as stated in this section and as soon as it is found that in such places food is sold or prepared for sale, they come within the ambit of Rule 50 *ibid*. Rule 50 provisions that no person shall manufacture, sell, stock, distribute or exhibit for sale any of the following articles of food except under a licence.... (b) sweetmeats and savoury. This Rule undoubtedly contemplates that sweetmeats and savoury cannot be kept in stock, manufactured or sold without any proper licence obtained in this behalf.

6. In view of this argument is it a matter for consideration whether the provisions of Section 25 of the Prevention of Food Adulteration Act, 1954, should be operative in this particular case for a finding that Section 442 is deemed to have been repealed. Sub-section (1) of Section 25 of the Food Adulteration Act provides that if immediately before the commencement of this Act, there is in force in any State to which this Act extends any law corresponding to this Act that corresponding law shall upon such commencement stand replaced. By virtue of this provision it need be considered seriously whether the provision contained in Rule 50 *ibid* is on the same footing as that appearing in Section 442 of the Calcutta Municipal Act. In this connection reference may be made to a decision of this Court as reported in (1) *Model Electric Oil Mills and Others Vs. Corporation of Calcutta*, . In this case, S.K. Sen, J., has decided as to whether Section 442 is operative in respect of Mustard Oil Mills where mustard oil is manufactured and stored for sale. In this decision his Lordship found that Section 442 will not be

attracted inasmuch as the petitioner (Model Electric Oil Mills) had already obtained a licence under Rule 50 of the Rules made under the Prevention of Food Adulteration Act. His Lordship observed, inter alia, that licencing of manufacture or sale of mustard oil in relation to a particular premises is fully covered by the provision of the Prevention of Food Adulteration Act taken with the Rules, and if Section 442 of the Calcutta Act is held to cover licencing of premises for the manufacture or sale of mustard oil, to that extent it must be deemed to be correspondent State law which is repealed by Section 25(1) of the Prevention of Food Adulteration Act. On this finding it has been argued by Mr. Roy Choudhury that his Lordship enunciated a proposition of law that whenever a licence is obtained for manufacture and sale of food as contemplated by Rule 50 that would amount to repeal of entire provision of Section 442 of the Calcutta Municipal Act. I cannot agree with him on this point inasmuch as in this decision Mr. Justice S.K. Sen has used the expression "to that extent". By using this expression it is quite clear that the provision of Section 25(2) of the Prevention of Food Adulteration Act was brought into play and it was not contemplated by his Lordship that the entire Section 442 of the Calcutta Municipal Act ought to be deemed to have been repealed. Accordingly, this part of the argument of Mr. Roy Choudhury cannot be accepted.

7. In this decision it has also been held that Section 442 is not intended to apply to any place where an article of food which is not ready for immediate consumption is either manufactured or sold. Hence it does not apply to a place like an oil mill where mustard oil or article of food not ready for immediate consumption is sold or manufactured. The expression "other place" referred to in the body of the Section must be a place of the same kind as an eating house and the other types of premises enumerated in sub-section (1) of Section 442. This observation as made in this reported case was on the footing of the argument of Mr. Nalin Chandra Banerjee, who had urged that in view of the fact that seven types of premises are specifically enumerated in sub-section (1) of Section 442, the residuary description "other place where food is sold or prepared for sale" must be interpreted as ejusdem generis with the types of premises enumerated in this section. There is no reason why we should not accept this interpretation of Section 442 of the Calcutta Municipal Act and, therefore, it may be said that eating house etc., should be treated on a distinct footing from places where food is sold or prepared for sale in order that they may come within the ambit of Rule 50 *ibid*. The expression "other place" in my opinion also means the place as enumerated in sub-section (1), viz., eating house, tea shop, hotel etc. In this view of the matter it can very well be said that this section 442 has not in any way been repealed by the provision of Section 25 of the Prevention of Food Adulteration Act as the expressions used in this section have got a special import which are not to be found in the body of Rule 50 which mainly refers to manufacturing, selling, stocking, distributing, or exhibiting, for sale any articles of food namely sweetmeats, savoury etc. the question whether Section 442 of the Calcutta Municipal Act has a separate entity of its own irrespective of the

provision of Rule 50 *ibid*, has been considered by a Division Bench of this Court in (2) Cr. Appeal No. 468/1960 (*Corporation of Calcutta v. Bhutnath Sarkar*) and I have followed this decision in arriving at my conclusion in this case.

8. Apart from this consideration it has been argued by Mr. Roy Choudhury that this particular place for which no licence was take is not an eating house simpliciter in view of the fact that even from an eating house the transaction of sale of the food articles may be performed in order to attract the provision of Section 25 of the Prevention of Food Adulteration Act and Rule 50 *ibid*. In this connection it may be said that the expression "eating house" has not been defined in the Calcutta Municipal Act and, as such, we must have resort to the ordinary Dictionary meaning of this expression. It will be found in short Oxford Dictionary that the expression means a house in which meals are supplied : restaurant. Similarly meaning has been given in Chambers 20th Century Dictionary where it has been described as a place where provisions are sold ready dressed : a restaurant. If we refer to Webster's new 20th Century dictionary - it appears that this expression means a house in which food is sold and are served : a restaurant. Therefore, if we refer to the dictionary meaning - "eating house" means a restaurant where meals or food taken at one time, may be had by the customers and, therefore, such an "eating house" is distinguishable from a place where food is manufactured, sold, stocked, distributed or exhibited for sale in terms of Rule 50 *ibid*. In that view of the matter also I am of opinion that this Section 442 has got a distinct entity untrammelled by the provision of Rule 50 *ibid*.

9. The observations made above are mainly based upon the argument advanced by Mr. Talukdar, appearing for the Calcutta Corporation. Accepting the same I am of opinion that the learned Magistrate as a Court of fact came to a correct decision that the petitioners in this case possessed an eating house and it cannot be run without a licence u/s 442 of the Calcutta Municipal Act, although they might have obtained licence under the Prevention of Food Adulteration Act for their business in manufacturing, selling and stocking and distributing or exhibiting for sale of sweetmeats and savoury. Even if we refer to the evidence, it will appear from the evidence of P.W. 1, Dr. D.K. Basu that he found chairs and tables at the place of the accused and the people taking food in that shop. He also found the customers taking Sandesh, Singara, Kachuri, Rasogola etc. This will show that unless they were served the customers could not have partaken of the same unless they took their seats on the chairs. In these circumstances, so far as the facts are concerned, I am of opinion that the learned Magistrate also did not overlook the material evidence and, as such, the order as passed by him is not liable to be interfered with u/s 439 Cr.P.C.

10. The Rule, accordingly, stands discharged.