

(1979) 01 DEL CK 0019

In the Delhi High Court

Municipal Corporation of Delhi

APPELLANT

Vs

Darshan Kumar and Another

RESPONDENT

Date of Decision : 16-01-1979

Acts Referred:

Citation : (1980) CriLJ 86 : (1979) ILR Delhi 416

Hon'ble Judges : V.D. Misra, J;F.S. Gill, J

Bench : Division Bench

Judgement

1. Whether a person selling adulterated milk can be convicted and punished for selling the same without a license? is the common question which has arisen in Criminal Appeals Nos. 287, 288 and 299 of 1977 which are being disposed of by this judgment.

2. We may note the facts of one case only since the facts of other cases are also similar. Darshan Kumar was found carrying milk in a can for sale. A Food Inspector duly took a sample of this milk for analysis. It was found to be adulterated. Delhi Municipal Corporation filed a complaint alleging that Darshan Kumar was selling adulterated milk and that he was selling the same without any license. The trial court convicted and sentenced Darshan Kumar for both the offences. On appeal Mr. P.K. Bahri, Additional Sessions Judge, following a Division Bench Judgment of Madhya Pradesh High Court reported in (1975) 2 FAC 404 Vasudeo Bhat v. Ganpat, held that Darshan Kumar could not be punished for selling the adulterated milk without a license.

3. Now we may note the relevant provisions of the Prevention of Food Adulteration Act. In the Act, as it stood before its amendment by Act No. 34 of 1976, the word "adulterated" was defined by Clause (i) of Section 2. Clause (ix) defined the word "misbranded". Section 7 prohibited any person from manufacturing for sale, or store, sell or distribute various kinds of food. It is in the following terms:

7. No person shall himself or by any person on his behalf manufacture for sale,

or store, sell or distribute -

(i) any adulterated food;

(ii) any misbranded food;

(iii) any article of food for the sale of which a license is prescribed, except in accordance with the conditions of the license;

(iv) any article of food the sale of which is for the time being prohibited by the Food (Health) Authority in the interest of public health; or

(v) any article of food in contravention of any other provision of this Act or of any rule made there under.

In other words, Section 7 creates the offences in relation to "manufacture, store, sell or distribute" certain articles of food. For the purpose of punishment Section 16 has been enacted. It provides the penalties. The relevant provisions of this section are in these terms:

16(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; or

X X X X X

he shall, in addition to the penalty to which he may be liable under the provisions of Section 6, 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.

4. It may be noticed at this stage that this section was amended by Act No. 49 of 1964 which came into effect on March 1, 1965. The relevant provision, as it stood before this amendment, was as under:

16. (1) If any - (a) whether by himself or by any person on his behalf imports into India or manufactures for sale, or stores, sells or distributes, any article of food in contravention of any of the provisions of this Act or any rule made there under, or

X X X X X

he shall, in addition to the penalty to which he may be liable under the provisions of Section 6 be punishable-

(i) for the first offence, with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both;

(ii) for a second offence, with imprisonment for a term which may extend to two years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, such imprisonment shall not be less than one year and such fine shall not be less than two thousand rupees:

(iii) for a third and subsequent offences, with imprisonment for a term which may extend to four years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, such imprisonment shall not be less than two years and such fine shall not be less than three thousand rupees.

X X X X X

5. The changes made by the amending Act of 1564 are material indeed. We need not go into the reasons for the amendment. Suffice it to say that when the Legislature found that the offenders are not being adequately punished by the Courts, it decided to ensure that heavy penalties should be awarded to the offenders. It also decided that the discretion, which was given to the Court by unamended section, should be restricted. Clause (a) was sub-divided into two parts which we have already reproduced. It has to be read with the amended proviso in order to appreciate the restriction on the discretion. Under the old section the discretion in awarding the sentence in the case of first offence was unfettered and an offender could be let off with a mere fine only. Even the amount of fine was left to the discretion of the court. By amendment, the discretion for awarding a punishment of less than six months and a fine of Rs. 1,000/- is limited to adulteration falling under Sub-clause (1) of Clause (i) of Section 2, and to misbranding falling under Sub-clause (k) of Clause (ix) of that section. In other words, adulteration or misbranding of other kinds has to be punished with at least six months imprisonment and a fine of Rs. 1,000/-. However, an unfettered discretion is still left to the court with reference to the offences mentioned in Sub-clause (ii) of Clause (a) of Section 16 (1). It is in that light that we have to interpret the effect of Sub-clause (ii) of Clause (a) of Section 16 (1).

6. The important words which must be noticed in Sub-clause (ii) are "other than an article of food referred to in Sub-clause (i)." Sub-clause (i) refers to articles of food which are adulterated or misbranded or sale of which is prohibited by the Food (Health) authority. Sub-clause (ii) takes out these articles of food from its purview, and refers to other articles of food which were sold etc. in contravention of any of the provisions of the Act or of any rules made there under. It has been contended on behalf of the Corporation that the phrase "other than an article of food referred to in Sub-clause (i)" should be construed as a reference to the offences enumerated in that sub-clause, i. e. of adulteration, misbranding, selling the articles prohibited, and not to the article in question. It is argued that when a person contravenes any of the provisions of the Act or of any rule he commits an offence because it is so mentioned in Clause (v) of Section 7.

7. It is true that a vendor may be committing more than one offence at the same time. He may be contravening the provisions of this Act or of any rule made there under and also be-tag guilty of adulteration or misbranding etc. But the question which arises for determination is whether Sub-clause (ii) provides for the punishment of an offence with reference to a particular article of food, which has been found adulterated or misbranded etc. The express words used by Sub-clause (ii) - "an article of food referred to in Sub-clause (i)" - can by no stretch of imagination be said to have any reference to the offence only and not to the article of food in question. The reason seems to be simple. Whereas discretion in awarding punishment was left to the court in respect of only some offences mentioned in Sub-clause (i) punishment of all the offences mentioned in Sub-clause (ii) has been left to the discretion of the court. If the intention of the Legislature was, as contended on behalf of the Corporation, that the offender must also be punished with reference to the same article of food which has been found adulterated etc. and in respect of which there had been ? contravention of any provision of Act or of rules made there under, this could have been achieved simply by deleting the opening phrase completely. Had that been so, a person would have been punished not only for adulteration etc. or of a particular article of food, but also for having contravened the provisions of the Act or the rules made there under with reference to the same article. We cannot substitute any other words for the words "an article of food referred to in Sub-clause (i)". It has been suggested that whereas Section 7 in Clause (iii) specifically refers to an article of food being sold under a license without any contravention of the conditions of the license, no such distinction has been in Clause (ii). In our opinion it was absolutely unnecessary to make such a distinction. Sub-clause (ii) is a residuary clause. If it did not contain the opening phrase, all the offences would have been covered by this sub-clause. And that was the case before the amendment of 1964. But, as we have already explained, the opening phrase takes out the articles of food which have been found adulterated etc. In terms of Sub-clause (i). In these circumstances we will be unjustifiably straining the language of Sub-clause (ii) to say that a vendor can also be punished for contravening the provisions of the Act or the rules made there under where in

respect of the same article of food he is being punished for adulteration. We, Therefore, are in respectful agreement with the aforesaid ruling of the Division Bench of the Madhya Pradesh High Court.

8. It has also been contended on behalf of the Corporation that in case a vendor is found to be selling an adulterated article of food then, in view of our above interpretation, he cannot be prosecuted for selling other articles of food without a license where license is required under the rules. That is not so. It may be that a vendor is selling more than one article of food and only one of them has been found to be adulterated. It may also be that a hawker is carrying more than one can of milk and when samples for analysis are taken by the Food Inspectors one of the samples is found up-to-the-mark. In such a situation a vendor can always be prosecuted for selling an article of food without a license since that article of food in question has not been found to be adulterated etc.

9. The upshot of the above discussion is that Criminal Appeals Nos. 287, 288 and 299 of 1977 are hereby dismissed. Bail bonds, if any, of the respondents are hereby discharged.