(1965) 08 CAL CK 0019

In the Calcutta High Court

Case No : Criminal Revision Case No. 171 of 1963

Netai Chandra and Surendra Nath Dey APPELLANT

Vs

Corporation of Calcutta RESPONDENT

Date of Decision : 27-08-1965

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 13(5), 2

Citation : AIR 1967 Cal 65 : (1967) 1 CALLT 309 : (1967) CriLJ 172

Hon'ble Judges : T.P. Mukherji, J;D.N. Das Gupta, J

Bench : Division Bench

Advocate : A.K. Dutt and Sunil Bose, for the Appellant; J.M. Banerjee and Rajesh Ghose, for the Respondent

Final Decision : Allowed

Judgement

D.N. Das Gupta, J.—This revision petition is directed against the order of a learned Municipal Magistrate of Calcutta convicting the petitioners u/s 7(1)/16(1)(a)(i) of the Prevention of Food Adulteration Act. Petitioner No. 1 Messrs. Netai Chandra and Surendra Nath Dey alias Netai Charan Dey Surendra Nath Dev was sentenced to pay a fine of Rs. 100 Petitioners 2 and 3 were sentenced to undergo rigorous imprisonment for three months each. Two other persons, namely Netai Chandra Dey and Shyam Sundar Dey were also tried along with the petitioners but they were acquitted.

2. The case for the prosecution is that on 22nd June 1981 Dr. A. B. Mazumdar, Food Inspector of the Corporation of Calcutta, went to the petitioners'' firm and expressed his intention to take samples of mustard oil. He took two samples after complying with all formalities and sent samples to the Public Analyst for analysis and report. On receipt of his report that the samples were adulterated the accused persons were prosecuted and placed upon trial.

3. The accused persons pleaded not guilty. Their defence is that petitioner No. 1 is a wholesale dealer in edible oils and it was granted a licence by the

Corporation of Calcutta to deal not only in edible oils but also in oil sweeping. When oil is poured in drums drops fall on the floor and get mixed up with dirt and other impurities Such oil is mopped up with rags and squeezed into drums. Then the scum or the sediments are allowed to drop down to the bottom and the oil above the cum is sold as oil sweeping for manufacturing purposes, such as manufacturing soap. The oil sweeping is popularly known as Latamara or Sabari 9 tins containing such sweeping oil are kept outside the shop room near the door. Those tins had been sold by the petitioners as sweeping oil and were kept outside for being taken away by the buyer. Within a very short time of the tins being kept outside, the Food Inspector appeared on the scene and expressed his intention to take samples from those tins. Samples were accordingly taken by the Food Inspector. But at the time when they were taken the salesman definitely told him that the stuff from which the samples were taken was not mustard oil but oil sweeping Another plea of defence was that petitioner No. 2 Surendra Nath Dey and the two persons who were acquitted were not present and were not in charge of the business.

4. The crucial point for determination in this case is whether the stuff from which the samples were taken by the Food Inspector was mustard oil, that is, food within the meaning of the Food Adulteration Act. The noticeable feature in this case is that as soon as the Food Inspector wanted to take samples of mustard oil from the aforesaid 9 tins the accused gave out that those tins did not contain mustard oil but oil sweeping. The Food Inspector also made a note that the accused had told him that the sample that was being taken was samples of sweeping oil. It appears from the Public Analyst''s report also that the sample that was received by him was sample of "mustard oil said to be shipping oil". There is also the evidence of D. W. 1 Shyamlal who was examined as a defence witness that he had purchased those 9 tins of oil sweeping for manufacturing soap. There is evidence to show that Shyamlal is a "Soapmaker and Seller". That would appear from the receipt granted by the Licence Officer of the Corporation of Calcutta. Account books were produced by the accused persons as well as by Shyamlal to prove the transaction, namely, the sale by the accused and purchase by Shyamlal of those 9 tins of oil sweeping. It is also beyond controversy that the said 9 tins were outside the accused''s shop. There is evidence on behalf of the defence that after purchasing the said tins of oil sweeping Shyamlal gave the challans to the Thelawala to carry the oil sweeping to Shyamlal''s shop. If that evidence is accepted then that would conclusively prove that the stuff from which the sample was taken by the Food Inspector was not mustard oil but oil sweeping. The learned Magistrate accepts the evidence that at the time of taking the sample the accused did tell the Food Inspector that what the Food Inspector was taking was not sample of mustard oil, but sample of oil sweeping. Indeed that is admitted by the Food Inspector himself. But the learned Magistrate does not accept the evidence that the said 9 tins were sold by the accused to Shyamlal as tins containing oil sweeping. The grounds given by the learned Magistrate for not accepting the evidence on that point are not convincing. The

learned Magistrate does not consider the account books as genuine simply because the scribe who was examined as a defence witness has said in his evidence that he used to so to Shyamlal a shop twice or thrice in the week to write out the books. The learned Magistrate thinks that the account books were not kept to fee regular course of business. It is rather difficult to understand the reasoning of the learned Magistrate. We have ourselves examined the account books and we do not find any reason to consider them to be spurious documents manufactured for the purpose of this case. The account books appear to us to be genuine and reliable. The learned Magistrate disbelieved Shyamlal because he could not say how much licence-fee is payable for his business and because he could not give the name of the landlord of his shop. Now, it appears from his evidence that he is an old man and the business is looked after not by him but by his son and other people. So, in those circumstances there is nothing extraordinary in his failing to say what amount was payable as trade tax or what the name of the landlord was. We are unable to agree with the learned Magistrate that the defence story of sale of aforesaid 9 tins of oil sweeping to Shyamlal is unacceptable. There are no grounds for doubting this transaction as a genuine transaction. It appears from a licence granted by the Corporation of Calcutta to the accused that they are permitted to carry on business and exercise the profession, trade or calling of W. S. Trade in coconut oil, groundnut oil, linseed oil, mustard oil and weeping oil, etc. This licence was granted by the Corporation of Calcutta to the accused on 8th July 1961 for carrying on the business during the year 1961-62, that is, the year in which the samples were taken by the Food Inspector. Therefore, by virtue of this licence the accused persons were authorised to carry on wholesale trade and business not only in edible oils, but also in oil sweeping from the same premises, namely, Bg 17/13+14 Orphangunge Market. The Corporation has permitted the accused to sell edible oil and oil sweeping from the same place. But when the accused persons sell oil sweeping from that place they are prosecuted for selling oil sweeping. It is not easy to understand the policy underlying the granting of licences to persons for selling edible oil as well as oil sweeping from the same place.

5. On a careful consideration of the evidence and circumstances of the case, we are satisfied that the accused persons never tried to sell the stuff contained in the said 9 tins as mustard oil and that they sold the said stuff to Shyamlal as oil sweeping, that is, a mixture of oil impurities, dirt and sweeping, etc. that stuff certainly is not food within the meaning of the Prevention of Food Adulteration Act.

6. It appears from the Public Analyst''s Report that a sample of ''mustard oil'' (said to be shipping oil) was received by him for analysis and report. On examination of the sample the Public Analyst was of the opinion that the sample of mustard oil did not conform to the standard in respect of B. R. Reading, Saponification value and Iodine value due to the presence of linseed oil and therefore, the sample was adulterated. Regarding this report we find that true

copies of this report were enclosed with the petition of complaint filed on life August 1961. The Public Analyst''s Report is dated 27th June 1961, but it is remarkable that the B. R. Reading is not given in the true copies of the report which were filed along with the petition of complaint. We do not know whether that omission was due to some mistake on the part of the person who copied out the Public Analyst''s Report or whether the B. R. Reading did not at all appear in the original report of the Public Analyst. At least that raises some doubt about the genuineness of the Public analyst''s Report. That doubt could have been removed only if the Public Analyst was examined in the case. But no attempt was made by the prosecution to explain what the real position was. That is one aspect of the Public Analyst''s Report. Mr. Duti, learned advocate appearing for the petitioners further contends that a very important lest which is given in A. 17.06 in Appendix B to the Prevention of Food Adulteration Act, namely, the test regarding "Unsaponifiable mat (sic)" has not been carried out. Against the (sic) 17.06 the following is specified :

"Mustard oil (Sarson kater) means the oil expressed from clean and sound mustard seeds, belonging to the compestris, uncea or napus varieties of Brassica. It shall be clear, free from acidity suspended or foreign matter, separated water added colouring or flavouring substances or mineral oil. It shall conform to the following standards:

(a) butyro refractometer reading at 40 Degree C. ... 58.0 to 60.5

(b) Saponification value ... 168 to 176

(c) Iodine value ... 96 to 108

(d) Unsaponifiable matter ... Not more than 1.2 per cent.

(e) Free Fatty acid as Oleic acid ... Not more than 3.0 per cent.

(f) Bellier (Turbidity test) by Ever''s method (Acetic acid) ... Not more than 26.5 Degree C.

The test for argemone oil should be negative."

7. Mr. Dutt contends that there must be reasons for those standards being laid down by the Legislature and that it is obligatory on the part of the Public Analyst to carry out all the tests to find our whether the mustard oil conforms to the standards prescribed. He cannot pick and choose Mr. Dutt''s contention is that unless all the tests are carried out by the Public Analyst his report does not become incomplete report and cannot be admitted into evidence u/s 13 of the aforesaid Act. Now, we would agree with Mr. Dutt that all the tests which are laid town in item A. 17.06 should have been carried out by the Public Analyst, and the report which has been submitted in this case by the Public Analyst does not contain the results of all the tests laid down. The test to find out "Unsaponifiable matter" has not been carried out. When item A. 17.06 prescribes that "It shall conform to the following standards", the Public Analyst is required to give his

opinion in respect of all the standards so laid down, that is his imperative duty. He cannot leave out any test in his discretion. But we cannot say that the report cannot be used as evidence u/s 13(5) of the Prevention of Food Adulteration Act without examining the Public Analyst. Whether his opinion can be accepted or not on account of the omission to carry out any particular Lest is a different matter and would depend on the facts of each particular case. On the facts of this case, however, we must say that the question whether the mustard oil is adulterated or not does not arise, because the sample taken was not a sample of mustard oil, but a sample of oil sweeping which is not ''mustard oil'' as defined in the Prevention of Food Adulteration Act.

8. In the result the conviction and the sentences of the petitioners cannot be sustained and are set aside. The petitioners are acquitted. The fine, if paid, must he refunded. The petitioners who are on hail are discharged from their bail bonds.

9. The Rule is made absolute as above.

T.P. Mukherji, J.

10. I agree.

