

(1970) 09 CAL CK 0033

In the Calcutta High Court

Case No : Criminal Revision Case No. 11 of 1970

Ratanlal Rostigi

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

Date of Decision : 29-09-1970

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 342, 351(1)
Prevention of Food Adulteration Act, 1954 — Section 14, 16(1), 19(1), 19(2), 2
Road Traffic Act, 1930 — Section 48(9)

Citation : 76 CWN 288 : (1971) 2 ILR (Cal) 91

Hon'ble Judges : N.C. Talukdar, J

Bench : Single Bench

Advocate : J.N. Ghosh, Pradeep Kumar Ghosh and Sekhar Kumar Bose, for the Appellant; N.C. Banerjee and Mukti Prasanna Mukherjee for Opposite Parties Nos. 3 and 5 and Sunil Kumar Basu, for Corporation of Calcutta, for the Respondent

Judgement

N.C. Talukdar, J.—This Rule is at the instance of the two added accused-Petitioners, Ratanlal Rostigi and Ramniwas Rostigi for setting aside an order dated November 26, 1969, passed by Sri C. Samaddar, Additional Chief Presidency Magistrate and Senior Municipal Magistrate, Calcutta, in case No. 73D of 1968, rejecting the objections raised in this behalf by the two added accused persons and refusing to quash the proceedings so far as they are concerned, u/s 16(1)(a)(i) read with Section 7(i) of the Prevention of Food Adulteration Act, 1954.

2. The facts leading on to the Rule are short and simple. A petition of complaint was filed on October 29, 1969, by a Food Inspector of the Corporation of Calcutta in the Court of Sri C. Samaddar, Additional Chief Presidency Magistrate and Senior Municipal Magistrate, Calcutta, u/s 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954, read with Section 7(i) of the said Act, against the accused M/s Gour Chandra Dey and Company and also Gour Chandra Dey, Keshab Chandra Dey and Gopal Chandra Dey described as partners of the said company. The prosecution case, as stated in the petition of complaint, inter alia,

is that on September 16, 1968, the complainant inspected the shop of the accused at 5/1 Orphan Gunge Market, Calcutta, and found some mustard oil in a barrel stored for sale ; that a sample of the same bearing F.I. serial No. 003847/48 was purchased from the accused No. 3, Gour Chandra Dey, after due observance of legal formalities; that on a tripartite division one part of the sample was sent to the Public Analyst in accordance with law ; that the mustard oil in the barrel weighing about 175 kgs. was seized and sealed and kept in the custody of the vendor ; and that the Public Analyst in his report stated that the oil was highly adulterated. Accordingly, the complaint was filed praying for the issue of summons against the accused persons for an offence u/s 16(1)(a)(i) of the Prevention of Food Adulteration Act read with Section 7(i) of the said Act.

The learned Senior Municipal Magistrate by his order of the same date issued summons on the accused persons as prayed for. Four witnesses were examined by the prosecution including the Food Inspector, the Public Analyst, an assistant in the Licensing Department of the Corporation of Calcutta, and the search witness and a charge was framed against the accused persons who are the opposite parties Nos. 2 to 5. Thereafter, the prosecution witnesses were cross-examined and the accused persons were examined u/s 342 of the Code of Criminal Procedure. The defence examined four defence witnesses. An application at this stage was filed on July 5, 1969, on behalf of the original accused persons, who are the accused opposite parties Nos. 2 to 5 to the present Rule praying, inter alia, that two other persons, who are the accused Petitioners in the present Rule, may be added as accused u/s 20 of the Prevention of Food Adulteration Act, 1954, inasmuch as it would appear from the evidence on the record that the manufacturer of the mustard oil is Ramasankar Oil Mill, whereof Ratanlal Rostigi and Ramniwas Rostigi are the proprietors. It was further stated that the oil had been kept in the same condition as obtained from the aforesaid mill. The learned Municipal Magistrate thereupon held that Ramasankar Oil Mill of 107/1/A Tollygunge Road, Calcutta, is also concerned as a distributor or the dealer of the mustard oil in question in respect of the offence alleged and, accordingly, ordered that the said mill and also the two proprietors are impleaded in the case and directed the issue of summons u/s 16(1)(a)(i) read with Section 7(i) of the Prevention of Food Adulteration Act, 1954. The added accused persons then appeared before the learned trying Magistrate and the prosecution case was opened afresh in view of the fact that the earlier depositions had been recorded in their absence. The prosecution proceeded to examine five witnesses of whom four had been examined before and closed the evidence. The date was fixed for a consideration of the charge. At that stage an application was filed on behalf of the other accused persons, viz. the accused Petitioners Nos. 2 to 5 stating that the prosecution evidence was not sufficient to make out a case against all the accused and further prayed for permission to examine the defence witnesses. A written objection was filed on July 5, 1969, on behalf of the added accused impugning the aforesaid prayer as bad in law. The learned Senior Municipal Magistrate ultimately by his order dated November 26, 1969, allowed the prayer

of the original accused opposite parties Nos. 2 to 5 and overruled the objection raised by the added accused. This order has been impugned and forms the subject-matter of the present Rule.

3. Mr. J.N. Ghosh, Advocate (with Messrs. Pradeep Kumar Ghosh and Sekhar Kumar Bose, Advocates) appearing in support of the Rule on behalf of the two added accused Petitioners, made a two-fold submission. The first contention of Mr. Ghosh is one of law relating to the interpretation of the word "dealer" in Section 20A of the Prevention of Food Adulteration Act, 1954, viz. that on a proper interpretation, the provisions of Section 20A of Act XXXVII of 1954 do not apply to the present case and, as such, the impleading of the added accused Petitioners therein has been bad in law and improper inasmuch as the original accused persons placed on trial are dealers of the article of food in question, viz. mustard oil. The second contention of Mr. Ghosh touches procedure, viz. that the learned trying Magistrate has erred in allowing the original accused persons to examine the defence witnesses, who has already given evidence, in the presence of the added accused persons instead of proceeding to consider the charges to be framed. Mr. Nalin Chandra Banerjee, Advocate (with Mr. Mukti Prasanna Mukherjee, Advocate) appearing on behalf of the original accused opposite party No. 2, opposed the Rule and submitted that there had been no misinterpretation of Section 20A of the Prevention of Food Adulteration Act, 1954, on the part of the learned trying Magistrate and the objection taken on this count by the Petitioners is not sustainable in law. Mr. Banerjee next contended that the procedure adopted is quite in accordance with law being in conformance to the provisions of Section 20A of the Prevention of Food Adulteration Act, 1954. Mr. Sunil Kumar Basu, Advocate appearing on behalf of the opposite party No. 1, the Corporation of Calcutta, supported Mr. Banerjee and submitted that the interpretation given by Mr. Ghosh to the provisions of Section 20A of the Prevention of Food Adulteration Act, 1954, is contrary to the intention of the Legislature as incorporated therein and would result in nullifying the said section. Mr. Basu also contended that there has been no defect in procedure as alleged or at all and the learned Municipal Magistrate has proceeded properly in allowing the original accused persons to examine the defence witnesses already examined in the presence of the added accused persons.

4. Having heard the learned Advocates appearing on behalf of the respective parties and on going through the materials on the record, I will now proceed to determine the first point raised by Mr. Ghosh relating to the interpretation of the word "dealer" in Section 20A of the Prevention of Food Adulteration Act, 1954. Section 20A of Act XXXVII of 1954, which is a new enactment, added by the Prevention of Food Adulteration (Amendment) Act of 1964, is as follows:

Where at any time during the trial of any offence under this Act alleged to have been committed by any person, not being the manufacturer, distributor or dealer of any article of food, the Court is satisfied on the evidence adduced before it that such manufacturer, distributor or dealer is also concerned with that offence,

then the Court may, notwithstanding anything contained in Sub-section (1) of Section 351 of the Code of Criminal Procedure, 1898, or in Section 20 proceed against him as though a prosecution had been instituted against him u/s 20.

The first part of the section, it would be seen, enjoins that the trial pending before the Court must relate to an offence committed by any person "not being a manufacturer, distributor or dealer of any article of food" and the second part lays down that the said Court, when it is satisfied on the evidence adduced before it, that "such manufacturer, distributor or dealer is also concerned with that offence", it may proceed against him by impleading him in the same trial. Mr. Ghosh contended that the original accused persons may not be the manufacturer or the distributor of the article of food in question but they being grocers, dealing in the article of food that was sold by them, did come within the meaning of the word "dealer" in the first part of Section 20A of Act XXXVII of 1954 and, as such, the said provisions are not applicable to the facts of the case and the added accused persons cannot be impleaded in the same trial. Mr. Banerjee joined issue and submitted that the word "dealer" is quite distinct from the word "vendor" or "seller" used in the other sections of the Act. In this context, he referred to several provisions of Act XXXVII of 1954 and the language used therein and in particular to Section 19(2) of the said Act which contains the word "vendor" and to Section 7 which refers to a seller and prohibits that no person shall by himself or by any person on his behalf manufacture for sale or store, sell or distribute. He further contended that some meaning and effect must be given to the different expressions used in the different sections of the same Act and that it is abundantly clear that the intention of the Legislature in using the word "dealer" in Section 20A of the Prevention of Food Adulteration Act, 1954, is to rule out a mere vendor or seller. Mr. Sunil Kumar Basu, Advocate appearing on behalf of the Corporation of Calcutta, submitted that the interpretation of the word "dealer" by Mr. Ghosh is too wide and de hors the intention of the Legislature as incorporated in Section 20A of Act XXXVII of 1954. It is pertinent, therefore, to consider the meaning of the word "dealer" and find out whether it is susceptible, in the context it is used, of the wide interpretation that is sought to be given. The expression "dealer" does not appear to have been defined in the Prevention of Food Adulteration Act, 1954, although the word "vendor" has been defined in the case of *Mangaldas Raghavji Ruparel and Another Vs. The State of Maharashtra and Another*, . *Mudholker J.* delivering the judgment of the Court observed that the word "vendor" though not defined in the Act, would obviously mean the person who had sold the article of food which is alleged to be adulterated.

A reference may be made to the Shorter Oxford English Dictionary (3rd. ed.), revised and edited by C. T. Onions, in this context. "Dealer" has been defined there to be "one who deals" and the special meaning given therein is "one who sells articles in the same condition in which he bought that". A reference to Act XXXVII of 1954 would bring to light that the word used in the other sections is not "dealer" but seller or vendor. Section 2, containing definitions, has defined

"sale" but not a "dealer"; Sections 7 and 16 prohibit and penalise respectively "manufacture for sale, or store, sell or distribute" etc.; Section 14 again relates to "sale"; Section 19(1) & (2) contain the word "vendor"; and Section 23(1)(g) (i) & (m)(iii) again refer to "sale". It is necessary also to note the context in which the said word has been used in Section 20A of the Act. The words "manufacturer, distributor or dealer of any article of food" are preceded by the preposition "the". It is sufficient that the word "dealer" comes after the other words "manufacturer, distributor". Some meaning and effect must be given to the use of the said words in the body of the provisions and it is, therefore, pertinent to refer to the canons of interpretation of the statutes in this context as also the objects of the Act. The first principle is that when two or more words which are susceptible of analogous meaning are coupled together noscuntur a sociis, they are understood to be used in their cognate sense. Maxwell in his Interpretation of Statutes (11th ed.) observed:

They take, as it were, their colour from each other, that is, the more¹ general is restricted to a sense analogous to the less general.

On such interpretation the word "dealer" should not be interpreted in "the more general sense" including anybody and everybody dealing in a commodity but should be restricted to its cognate sense along with the words "manufacturer or distributor" ruling out thereby any and every seller or a vendor of any article of food. The next principle to be considered is the principle of ejusdem generis. In the said section, the general word "dealer" has followed other less general terms like "manufacturer, distributor" and, therefore, should be interpreted ejusdem generis. Maxwell in his Interpretation of Statutes (11th ed.) has observed that but the general word which follows particular and specific words of the same nature as itself takes its meaning from them and is presumed to be restricted to the same genus as those words and referred to the case of Eton Rural District Council v. River Thames Conservators (1950) L.R. Ch.D. 540 in support of the proposition. Vaisey J. while considering therein the provisions of 9, Sub-section(1) of the Land Drainage Act, 1930, containing the words "by reason of tenure, custom, prescription or otherwise" observed:

It seems to me (and I do not think that it can be denied) that the words "or otherwise" in that first context ought, to some extent and in some measure to be construed according to the ejusdem generis rule.

A reference in this context may also be made to the case of Evans v. Cross (1938) 1 K.B.D. 694. Lord Hewart C.J., while interpreting the provisions of Section 48, Sub-section (9) of the Road Traffic Act, 1930, containing the words "signals, warning, signposts, direction posts and signs" preceding the word "device" in the said Sub-section, observed that the said word "device" is to be construed ejusdem generis with the preceding words. It was further observed by Maxwell that in other words, it is to be read as comprehending only things of the same kind as those designated by them, unless, of course, there be something to show that a wider sense was intended.

I have taken into consideration the use of the words and the context thereof in the body of the provision in question and I find that the same does not indicate that a wider sense was intended when the Legislature used the "word "dealer" as distinguished from the word "vendor" or "seller" in the other provisions of the same Statute. The point may be approached from another standpoint, viz. of redundancy. The Legislature abhors redundancy and some meaning, and effect must be given to the words of the Act. If taken at the wide meaning sought to be given by Mr. Ghosh, the word "dealer" would include any "seller" or a "vendor" and, as such, Section 20A would be inoperative. The canons of interpretation again rule out presumption against intending what, is inconvenient and unreasonable. As has been observed by Maxwell in determining either the general object of the Legislature, or the meaning of its language in any particular passage, it is obvious that the intention which appears to be most in accord with the convenience, reason and justice and legal principles should in all cases of doubtful significance, be presumed to be the true one.

A reference in this context was made to the case of *Cooke v. The Charles A. Vogeler Company* (1901) A.C. 102 (107) wherein Lord Chancellor Earl Halsbury observed:

But a Court of law has nothing to do with the reasonableness of a provision except so-far-as it may help them in interpreting what the Legislature has said.

The principles of interpretation of Statutes rule out redundancy. As was observed by Lord Sumner in the case of *Quebec Railway Light, Heat and Power Company Ltd. v. Vandry* AIR 1920 P.C. 181 (186), that--

Effect must be given if possible to all the words used, for the Legislature is deemed not to waste its words or to say anything in vain. Subba Rao J. (as his Lordship then was) also observed in the case of *Ghanshyam Das Vs. Regional Assistant Commissioner of Sales Tax, Nagpur*, that a construction which would attribute redundancy to a Legislature shall not be accepted except for compelling reasons.

A reference may also be made to the case of *N.T. Veluswami Thevar v. G. Raja Nainar* A.I.R. 1959 S.C. 422 (427) wherein T. L. Venkatarama Aiyer J. delivering the judgment of the Court observed:

It is no doubt true that if on its true construction a Statute leads to anomalous results, the Courts have no option but to give effect to it and leave it to the Legislature to amend and alter the law. But when on a construction of a Statute two views are possible one which results in an anomaly and the other, not, it is our duty to adopt the latter and not the former seeking consolation in the thought that law bristles with anomalies.

5. Applying the aforesaid principles of construction of convenience, reason and justice, I hold that the word "dealer" is not susceptible of the very wide interpretation sought to be given by Mr. Ghosh appearing on behalf of the added

accused Petitioners. The point may be approached from another standpoint, viz. the object of the Act XXXVII of 1954. This is an Act to make provision for the prevention of adulteration of food and the said object of the Legislature must be pinpointed in considering whether the word "dealer" should be interpreted in a very wide sense or in its cognate sense. A reference in this context may be made to the case of Sarjoo Prasad v. The State of Uttar Pradesh (1961) 2 S.C.A. 456 (459) wherein Shah J. (as his Lordship then was) observed that the intention of the Legislature must be gathered from the words used in the statute.... The Legislature has, in the interests of public health, enacted the Act and has provided that all persons are prohibited from selling adulterated food. I respectfully agree and I hold that the object of the Act is also to be taken into consideration in interpreting the word "dealer" as incorporated in Section 20A of Act XXXVII of 1954. Such object is "to make provisions for the prevention of adulteration of food". Any interpretation which would nullify or attribute redundancy to such provisions would not be in accordance with the canons of construction of Statute. The interpretation sought to be given by Mr. Ghosh to the word "dealer" in Section 20A of the Prevention of Food Adulteration Act, 1954, is therefore not tenable.

6. On ultimate consideration I hold that a "dealer" is something more than a mere "vendor" or "seller" of a particular article of food and, in the facts and circumstances of the present case, the accused do not come within the meaning of the said word "dealer". The provisions of Section 20A of the Act therefore apply to the instant case. The learned Municipal Magistrate being satisfied on the evidence adduced before him that the "manufacturer, distributor, or dealer is also concerned with that offence" has acted within the bounds of his jurisdiction in proceeding against the added accused persons in the same trial as enjoined under the provisions of Section 20A of the Act. The interpretation sought to be given by Mr. Ghosh to the provisions of Section 20A of Act XXXVII of 1954 is not sustainable on ultimate-analysis. He has tried to read more into the section than was intended by the Legislature and the interpretation sought to be given by him would only result in redundancy. The first contention of Mr. Ghosh accordingly fails.

7. The second point of Mr. Ghosh, relating to procedure is that the learned Municipal Magistrate has erred in allowing the original accused persons to examine the defence witnesses already examined before in the presence of the added accused persons instead of proceeding to consider the charges to be framed. This point is interlinked with the first point that has been raised and considered. If the provisions of Section 20A of the Prevention of Food Adulteration Act, 1954, applied to the facts of the present case and I have already found that the same does apply, there is no non-conformance to any provisions of the Statute or to any procedure established by law prejudicing thereby the added accused Petitioners in any way. The provisions of Section 20A of Act XXXVII of 1954 may be sought to be enforced before all the evidence is adduced or after such examination. The section itself provided that in a fit and

proper case "such manufacturer, distributor or dealer" concerned with the offence, can be impleaded in the same trial by learned Magistrate notwithstanding anything contained in Sub-section (1) of Section 351, Code of Criminal Procedure, or in Section 20 of the Prevention of Food Adulteration Act, 1954, on the footing as if a prosecution had been instituted against such added accused u/s 20 of Act XXXVII of 1954. In view of the said provisions and in view of the question of prejudice that will result if such examination is not allowed, the recalling of the witnesses has not been bad in law or improper in any way. Apart from the question of merit, the accused persons also have taken up this point at a belated stage in a protracted prosecution. The second contention of Mr. J.N. Ghosh, accordingly, fails.

8. In the result, I discharge the Rule, uphold the order dated November 26, 1969, passed by Sri C. Samaddar, Additional Chief Presidency Magistrate and the Senior Municipal Magistrate, Calcutta, in case No. 73D of 1968 rejecting the added accused Petitioners' prayer for quashing the proceedings u/s 16(1)(a)(i) read with Section 7(i) of the Prevention of Food Adulteration Act, 1954, so far as the same relates to them, and I direct that the case shall go back to the Court below for being disposed of in accordance with law and expeditiously from the stage reached therein.

9. The records are to go down as early as possible.