

(2018) 03 OHC CK 0011
In the Orissa High Court
Case No : CRLMC No.1826 of 2007

Saroj Ranjan Rath and another

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 06-03-2018

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 7, 10, 16, 16(1)(a)
Code of Criminal Procedure 1973 — Section 482

Citation : (2018) 03 OHC CK 0011

Hon'ble Judges : DR. D.P. CHOUDHURY

Bench : Single Bench

Advocate : S.D.Das, D.Nayak, R.K.Pradhan, S.K.Das, B.K.Dash, G.Dash

Final Decision : Allowed

Judgement

Dr. D.P. Choudhury, J.

1. The petitioners assail the order dated 13.07.2006 taking cognizance of the offence under Section 16 of the Prevention of Food Adulteration Act,

hereinafter to be called as 'the Act', in short, passed by the learned S.D.J.M., Nilgiri in 2(c) CC No.2 of 2006. Â

FACTS

2. The allegation as per the prosecution report is that on 19.08.2005 one N.N.Dash, Food Inspector inspected the canteen situated inside Balasore

Alloys Ltd. and at that time petitioner no.1 being in-charge of the said canteen was present. The Food Inspector verified the stock of food articles for

sale. Then suspecting chilly powder kept in an open diba to be adulterated, the complainant took sample of the chilly powder and sent same to public

analyst for chemical analysis. After chemical analysis, the sample of chilly powder was found to be adulterated and accordingly prosecution report

after being sanctioned was filed under Section 16 read with Section 7 of the Act. After receiving the prosecution report, the learned Magistrate basing on the materials available on record, by order dated 13.7.2006 took cognizance of the offence under Section 16 of the Act against the petitioners.

Challenging the said order, the present application under Section 482, Cr.P.C. has been filed.

SUBMISSIONS

3. Mr.S.D.Das, learned Sr. Advocate appearing for the petitioners submitted that the petitioners are the employees of Balasore Alloys Ltd. and the

Food Inspector of Balasore Alloys Ltd. visited the canteen of the said factory where he found that an open diba containing chilly powder. Suspecting

the same to be adulterated, he seized the same observing the provisions of the Act and Rules framed thereunder.

4. Mr. Das, learned Sr. Advocate further submitted that the said chilly powder was kept for its use in the canteen, but not for sale. According to him,

the sanction order of the prosecution clearly spells out that the same was stored for human consumption but not for sale. Mr. Das, learned Sr.

Advocate for the petitioners further submitted that the word "store" as appears in Section 16(1)(a) read with Section 7 of the Act only denotes

store of adulterated articles of food for sale other than stored for human consumption. Since in the present case the chilly powder was seized from the

canteen where there is no question of sale of chilly powder, but the same was used to be in curry for human consumption and as such, does not

penalize a person under the Penal provisions of the Act. According to him, since the learned Magistrate has not applied his mind while passing the

impugned order, the same is liable to be quashed. While submitting so, he has relied upon the decisions reported in the case of *Rupak Kumar v. State*

of Bihar and another, AIR 2014 SC 1390 and *Municipal Corporation of Delhi v. Laxmi Narain Tandon and others*, (1976) 1 SCC 546.

5. Learned Addl. Standing Counsel submitted that the Food Inspector being authorized to seize the suspected article and he being duly authorized,

verified the canteen of Balasore Alloys Ltd. and found that the chilly powder was kept open. Since the chilly powder to be used in the canteen for

human consumption even not for sale but for serving the people of the company, the same was found to be adulterated and accordingly, the learned

court below has taken cognizance of the offence rightly. He further submitted that there is absolute observance of the Act and Rules framed

thereunder so far as search and seizure of chilly powder from the canteen of the petitioners concerned. It is further submitted that the said chilly

powder was examined by the chemical examiner and it is reported that the same was adulterated. According to him, there was proper sanction of the

prosecution for which the offence is prima facie made out against the petitioners and therefore, the present criminal miscellaneous application is liable

to be dismissed.

DISCUSSIONS

6. It is admitted fact that the petitioners are the employees of Balasore Alloys Ltd. at Balgopalpur in the district of Balasore. It is also not in dispute

that on 10.8.1976 the Food Inspector, Balasore visited Balasore Alloys Ltd. and found an open diba containing chilly powder. The report of the

chemical examiner shows that it is adulterated below the prescribed standard of result 3-4.

7. Sections 7, 10 and 16 of the Act read thus:

â??7. Prohibition of manufacture, sale, etc., of certain articles of food.â?"No person shall himself or by any person on his behalf manufacture for

sale, or store, sell or distributeâ?"

(i) any adulterated food;

(ii) any misbranded food;

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

(iv) any article of food the sale of which is for the time being prohibited by the Food (Health) Authority 2 [in the interest of public health;

(v) any article of food in contravention of any other provision of this Act or of any rule made thereunder;

(vi) any adulterant.] Explanationâ?"For the purposes of this section, a person shall be deemed to store any adulterated food or misbranded food or any

article of food referred to in clause (iii) or clause (iv) or clause (v) if he stores such food for the manufacture there from of any article of food for

sale.

10. Powers of Food Inspectors.â?"(1) A food Inspector shall have powerâ?"

(a) to take samples of any article of food from—

(i) any person selling such article;

(ii) any person who is in the course of conveying, delivering or preparing to deliver such article to a purchaser or consignee;

(iii) a consignee after delivery of any such article to him; and

(b) to send such sample for analysis to the public analyst for the local area within which such sample has been taken;

(c) with the previous approval of the Local (Health) Authority having jurisdiction in the local area concerned, or with the previous approval of the Food

(Health) Authority, to prohibit the sale of any article of food in the interest of public health.] Explanation—“For the purposes of sub-clause (iii) of

clause (a) —“consignee”— does not include a person who purchases or receives any article of food for his own consumption.

(2) Any food inspector may enter and inspect any place where any article of food is manufactured, or stored for sale, or stored for the manufacture of

any other article of food for sale, or exposed or exhibited for sale or where any adulterant is manufactured or kept, and take samples of such article of

food or adulterant for analysis: Provided that no sample of any article of food, being primary food, shall be taken under this sub-section if it is not

intended for sale as such food.

(3) Where any sample is taken under clause (a) of sub-section (1) or sub-section (2), its cost calculated at the rate at which the article is usually sold

to the public shall be paid to the person from whom it is taken.

(4) If any article intended for food appears to any food inspector to be adulterated or misbranded, he may seize and carry away or keep in the safe

custody of the vendor such article in order that it may be dealt with as hereinafter provided 4 [and he shall, in either case, take a sample of such article

and submit the same for analysis to a public analyst. 5 Provided that where the food inspector keeps such article in the safe custody of the vendor he

may require the vendor to execute a bond for a sum of money equal to the value of such article with one or more sureties as the food inspector deems

fit and the vendor shall execute the bond accordingly.]

(4-A) Where any article of food seized under sub-section (4) is of a perishable nature and the Local (Health) Authority is satisfied that such article of

food is so deteriorated that it is unfit for human consumption, the said Authority may, after giving notice in writing to the vendor, cause the same to be destroyed.

(5) The power conferred by this section includes power to break open any package in which any article of food may be contained or to break open the door of any premises where any article of food may be kept for safe: Provided that the power to break open the package or door shall be exercised only after the owner or any other person in charge of the package or, as the case may be, in occupation of the premises, if he is present therein, refuses to open the package or door on being called upon to do so, and in either case after recording the reasons for doing so: Provided further that the food inspector shall, in exercising the powers of entry upon, and inspection of any place under this section, follow, as far as may be the provisions of the [Code of Criminal Procedure, 1973 (2 of 1974)] relating to the search or inspection of a place by a police officer executing a search warrant issued under that code.

(6) Any adulterant found in the possession of a manufacturer or distributor of, or dealer in, any article of food or in any of the premises occupied by him as such] and for the possession of which he is unable to account to the satisfaction of the food inspector, and any books of account or other documents found in his possession or control and which would be useful for, or relevant to, any investigation or proceeding under this Act, may be seized by the food inspector] and a sample of such adulterant submitted for analysis to a public analyst. Provided that no such books of account or other documents shall be seized by the food inspector except with the previous approval of the authority to which he is officially subordinate. (7)

Where the food inspector take any action under clause (a) of sub-section (1) sub-section (2), sub-section (4), or sub-section (6), he shall call one or more persons to be present at the time when such action is taken and take his or their signatures.

(7-A) Where any books of account or other documents are seized under sub-section (6) the food inspector shall, within a period not exceeding thirty days from the date of seizure, return the same to the person from whom they were seized after copies thereof or extracts therefrom as certified by that person in such manner as may be prescribed have been taken. Provided that

where such person refuses to so certify, and a prosecution has been instituted against him under this Act, such books of account or other documents shall be returned to him only after copies thereof or extracts therefrom as certified by the court have been taken.

(7-B) When any adulterant is seized under sub-section (6), the burden of proving that such adulterant is not meant for purposes of adulteration shall be on the person from whose possession such adulterant was seized.

(8) Any food inspector may exercise the powers of a police officer 10[under section 42 of the Code of Criminal Procedure, 1973 (2 of 1974) for the purpose of ascertaining the true name and residence of the person from whom a sample is taken or an article of food is seized.

(9) Any food inspector exercising powers under this Act or under the rules made thereunder whoâ?

(a) vexatiously and without any reasonable grounds of suspicion seizes any articles of food (or adulterant) or

(b) commits any other act to the injury of any person without having reason to believe that such act is necessary for the execution of his duty. shall be

guilty of an offence under this Act and shall be punishable for such offence with fine which shall not be less than five hundred rupees but which may

extend to one thousand rupees.

16. Penalties.â?" [(1) Subject to the provisions of sub-section (1-A), if any personâ?

(a) whether by himself or by any other person on his behalf, imports into India or manufactures for sales or stores, sells or distributes any article of

foodâ?

(i) which is adulterated within the meaning of sub-clause (m) of clause (ia) of section 2 or misbranded within the meaning of clause (ix) of that section

or the sale of which is prohibited under any provision of this Act or any rule made thereunder or by an order of the Food (Health) Authority;

(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 thereunder; or

(b) whether by himself or by any other person on his behalf, imports into India or manufactures for sales or stores, sells or distributes any adulterant

which is not injurious to health; or

(c) prevents a food inspector from taking a sample as authorised by this Act; or

(d) prevents a food inspector from exercising any other power conferred on him by or under this Act; or

(e) being a manufacturer of an article of food, has in his possession, or in any of the premises occupied by him, any adulterant which is not injurious to health; or

(f) uses any report or certificate of a test or analysis made by the Director of the Central Food Laboratory or by a public analyst or any extract thereof for the purpose of advertising any article of food; or

(g) whether by himself or by any other person on his behalf, gives to the vendor a false warranty in writing in respect of any article of food sold by him, 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 three 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, being primary food, which is adulterated due to human agency or is with respect to an article of food which is misbranded within the meaning of sub-clause (k) of clause (ix) of section 2; or

(ii) if the offence is under sub-clause (ii) of clause (a), but not being an offence with respect to the contravention of any rule made under clause (a) or clause (g) of sub-section (1A) of section 23 or under clause (b) of sub-section (2) of section 24, the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term which shall not be less than three months but which may extend to two years, and with fine which shall not be less than five hundred rupees: Provided further that if the offence is under sub-clause (ii) of clause (a) and is with respect to the contravention of any rule made under clause (a) or clause (g) of sub-section (1A) of section 23 or under clause (b) of sub-section (2) of section 24, the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term which may extend to three months and with fine which may extend to five hundred rupees.] [(1-A) If any person whether by himself or by any other person on his behalf, imports into India or manufactures for sale, or stores, sells

or distributes,â?

(i) any article of food which is adulterated within the meaning of any of the sub-clauses (e) to (l) (both inclusive) of clause (ia) of section 2; or

(ii) any adulterant which is injurious to health, 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 one year but which may extend to six years and with fine which shall not be less

than two thousand rupees: Provided that if such article of food or adulterant when consumed by any person is likely to cause his death or is likely to

cause such harm on his body as would amount to grievous hurt within the meaning of section 320 of the Indian Penal Code (45 of 1860), he shall be

punishable with imprisonment for a term which shall not be less than three years but which may extend to term of life and with fine which shall not be

less than five thousand rupees.]

[(1-AA)] If any person in whose safe custody any article of food has been kept under sub-section (4) of section 10, tampers or in any other manner

interferes with such article, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two

years and with fine which shall not be less than one thousand rupees.

[(1-B) If any person in whose safe custody any article of food has been kept under sub-section (4) of section 10, sells or distributes such article which

is found by the magistrate before whom it is produced to be adulterated within the meaning of sub-clause (h) of clause (ia) of section 2 and which,

when consumed by any person, is likely to cause his death or is likely to cause such harm on his body as would amount to grievous hurt within the

meaning of section 320 of the Indian Penal Code (45 of 1860), then, notwithstanding anything contained in sub-section (1AA), he shall be punishable

with imprisonment for a term which shall not be less than three years but which may extend to term of life and with fine which shall not be less than

five thousand rupees.]

(1-C) If any person contravenes the provisions of section 14 or section 14A, he shall be punishable with imprisonment for a term which may extend to

six months and with fine which shall not be less than five hundred rupees. (1-D)

If any person convicted of an offence under this Act commits a like

offence afterwards, then, without prejudice to the provisions of sub-section (2),

the court, before which the second or subsequent conviction takes place, may order the cancellation of the licence, if any, granted to him under this Act and thereupon such licence shall, notwithstanding anything contained in this Act, or in the rules made thereunder, stand cancelled.]

(2) If any person convicted of an offence under this Act commits a like offence afterwards it shall be lawful for the court before which the second or

subsequent conviction takes place to cause the offender's name and place of residence, the offence and the penalty imposed to be published at

the offender's expense in such newspapers or in such other manner as the court may direct. The expenses of such publication shall be deemed to

be part of the cost attending the conviction and shall be recoverable in the same manner as a fine.

8. In *Rupak Kumar (supra)*, the Hon'ble Apex Court have observed in the following manner:

9. X x x x x We have referred to the provisions of Section 7, Section 10 and Section 16 of the Act and from their conjoint reading, it will appear

that the Act is intended to prohibit and penalise the sale of any adulterated article of food. In our opinion, the term 'store' shall take colour from

the context and the collocation in which it occurs in Section 7 and 16 of the Act. Applying the aforesaid principle, we are of the opinion, that

'storage' of an adulterated article of food other than for sale does not come within the mischief of Section 16 of the Act. In view of the

authoritative pronouncement of this Court in the case of *Municipal Corporation of Delhi v. Laxmi Narain Tandon*, (1976) 1 SCC 546, this submission

does not need further elaboration. In the said case it has been held as follows:

14. From 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 collocation 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.

9. With due respect to the aforesaid decision, it appears that the word 'store' in Section 16 means storage of article of food other than sale does

not come within the mischief of Section 16(1)(a). Similarly in *Municipal Corporation of Delhi v. Laxmi Narain Tandon and others* (supra) the

Hon^{ble} Supreme Court observed in the following words:

“14. From a conjoint reading of the above referred provisions, it will be clear that the broad scheme of the Act is to prohibit and penalize 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 collocation 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. That this is the right construction of the terms

“store” and “distribute” in Section 16(1) will be further clear from a reference to Section 10. Under that Section, the Food Inspector, whom

the Act assigns a pivotal position for the enforcement of its provisions, is authorized to take samples of an article of food only from particular persons

indulging in a specified course of business activity. The immediate or ultimate end of such activity is the sale of an article of food. The section does not

give a blanket power to the Food Inspector to take samples of an article of food from a person who is not covered by any of the sub-clauses of sub-

section 1(d) or sub-section 2. The three sub-clauses of sub-section 1(a) apply only to a person who answers the description of a seller or conveyer,

deliverer, actual or potential, of an article of food to a purchaser or consignee or his consignee after delivery of such an article to him. Sub-section (2)

further makes it clear that sample can be taken only of that article of food which is “manufactured”, “stored” or exposed for sale. It follows

that if an article of food is not intended for sale and is in the possession of a person who does not fulfill the character of a seller, conveyer, deliverer,

consignee, manufacturer or storer for sale such as is referred in sub-section 1(a) and (2) of the section, the Food Inspector will not be competent

under the law to take a sample and on such sample being found adulterated, to validly launch prosecution thereon. In short, the expression “store”

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 under Section 16(1)(a).”

10. With due respect to the aforesaid decision, it appears that any food article

stored for the purpose other than sale would not constitute an offence under Section 16(1)(a) of the Act.

11. Now adverting to the present case, it appears that the chilly powder kept in an open diba of the canteen of Balasore Alloys Ltd. was found to be

adulterated having standard report of the chemical examiner and there is nothing to show that it was kept for sale directly to the people as there is no

commercial activities involved with such search of chilly powder. Mere keeping such chilly powder in the canteen for its use in preparation of food

other than for sale cannot constitute an offence under Section 16(1)(a) of the Act as per the decision of the Honâ??ble Apex Court observed

hereinabove. Had there been chilly powder kept directly for sale in any grocery shop or any other establishment for human consumption and the same

is found to be adulterated, the offence under Section 16(1)(a) of the Act shall be attracted. But in the peculiar facts and circumstances of the case,

the seizure of adulterated chilly powder being kept for the purpose other than sale, does not come within the purview of Section 16(1)(a) read with

Section 7 of the Act. Hence, the contention of the learned Sr. Advocate for the petitioners has got force. On the other hand, the learned Magistrate

without application of judicial mind, has taken cognizance of the offence and as such, it is an abuse of the process of Court. Accordingly, the impugned

order dated 13.07.2006 passed by the learned SDJM, Nilgiri in 2(c) CC No.2 of 2006 is hereby quashed.

12. The interim order passed earlier stands vacated.

13. The CRLMC is accordingly allowed.