(1968) 04 AHC CK 0003

In the Allahabad High Court

Case No : Government Appeal No. 13 of 1965 and Government Appeal No. 10 of 1966

State APPELLANT

Vs

Mohd. Yasin RESPONDENT

Date of Decision : 12-04-1968

Acts Referred:
Prevention of Food Adulteration Act, 1954 — Section 10(2), 2(xiii)

Citation : (1968) 38 AWR 521

Hon'ble Judges : D.P. Uniyal, J;C.B Capoor, J

Bench : Division Bench

Final Decision : Allowed

Judgement

D.P. Uniyal, J.—These are two connected appeals, one by the State Government and another by the complainant, the Municipal Board of Saharanpur, from an order of the learned Sessions Judge dated 10-9-1964 acquitting the Respondent Mohd. Yamin for offences u/s 7/16 of the Prevention of Food Adulteration Act.

2. The facts giving rise to the prosecution of the Respondent may be briefly stated. On 13-6-1963 Head Constable Baboo Khan was on patrol duty. He happened to reach Chakki of one Abdul Razzaq. He found heeps of Shakkar lying there and some labourers mixing Shelkhari in it with spades. He asked the labourers not to leave the place until his return. He went to the police station to inform the Station Officer about it but neither the Station Officer nor the Second Officer was found there. He then met Chief Sanitary Inspector whom he informed about what he had seen at the Chakki. The Chief Sanitary Inspector accompanied by the Food Inspector then proceeded to the Chakki of Abdul Razzaq. They found labourers mixing some thing in the heap of Shakkar. Shortly afterwards the Station Officer and the Dy. S.P. Police also arrived there. On enquiry by the Food Inspector he was told that the stock of shakkar belonged to Mohd. Yamin, the Respondent.

3. The Food Inspector purchased 1 1/2 seers of Shakkar from the Respondent by

way of sample after paying its price. He divided the sample into three parts and gave one sample to the Respondent and kept two other samples with him.

4. One of the samples was sent to the Public Analyst for scientific examination and report. The Public Analyst submitted his report on 11-7-1963. The report disclosed that the Shakkar contained 2.4% moisture, 72.7% total sugar, 64.7% sucrose, 17% extraneous matter insoluble in water. The opinion of the Public Analyst was that the Shakkar in question was deficient by 17% in total sugar and by 5.0% in sucrose contents. According to him the extraneous matter insoluble in water, total ash and ash insoluble in Hydrochloric acid exceeded by 15.0%, 10.1% and 13.3% respectively as against the maximum prescribed standards of 2.0%, 6.0% and 0.5% respectively. The Magistrate while holding that the sale of shakkar to the Food Inspector was not voluntary and was made under duress came to the conclusion that the Respondent had stored it for sale and that it was adulterated. He accordingly convicted the accused and sentenced him to one years'' R.I. and a fine of Rs. 2,000/- in default six months'' R.I. u/s 7 read with Section 16 of the Act.

5. In appeal the learned Sessions Judge acquitted the Respondent on the finding that the prosecution had failed to prove that Shakkar stored by the Respondent was for purposes of sale. He held that Shakkar found in the godown of the Respondent was being converted into Raab by mixing extraneous matter and as such it could not be said that it had been stored for purposes of sale. He further held that no standard was prescribed for Shakkar and that as an article of food it could not be equated with Gur or jaggery. He also held that the Shakkar in question had been obtained from the Respondent under duress and the transaction could not be regarded as sale in the eye of the law.

6. It was contended for the Municipal Board that Shakkar and jaggery were one and the same thing. The rules framed under the Prevention of Food Adulteration Act had prescribed a standard for jaggery and therefore, that standard applied in all respects to Shakkar stored by the Respondent and purchased by the Food Inspector.

7. In Chambers Twentieth Century Dictionary (Revised Edition) jaggery is defined thus:

A coarse, dark sugar made from palm sap or otherwise (Hindi--Shakkar; Sanskrit--Carkara).

8. The above definition shows that in the English language jaggery and Shakkar are synonimous terms : and the one is not different from the other.

9. It, therefore, follows that the standard prescribed for jaggery under the rules was applicable to Shakkar sold in the instant case.

Para A-07-05 of Appendix B of the Rules reads:

Gur or jaggery means the product obtained by boiling or processing juice pressed out of sugar cane or extracted from palmyra palm, date palm or coconut palm. It shall be free from substances deleterious to health and shall conform to the following analytical standards on dry weight basis:

(i) total sugars not less than 90% and sucrose not less than 70%,

(ii) extraneous matter insoluble in water not more than 2%,

(iii) total ash not more then 6%,

(iv) ash insoluble in hydrochloric acid (HC1) not more than 0.5%.

Gur of jaggery other than that of the liquid or semi liquid variety shall not contain more than 10% moisture.

10. The report of the Public Analyst clearly goes to prove that the sample of Shakkar that is ''jaggery'' which was sent for analysis was below the prescribed standard and that the extraneous matter insoluble in water found therein was in excess of the prescribed standard. He was accordingly of the opinion that the sample of Shakkar sent for analysis was adulterated.

11. The learned Sessions Judge was therefore clearly in error in thinking that ''Shakkar'' and ''jaggery'' are not one and the same thing and that no standard has been prescribed for Shakkar in the Rules framed under the Prevention of Food Adulteration Act. He was also wrong in holding that Shakkar contains more foreign matter than Gur and that presence of extraneous matter in the sample did not indicate that it was adulterated. We are clearly of opinion that the sample of Shakkar sold to the Food Inspector was ''adulterated'' within the meaning of Section 2(i)(1) of the Act.

12. The next question is whether the sample purchased by the Food Inspector for purposes of analysis amounted to sale within the meaning of the Act. Section 2(xiii) defines ''sale'' as follows:

"Sale" with its grammatical variations and cognate Expressions, means the sale of any article of food, whether for cash or on credit or by way of exchange and whether by wholesale or retail, for human consumption or use, or for analysis and includes an agreement for sale and offer for sale, the exposing for sale or having in possession for sale of any such article and includes also an attempt to sell any such article.

13. It is not disputed that the Food Inspector did purchase a sample of Shakkar from the Respondent and had paid its price to him. What was contended for the Respondent, was that sale of the sample had been effected under threat and in the presence of police officers and it was not a voluntary act of the Respondent. According to the Learned Counsel such a transaction did not amount to sale because the concept of sale involves free consent on the part of the vendor and the vendee. The argument loses sight of the fact that by Section 10 the Food Inspector is empowered not only to take samples of any article of food but also to enter and inspect any place where any article of food is manufactured, stored

of exposed for sale and take samples of such articles of food for analysis. The Food Inspector is thus authorised by law to purchase a sample of any article of food under Sub-section (2) of Section 10 after paying its price in accordance with Sub-section (3) of that section. By reading Section 2(xiii) and Section 10(2) together it becomes clear that the Food Inspector is empowered to purchase any article of food from any person on payment of price and such a transaction amounts to sale in law. In view of the report of the public analyst that the sample in question was adulterated the Respondent rendered himself liable u/s 7 read with Section 16 of the Act.

14. The allegation that the sale of article in question was the result of coercion exercised on the Respondent is, to our mind, of no consequence. Where there is a statutory power empowering an authority like the Food Inspector to purchase sample of food for purposes of analysis, the law implies the enforcement of that power even against the will of the person storing or exposing that article for sale. In Mangal Das v. State of Maharashtra 1966 AWR 360 SC the point under consideration was whether sale of an adulterated article of food for purposes of sample constituted sale within the meaning of the Act when the transaction in question could not be said to be free or voluntary. Dealing with this aspect of the matter Madholkar, J. delivering the judgment of the Court said as follows:

Mr. Anthony contends that a contract must be consensual and that this implies that both the parties to it must act voluntarily. No doubt a contract comes into existence by the acceptance of a proposal made by one person to another by that other person. That other person is not bound to accept the proposal but it may not necessarily follow that where that other person had no choice but to accept the proposal the transaction would never amount to a contract....

That was evidently because here we have a special definition of ''sale'' in Section 2(xiii) of the Act which specifically includes within its ambit a sale for analysis. It is, therefore, difficult to appreciate the reasons which led Raman Nayar, J. in Food Inspector Calicut v. Parameswaran Chettiar 1062 (1) Cri LJ 152 Kerala to hold that a transaction like the present does not amount to a sale. We are, therefore, unable to accept that view.

15. It may be pointed out that in the case of Parameswaran Chettiar referred to above Raman Nayar, J. was of opinion that if a Food Inspector obtains an article of food for price but in exercise of a statutory power u/s 10 the transaction did not constitute sale. The above view was repelled by the Supreme Court and it was held that purchase of an article of food by the Food Inspector for purposes of sample was ''sale'' within the meaning of Section 2(xiii) and that irrespective of whether the transaction was voluntary or otherwise it did not lose its character of being a sale as defined in the Act.

16. Lastly it was contended that the Food Inspector had no jurisdiction to enter the premises where Shakkar was stored as the same was not for sale and exhypothesi the purchase of Shakkar by the Food Inspector would not be a sale

u/s 2, Clause (xiii) of the Prevention of Food Adulteration Act, 1954. In support of the contention reliance was placed on the finding recorded by the learned lower court that the Shakkar which was in the godown was stored for being manufactured into Rab and was not for sale. Assuming for the moment that the aforesaid finding is correct it would not lead to the conclusion that the Food Inspector had no authority to visit the godown or to take a sample of the Shakkar. Sub-section (2) of Section 10 of the Prevention of Food Adulteration Act, 1954 reads as below:

Any Food Inspector may enter and inspect any place where any article of food is manufactured, stored or exposed for sale and take sample of such articles of food for anylysis.

17. It would thus appear that it is within the power of the Food Inspector to enter and inspect the place where any article of food is manufactured and even according to the finding recorded by the learned lower court Shakkar was being converted into Rab. Rab is an article of food and the godown was a place where Rab was being manufactured. The Food Inspector had thus power and authority to enter the aforesaid godown and take a sample of the article of food. It was also contended on behalf of the Respondent that since the Rab was not for sale the Food Inspector did not have any power to take a sample of it. It will be noticed that the word ''manufacture'' is not modified by the words ''for sale''. If the intention of the legislature had been that the words ''manufacture'' and ''stored'' should also be qualified, by the expression ''for sale'' Sub-section (2) would have been worded some what as below:

any Food Inspector may enter and inspect any place where for the purposes of sale any article of food is manufactured, stored or exposed and take sample of such articles of food for analysis.

18. Even if it be held that the expression ''for sale'' governs the word ''manufacture'' also it would not improve the Respondent''s case. The Respondent had purchased Shakkar for Rs. 12000/- or so and the Rab that was in the process of manufacture must have been for sale. It has not been shown that such a huge quantity of Rab would have been utilised by the Respondent for any other purpose.

19. We are not inclined to uphold the finding recorded by the learned lower court that the Shakkar found in the godown was to be or being manufactured into Rab. Shabbir (D.W. 6) has been doing business in Gur and Shakkar for the last 28 years and he has stated that in the manufacture of Rab no masala or any other substance is mixed. At the time when the Food Inspector visited the godown in question he found that Shelkhari which is a kind of stone in a powdered form was being mixed in the Shakkar in question. Thus the Respondent''s case that Shakkar found in the godown was to be or being manufactured into Rab has no substance. We, therefore, reject the contention advanced on behalf of the Respondent that the Food Inspector had no power or authority to enter and visit

the godown in question and take a sample of the Shakkar.

20. On the facts of the case we are of opinion that the sample of Shakkar purchased by the Food Inspector from the Respondent for purpose of analysis amounted to a transaction of sale. The article sold having been found to be adulterated, the Respondent could not escape liability for being in possession of an adulterated article of food, the sale of which is prohibited by Section 7 of the Act.

21. We accordingly allow these appeals, set aside the order of acquittal and restore that of the learned Magistrate convicting and sentencing the Respondent u/s 7/16 of the Act. He will be taken into custody forthwith to serve out the sentences awarded to him.