
(1980) 04 BOM CK 0039
In the Bombay High Court

State of Maharashtra

APPELLANT

Vs

Zamandas Vansimal Paryan

RESPONDENT

Date of Decision : 21-04-1980

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16(1)(A)(i)

Citation : (1981) CriLJ 383

Hon'ble Judges : Waikar, J;Palshikar, J

Bench : Division Bench

Judgement

Waikar, J.—These appeals are preferred by the State against the acquittal of the respondent who is common. The respondent was prosecuted for selling adulterated articles namely chilli powder In Criminal Case No. 6525/73 giving rise to Criminal Appeal No. 245 of 1977 and Bundi Ladu (in Criminal Case No. 6526 of 73) giving rise to Criminal Appeal No. 30 of 1979. Both these cases were tried together, common evidence was recorded and both the cases were disposed of by common judgment by the learned Magistrate acquitting the respondent.

2. The respondent runs a hotel known as Azad Bharat Hindu Hotel, within the limits of Nagpur Municipal Corporation. On 27-6-1973, the Food Inspector visited this hotel and purchased 500 gms. of Bundi Laddu and 600 gms. of chilli powder from the respondent. The respondent sells, food products, which include Bhajie, Aluwada, Bundi Laddu, etc., The quantity of Bundi Laddu and Chilli so purchased were sampled as per rules by the Food Inspector in the presence of the respondent and the witnesses. One portion of each sample was sent by him to the Public Analyst for analysis. The report of the Public Analyst showed that the chilli powder was adulterated as it did not conform to the standard and that in the Bundi Laddus non permitted coal tar colour i.e. metanil yellow was used for colouring. After obtaining the consent of the Commissioner, Food and Drugs Administration, the respondent came to be prosecuted separately for the offences punishable u/s 7(1) read with Section 16(1)(A)(i) of the Prevention of Food Adulteration Act (hereinafter called "the Food Act").

3. The respondent pleaded that the chilli powder was not for sale. With regard to Bundi Laddu, he stated that they were prepared for the purpose of Sagayi ceremony which was to take place at his residence and they were also not for sale.

4. The defences put forth by the respondent found favour with the learned Magistrate, who acquitted him.

5. These two appeals came up for hearing before the learned single Judge (Tulpule J.). The learned Judge referred these appeals to this Bench, as in his opinion the decision of the Supreme Court reported in Municipal Corporation of Delhi Vs. Laxmi Narain Tandon and Others, was contrary to the view taken by the Single Judge of this Court (Jahagirdar J.) in Criminal Appeal No. 870 of 1975 decided on 29-3-1977 and in Criminal Appeal No. 624 of 1975 decided on 15-4-1977 and by the other single Judge of this Court (Dighe J.) in Criminal Appeal No. 644 of 1976 decided on 26-6-1977. The other contentions which were raised by Shri Kanhe, the learned Counsel for the respondent before the learned single Judge, were however, not considered by him.

6. So far as the sample of chilli powder is concerned the report of the Public Analyst shows that it did not conform to the standard, inasmuch as the total ash found was 9.3 per cent and as such it exceeded by 1.7 per cent. So also non volatile ethel extract found was 9.98% and as such it was less by 2 per cent. So also the sample of Bundi Laddu showed that it contained non-permitted coaltar colour i.e. metanil yellow. In the opinion of the Public Analyst, therefore, both these articles were adulterated.

7. Shri Kanhe the learned Counsel for the respondent submitted that there was non-compliance of Rule 7(3), so far as the chilli powder is concerned, the said Rule is in these terms:

After the analysis has been completed, he shall send to the person concerned, two copies of the report of the result of such analysis in Form III within a period of sixty days of the receipt of the sample.

8. Shri Kanhe further submitted that sample of chilli powder was received by the Public Analyst on 28-6-1973 and the report was despatched on 10-9-1973 i.e. after 74 days. He placed reliance upon the State of Maharashtra v. Chandanmal 1979 (1) FAC 235 and the State Public Prosecutor v. Meenakshi Achi 1973 FAC 43 : 1972 Cri LJ 1684 (Mad), in support of his submission that Rule 7(3) is mandatory in every sense. It was observed in the latter case by the Madras High Court, that in no event and under no circumstance the full rigour of Rule 7 should be permitted to be relaxed, otherwise this would even result in the effective deprivation of the valuable right u/s 13(2) conferred on the accused by the Parliament. Thus so far as the sample of chilli powder is concerned, since there has been an infraction of the mandatory Rule 7(3), the respondent was rightly acquitted by the learned Magistrate.

9. Shri Kanhe next submitted that the Public Analyst Shri R. V. Naik who carried out the analysis was not the proper person to perform this function and as such there was contravention of Section 8 of the Food Act. The section reads thus:

The Central Government or the State Government may by notification in the Official Gazette, appoint such persons as it thinks fit having the prescribed qualifications to be Public Analysts for such local areas as may be assigned to them by the Central Government or the State Government, as the case may be.

10. The report of the Public Analyst Shri Naik shows that he was appointed as Public Analyst for all local areas falling within the revenue district of Nagpur, duly appointed under the provisions of the Food Act. What is submitted by Shri Kanhe is that for the Municipal limits of Nagpur one Shri Pangarkar has been appointed as the Public Analyst. When Shri Naik has been appointed as Public Analyst for all local areas within the revenue district of Nagpur, it would include even the Municipal Corporation area and it cannot be said that the analysis carried out by him was in violation of the provisions of Section 8 of the Food Act. Shri Kanhe then submitted that there has been an infraction of Rule 17, inasmuch as there is nothing to show that the container of these samples and the outer covers were both duly sealed. Rule 17 is in these terms:

The container of sample for analysis shall be sent to the Public Analyst by registered post or Railway parcel or air freight or by hand in a sealed packet, enclosed together with a memorandum in Form VII in an outer cover addressed to the Public Analyst.

11. It is thus clear that both the containers as well as the outer covers must be duly sealed as required by this Rule. The acknowledgments at Exs. 24 and 25 by the Public Analyst do not mention that the packets were received duly sealed but all the same in his reports at Exs. 30 and 31 he did mention that the sample was properly sealed and fastened and he found the seal intact and unbroken. He further stated that the seal fixed on the container tallied with the specimen impression of the seal separately sent by the Food Inspector. What is submitted by Shri Kanhe is that the report does not show that the outer cover had really any seal or that it tallied with the specimen. We find that the evidence of the Food Inspector Shri Jago (P.W. 1) is more accurate and clear on the point when he stated that he had not only sealed the containers of the samples but the duplicate of Form VII and the specimen seal were sent in another packet which were also sealed. We thus, find no force in the submission of Shri Kanhe that there has been any infraction of Rule 17.

12. Next it was submitted by Shri Kanhe that the sanction or consents Exhs. 33 and 34 issued by the Commissioner, Food and Drugs Administration were bad inasmuch as they make no mention of the fact that the concerned officer had gone through the papers or that he had issued them after proper application of mind. The sanction order issued reads thus:

In exercise of the powers vested in me u/s 20 of the Prevention of Food

Adulteration Act, 1954 read with Government Order Urban Development, Public Health and Housing Department No. PFA.1069/74029-V dated 22nd August, 1970. I, E. K. Rangnekar, Commissioner Food and Drugs Administration, Maharashtra State, Bombay hereby give my consent for the prosecution of Shri Zamandas Vansimal Haryani (sic) of Azad Bharat Hindu Hotel, situated at Chitra Talkies Chawk, Nagpur for an offence alleged to have been committed by him as regards stocking for sale and selling of chilli powder on or about 27-6-1975 in contravention of Section 7, punishable u/s 16 of the said Act.

13. Shri Kanhe placed reliance on Madan Mohan Singh Vs. State of Uttar Pradesh, , which was a case under the Prevention of the Corruption Act and it was observed that where the facts constituting the offence do not appear on the face of the letter sanctioning prosecution, it is incumbent upon the prosecution to prove by other evidence that the material facts constituting the offence were placed before the sanctioning authority and where this is not done, the sanction must be held to be defective and an invalid sanction cannot confer jurisdiction upon the Court to try the cases.

14. Shri Kanhe also referred to the State of Maharashtra v. Shantilal Jamnadas Thakkar 1979 (1) FAC 210. It appears that the sanction or consent in that case did mention that the relevant papers and the report of the Public Analyst were perused by the competent officer. It was also mentioned that the offences under the relevant provisions of the Food Act were committed by the accused, after stating the facts which constituted such offences. The only defect or infirmity was that the sanction referred to Section 7(v) which was a superfluity. Such a sanction which was issued was held by the learned Judge as invalid. The view taken by the learned single Judge in the said case appears highly technical and rigid. If the sanction shows that all necessary papers and the report of the Public Analyst were placed before the concerned authority and were perused by him, that the particulars of the alleged offence are also found stated in the sanction, that the provisions of law the breach of which is complained of is also stated, then only because a reference to some unnecessary provisions of law is mentioned through mistake that should not ordinarily render the same invalid, nor can it be said that such a sanction was given only mechanically without any application of mind. However, so far as the present matter is concerned, we find that the sanction issued by Shri Rangnekar makes no mention of the fact that the relevant papers or the report of the Public Analyst were made available to him. There is no other evidence to show that these sanctions were issued by the concerned officers after proper application of mind. We, therefore, hold that the present prosecution suffers from want of proper sanction as required by Section 20 of the Food Act.

15. This takes us to the next question whether chilli powder and the Bundi Laddus were stored for sale. The chilli powder was found kept in a tin box in kitchen and it was the contention of the respondent that he never dealt in sale of such articles and the chilli powder that was found in his kitchen was meant for

preparation of the food articles like Bhajie, Alubonda, Shev etc. The learned Magistrate, therefore, rightly held that the respondent who is a hotel owner did not store the chilli powder for sale.

16. So far as the Bundi Laddus are concerned, they were found kept partly near the oven in the kitchen and partly in the cupboard. The respondent no doubt produced one invitation card Ex. 60 through his witness Kishanchand (D.W. 2) to show that on 27-6-1973 there was a Sagayi function at his house and the bundi laddus were prepared in his hotel for that purpose. It may be that Bundi Laddus were prepared for the said function but the fact that some stock of bundi laddus was kept in the cupboard and exhibited to the customers would indicate that they were stored by the respondent for sale to the customers.

17. The last question which arises for consideration and which has been referred to us by the learned single Judge is whether the respondent had sold the adulterated articles of food to the Food Inspector or not or whether he had stored these articles for sale. In the *The Food Inspector, Calicut Corporation Vs. Cherukattil Gopalan and Another*, the Food Inspector had purchased from the respondent who was a manager of the Tea Stall 600 gms. of sugar for analysis. The sugar was found adulterated with saccharin and the respondent came to be charged for the offence u/s 16(1)(a)(i) read with Section 7 of the Act, The plea of the respondent was that sugar was not sold as such in his tea stall but it was only used for mixing it in tea which alone was sold. This defence" plea had prevailed with the District Magistrate and also with the Kerala High Court and the respondent was acquitted. The Supreme Court in further appeal held that the purchase by the Food Inspector for analysis amounts to sale u/s 2(xiii) of the Act. It was also observed that when the Food Inspector purchased an article of food from a person for analysis the latter must not necessarily be a dealer in that article as such. The respondent was, therefore, found guilty and his acquittal was set aside. It is pertinent to note that the question whether the expression "stored" occurring in Section 7 and Section 16 should be interpreted as "storage for purposes of sale" was left open as it was felt not necessary to consider that question for the purpose of decision of that case.

18. In the *Municipal Corporation of Delhi Vs. Laxmi Narain Tandon and Others*, , that question was considered and decided. The Food Inspector got from respondent No. 1 who was a hotelier samples of icecream, milk, curd and butter for the purpose of analysis. These articles were found to be sub-standard and as such adulterated articles of food. The defence was that these articles of food were not sold in this hotel to non-resident visitors, but they were provided to resident customers for which a composite charge was levied which included charges for residential accommodation, other amenities including meals. The defence was negated with the observation that good residential accommodation and good (food) against one consolidated charge were the main consideration which must have weighed with the party while entering into this transaction and it is therefore, not correct to say that the supply of food under such composite

transaction entered into between the hotelier and his resident customers does not amount to supply of food as articles of commerce. The fact remains that the supply or offer of food to such customers is for a money consideration as part of business activity and as such constituted sale under the Food Act. Referring to the scheme and the contents of the relevant provisions of the Food Act, it was however held that if an article of food is not intended for sale and is in the possession of a person who does not fulfil the character of a seller, or conveyer, deliverer, consignee, manufacturer or enterer for sale such as is referred in Sub-sections (1)(a) and (2) of the Section 10 of the Act, the Food Inspector will not be competent under the law to take a sample and on such sample being found adulterated to validly launch a prosecution thereon. In short the expression, "store" in Section 7 means "storing for sale", and consequently storing of an adulterated article of food for purpose other than for sale would not constitute an offence u/s 16(1)(a).

19. In the instant case as observed above it cannot be said that chilli powder which was kept in a tin box in the kitchen was stored for sale. It is not the prosecution case that what was sold to the Food Inspector for the purpose of sample was a finished product like Shev, Bhajie, or Alubonda in which such adulterated chilli powder was used and the composite charge for such finished products also included the charge for chilli powder. So far as the bundi laddus are concerned we find that since a part of the stock of Bundi Laddus was exhibited in the cupboard for the customers, there is a reason to believe that they were stored for sale. We, therefore, find that as the chilli powder was not stored for sale by respondent the Food Inspector was not empowered to take sample of the said stock and as such the ratio of decision of Calicut Corporation's case would not apply here. As observed in the Municipal Corporation of Delhi Section 10 of the Food Act, 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 (1)(a) or Sub-section (2) of Section 10. On the facts of that case, however, it was no doubt observed that, the adulterated articles of food were offered by the hotelier to the resident customers for a money consideration and it was immaterial whether such consideration was a distinct item or was an inseparable element of the consolidated charge made by the hotelier for providing residential accommodation services, amenities and food. In the instant case the chilli powder by itself which was kept in the kitchen was not stored for sale by the respondent and it is not the case of the prosecution that the finished product sold to the customers did contain this adulterated chilli powder for which a consolidated charge was levied (on) by the respondent.

20. In the result, therefore, we find that the acquittal of the respondent in both the cases was proper and we see no valid reason to interfere with the same. The appeals are, therefore, dismissed.