

(1986) 07 CAL CK 0004
In the Calcutta High Court

Swapan Kumar Singha Roy and Another	APPELLANT
Vs	
Anil Kumar Mukherjee	RESPONDENT

Date of Decision : 03-07-1986

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16, 19

Citation : (1988) CriLJ 60

Hon'ble Judges : Sudhanshu Sekhar Ganguly, J

Bench : Single Bench

Judgement

Sudhanshu Sekhar Ganguly, J.—Both the cases are taken up together, as both the cases involve same points of law.

2. Case No. 494-D of 1977 of the Court of the 2nd Municipal Magistrate and Metropolitan Magistrate, Calcutta is proceeding against the present petitioners sellers of Banaspati - and opposite parties 2 and 3 being the dealers from whom the aforementioned sellers had purchased the said supply of Banaspati under the provisions of Section 16 Sub-section (a)(1) of the Prevention of Food Adulteration Act on allegation that the said Banaspati on being examined by the Public Analyst was found adulterated. The petitioners in Revision No. 2026 of 1981 prayed that the aforementioned case be quashed as they had purchased their supply of the Banaspati in question from the aforementioned dealers in closed sealed pack tins and were given cash memos with written warranty in the prescribed form and further that they had stored the same in a proper way.

3. Revision No. 539 of 1986 has been started by the dealers from whom the sellers had purchased their supply of the Banaspati. They also petitioned the learned Magistrate for their discharge on the ground that they in their turn had purchased their supply of the Banaspati in question from Berar Oil Industry of 16, India Exchange Place, Calcutta-1 in sealed and packed tins having proper labels attached to the tins and further that they were given cash-memos for the same along with written warranty in the prescribed form and further that after their purchase they had properly stored the said tins and sold the same to the

sellers mentioned above in the same state as purchased by them. The learned Magistrate, however, rejected the applications of the petitioners in both the cases. Hence, these revisional applications.

4. The petitioners in both the cases claimed that their purchases were covered by written warranty from their respective sellers. Granting that this is so, they have yet to establish that they had properly stored the Banaspati in question and sold the same in the same state as they had purchased it. They have made such claims in their petitions but they have yet to establish their claims in this regard. In that view of the matter it cannot be said that the provisions of Section 19 of the Prevention of Food Adulteration Act apply to the petitioners of these cases. The question of their discharge at this stage does not therefore arise.

5. The learned Advocates of the petitioners in both the cases urge next that in any way the sellers and the dealers should not be tried together. They both relied upon *Bhagwan Das Jagdish Chander Vs. Delhi Administration*, and *Ram Pratap Brij Mohan and Others Vs. The State of West Bengal and Others*, . In the first cited decision it is laid down by the Hon"ble the Supreme Court that in a suitable case a vendor, a distributor and a manufacturer could be tried together provided the allegations made before the court show that there are connecting links between their activities so as to constitute the same transaction and further that the connecting links in a case such as the one, in question could be provided by : firstly, the fact that a sale at an interior stage could be viewed as the cause of the subsequent sale, secondly, the allegation that each of the accused parted with the article of food when it was in an adulterated state, and thirdly, by the common object of the manufacturer, the distributor and the vendor that the article should reach the consumer to be used as food. It is these principles which have been applied in the 2nd decision cited above. Now the facts of the present case cover the first and the third conditions. They however, do not cover the second condition for, the complaint in the present case does not allege specifically, that the Banaspati in question was adulterated when the dealers parted with it. In that view of the matter, there cannot be any joint trial in this case.

6. The petitioners in the second case should therefore be tried separately and the prosecution should take steps accordingly. It is not understood why manufacturers were not also added as parties to the present case. In such a case as the present, nobody in the chain of supply should be left out, for, in such a case the persons made parties may always plead that the offence was committed if at all by the party/parties left out. In the case at hand the seller says that he sold the article of food in the same way as he had obtained it from the dealer. The dealer in his turn says that he sold the article of food to the seller in same state as he had received it from his supplier, namely, the manufacturer. Both the seller and the dealer are covered by the warranties. The proper course therefore should have been also to rope in the manufacturer to make the circuit complete. The authorities should consider if in such cases as the present all the three

parties, namely, the manufacturer, the dealer and the vendor and anybody else who is a party in between should be proceeded with invariably; otherwise, the very purpose for which the Food Adulteration Act has been enacted will become frustrated as it did in the aforementioned Supreme Court case. The rules are disposed of accordingly. Send the L.C.R. back to the learned Magistrate immediately to enable the prosecution to take appropriate steps as per the observations made above. The charges framed in both the cases are hereby quashed.

7. A plain copy of this judgment be handed over to the learned Advocate for the Calcutta Corporation for forwarding it to the appropriate authorities.