

(1975) 09 MP CK 0012
In the Madhya Pradesh High Court

The Commissioner (Now Administrator) Municipal Corporation	APPELLANT
Vs	
Satyanarain and Co. Partnership Firm and Others	RESPONDENT

Date of Decision : 19-09-1975

Acts Referred:

Contract Act, 1872 — Section 182
Criminal Procedure Code, 1973 (CrPC) — Section 417
Prevention of Food Adulteration Act, 1954 — Section 16, 19, 7

Citation : (1976) CriLJ 1665 : (1977) ILR (MP) 806 : (1976) 21 MPLJ 421

Hon'ble Judges : Raj Krishna Tankha, J; A.P. Sen, J

Bench : Division Bench

Judgement

A.P. Sen, J.

This appeal u/s 417(3) of the Code of Criminal Procedure, filed by the Administrator (now Commissioner), Municipal Corporation, Jabalpur, with leave of the Court, is directed against an order of acquittal of the Magistrate First Class, Jabalpur, dated 31st March, 1967, acquitting the respondents of an offence punishable u/s 16 of the Prevention of Food Adulteration Act, 1954, for alleged contravention of Section 7 of the Act.

The prosecution case, in brief, is as follows. The respondents - M/s Satyanarain & Co., Jabalpur and its partners, are a firm of commission agents. They are engaged in the business of selling mustard oil and coconut oil, which they get from different manufacturers. We are here concerned with samples of mustard oil taken on 25-3-1964, by M. B. Shrivastava Food Inspector (PW 1) in form IV, vide Ex. P-9, from 5 sealed tins containing mustard oil, manufactured by M/s Uma Shanker Oil Mills, Allahabad. The samples were duly forwarded by the Food Inspector to the Public Analyst who by his report dated 31-3-1964 in form III, Ex. P-11, found that out of the five samples taken, four were adulterated.

The order of acquittal recorded by the learned Magistrate rests on two grounds, namely.

(i) the report of the Public Analyst, Ex-P-11, was inadmissible in evidence, in view of the decision of a Division Bench of this Court in *State of M.P. Vs. Abbasbhai Tyab Ali Bohra*, and that of a single Judge following it in *Ramkishan v. State* Cri Revn No. 398 of 1965 D/-28-7-1966 : ILR (1970) MP 510 and *Bhagwan v. State* Cri Revn. No. 399 of 1965 (Madh Pra) both decided on 28-7-1966.

(ii) The respondents were protected by Section 19(2) of the Act inasmuch as they had purchased the mustard oil i.e. the article of food, in sealed tins, bearing a label that the article was hundred per cent. pure.

As to the first, the correctness of the view taken by this Court in *State of M.P. Vs. Abbasbhai Tyab Ali Bohra*, was questioned before a Full Bench in *State of Madhya Pradesh Vs. Chhotekhan Nannekhan*, and the Full Bench has overruled it. That being so, the acquittal of the respondents on the ground that the report of the Public Analyst, Ex.-11 was inadmissible cannot be sustained.

As to the second ground the learned Magistrate has rightly upheld the plea in defence viz, that the respondents having sold the mustard oil in the same state as they purchased in sealed tins from the manufacturer i.e. bearing the manufacturer's label of absolute purity, were protected u/s 19(2) of the Act. which reads as follows:

19(2) A vendor shall not be deemed to have committed an offence if he proves:

(i) That the article of food was purchased by him as the same in nature, substance and quality as that demanded by the purchaser and with a written warranty in the prescribed Form, if any, to the effect that it was of such nature, substance and quality;

(ii) That he had no reason to believe at the time when he sold it that the food was not of such nature, substance and quality and

(iii) that he sold it in the same state as he purchased it.

There can be no doubt that the respondents had purchased the mustard oil in question from the manufacturers vide their bijak, Ex-D-2,. The learned Counsel for the Municipal Corporation, however, draws our attention to the testimony of Gangaprasad (DW 1), a partner of M/s. Uma Shankar Oil Mills, Allahabad and Krishna Kumar (DW 3), Munim of the respondents, and urges that the respondents are a firm of commission agents and the property in the goods remained with the manufacturer. On the basis of that evidence, he contends that the respondents had not purchased the goods. The contention can hardly be accepted,

The decision of Vivian Bose, J. in AIR 1938 254 (Nagpur) on which reliance was placed, instead of supporting the Municipal Corporation, is against it. Bose, J. stated that commission agents are no doubt agents within Section 182 of the Contract Act but are not agents pure and simple. They are agents up to a point of time, and to that extent they stand in a position of active confidence towards

their principals, but beyond that they are not agents in the real sense of the term, and the relationship between the parties from then on is one of debtor and creditor. The position of a pucca adhatia is well settled. The law is stated in Mulla's Contract Act, 9th Ed., p-710.

In order to constitute selling agency, goods should be sold to the customer introduced by the agent not on behalf of the agent but on behalf of the principal. When a wholesale dealer sells goods of a manufacturer for his own profit, he is not an agent of the manufacturer and the mere insertion that he shall be deemed to be an agent does not make him one.

Here, the Food Inspector admittedly purchased the samples, and from that point of time onwards, the relationship between the respondents and their suppliers was that of debtor and creditor, but vis-a-vis the Food Inspector, the respondents were the sellers.

In our opinion, the respondents were clearly protected u/s 19(2)(i) of the Act. Rule 12-A speaks of Warranty, which runs thus:

Rule 12-A - WARRANTY - Every trader selling an article of food to a vendor shall, if the vendor so requires deliver to the vendor a warranty in Form VI-A.

PROVIDED that no warranty in such form shall be necessary if a label on the article of food or the cash-memo, delivered by the trader to the vendor in respect of that article contains a warranty certifying that the food contained in the package or container or mentioned in the cash-memo, is the same in nature, substance and quality as demanded by the vendor." Admittedly, there was no such warranty in the prescribed form in the instant case. The respondents can, however, rely on the proviso to Rule 12-A. The testimony of M. B. Shrivastava, Food Inspector (PW 1) clearly shows that he bought the samples from out of sealed tins, i.e. from tins bearing the manufacturer's label guaranteeing purity. The requirements of the proviso to Rule 12-A are clearly fulfilled in the present case. That being so, the respondents shall not be deemed to have committed any offence by reason of Section 19(2) of the Act (See, Rajaldas Gurunamal Pamanani Vs. The State of Maharashtra,)

The result, therefore, is that the appeal fails and is dismissed.