

Corporation of Calcutta Vs. United Oil Mills and anr.

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Court : Kolkata

Decided On : Jan-11-1968

Reported in : AIR1968Cal342,1968CriLJ912

Judge : T.P. Mukherji, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 2, 7, 16 and 17; ;Prevention of Food Adulteration Rules, 1954 - Rule 44; ;[Evidence Act, 1872](#) - Sections 101 to 104

Appeal No. : Criminal Appeal No. 285 of 1966

Appellant : Corporation of Calcutta

Respondent : United Oil Mills and anr.

Advocate for Def. : Ajit Kumar Datta and ;Ajit Kumar Chatterjee, Adv.

Advocate for Pet/Ap. : Prasun Chandra Ghosh, Adv.

Disposition : Appeal partly allowed

Judgement :

T.P. Mukherji, J.

1. The Corporation of Calcutta filed this appeal with the special leave of the Court under Section 417 (3) of the Code of Criminal Procedure against the acquittal of the two respondents in a case under Section 16 (i) (a) (i)/7(i) of the Prevention of Food Adulteration Act. Section 7 of the Act prohibits manufacture for sale, or storage, or sale or distribution of any adulterated food and Section 16 makes such manufacture, storage, sale and distribution an offence punishable thereunder. Respondent No. 1 is an oil mill with the firm name of Messrs. United Oil Mills Respondent No. 2 was prosecuted as the proprietor thereof. A food inspector of the Calcutta Corporation took sample of Jinjili Oil also known as Til or Sesame Oil from a vat in the mill premises after observing the necessary formalities. On chemical examination, the oil was found to be adulterated in the sense that it deviated from the standard in respect of B. R. reading, saponification value and iodine value and it was further found to contain linseed oil. On receipt of the report of the chemical analyst, the present prosecution launched.

2. The defence pertaining to the present proceeding was that the oil mill firm was a partnership firm and that respondent No. 2 could not be prosecuted for his liability in the matter in the absence of necessary evidence under Section 17 of the Act which

was wanting in the case. The other defence that the oil being an article of food, storcle of food, the same being meant for use end being used for industrial purposes.

3. The learned magistrate found that the food inspector took sample of oil for human consumption, that is, as an article of food for human consumption. A further finding was that accused No. 2 in the case was not liable for any offence that might have been committed, accused No. 1 being a partnership firm and the necessary evidence under Section 17 of the P. F. A. Act being wanting. The third relevant finding of the learned magistrate was that the defence contention that the oil was meant for industrial purposes might reasonably be true. These findings of the learned magistrate led to the order of acquittal the propriety whereof is challenged in this appeal.

4. Mr. Ghosh appearing in support of the appeal contends that the learned magistrate should have held on the basis of ext. 8, the Demand Register of Trade and Profession Tax, that respondent No. 1, the oil mill, was a proprietorial firm and that the respondent No. 2 was the proprietor thereof and, secondly, that the sample of oil should have been found on the evidence adduced in the case to be not only meant for human consumption but used as such. It was the further contention of Mr. Ghosh that the oil being an article of food, storage thereof in itself would attract mischief of the Act if it was found to be adulterated.

5. So far as the first contention raised by Mr. Ghosh is concerned, the prosecution was launched in the case on the basis of respondent No. 1 being a 'company' and respondent No. 2 being the proprietor thereof. The defence contention in this regard is that respondent No. 1 is a partnership firm and that there is no evidence under Section 17 that respondent No. 2 who might be a partner thereof was in charge of the business of the firm at the time the offence was committed. We proceed in the matter on the basis of the prosecution allegation that respondent No. 1 was a proprietorial firm and respondent No. 2 was the proprietor thereof. Under the Prevention of Food Adulteration Act, the proprietor as also the proprietorial firm cannot both be proceeded against. In the case of a proprietorial firm the firm has no separate legal entity apart from its proprietor, the firm name being another name of the proprietor himself. A 'company' as defined in explanation (a) of Section 17 of the Act together with its officer in charge at the time the offence is committed can both be proceeded against under Section 17. But a proprietorial firm is not a 'company' in law. When according to the prosecution, the firm in this case is a proprietorial firm, both the accused, in my view, could not be proceeded against, As, according to the prosecution, both accused Nos. 1 and 2 could not be liable to be proceeded against and as even according to the defence there cannot be any objection to the prosecution of respondent No. 1 firm in the case at any rate, it is unnecessary to enter into the question as to whether the firm is a proprietorial firm or a company. I find that on the basis of the prosecution allegation and evidence that it is the firm respondent No. 1 which should be liable if an offence be found to have been committed in this case

6. In support of the second contention of Mr. Ghosh reference was made to a Bombay decision in State v. Sankar Dnyanoba : AIR1965Bom17 . The question raised in that case was whether it was necessary for the prosecution in a case under Section 16 of the Act to establish that the adulterated article was sold as food. The answer was in the negative and it was held that if the article concerned is food in the sense that it can enter into preparation of food for human consumption, the onus that lies on the

prosecution is discharged. The other case referred to by Mr. Ghosh in this connection is *Govinda Pillai v. Padma-nabha Pillai*, : AIR1965Ker123 (FB). In that case, on an interpretation of the definition of the word 'sale' in Section 2 (xiii) of the P. F. A. Act. it was held that, in the case of actual sale of an article of food, the same must be a sale for human consumption, but that in the case of a prosecution for possession or sale the article of food need not be one for human consumption. If it be an article which normally enters into the preparation of food, mere possession thereof for sale would constitute sufficient evidence to convict the accused irrespective of whether the article of food was sold for human consumption or not.

7. In reply to the contention of Mr. Ghosh, Mr. Datta appearing for the respondents argued that as the prosecution in the case could not adduce any evidence that the oil manufactured by the firm was meant for or used for human consumption and as there was moreover good evidence that the oil manufactured is used for industrial purpose, the learned magistrate was fully justified in acquitting the accused in the case. On the strength of an unreported decision in the case *Corporation of Calcutta v. Ghasiram Agarwalla*, Criminal Appeal No. 297 of 1961, D/- 27-6-1963 (Cal) Mr. Datta repelled the arguments of Mr. Ghosh that Til Oil being an article of food, storage thereof In itself would be punishable if it is found to be adulterated.

8. Ghasiram's case, Cri. Appeal No, 297 of 1961 D/- 27-6-1963 (Cal) did not accept the argument that simply because an article is ordinarily used as food it would attract the mischief of the Act if found adulterated irrespective of whether it is meant for purposes other than for human consumption. Such an argument on behalf of the prosecution would make it impossible for user for industrial purposes of articles which may also be used as food but which article the industries do not require in as pure a form as is demanded under the P. F. A. Act, The acceptance of this argument would lead to the starvation of many industrial establishments or force them to manufacture raw materials. The P. F. A. Act deals with food and it will be open to the accused to plead that the article involved in any case is not food. This view of the matter, in my view, is also evident from Rule 44 of the Rules framed under the Act. Under this Rule, 'no person shall either by himself or by any servant or agent sell * * * (e) a mixture of two or more edible oils as an edible oil'. It would appear from this Rule that admixture of two or more oils as a non-edible oil is not prohibited and this Rule may lend strength to the argument that simple storage of an adulterated article of food might not be an offence, if it can be proved by the defence that the storage was never meant for being sold or used as food for human consumption.

9. The Bombay case referred to by Mr. Ghosh does not touch the point under consideration. The Kerala case undoubtedly supports the contention of Mr. Ghosh. But in view of the Bench decision of our Court in Ghasiram's case, Cri. No. 297 of 1961 D/- 27-6-1963 (Cal) I must hold that defence is always open to the accused in the case of a prosecution under Section 16 of the P. F. A. Act that the article of food concerned was never sold as food for human consumption. The onus would undoubtedly lie heavily on the defence in that regard and the merit of the defence will have to be decided upon evidence that may be adduced in a particular case.

10. Coming now to the evidence adduced in the case, reference may at the outset be made to the definition of the term 'food' in the P. F. A. Act. Under this definition in Section 2(v), any article which ordinarily enters into or is used in the composition or preparation of human food would be food under the Act and if such an article is found adulterated under the circumstances which would attract the provisions of Section

16, liability cannot be avoided.

11. The term 'sale' has been defined in Section 2(xiii) of the Act as meaning the sale of any article of food * * * for human consumption or use or for analysis and includes an agreement for sale, an offer for sale, the exposing for sale or having in possession for sale of any such article * * *. According to the earlier part of the definition, the sale of the article of food has to be for human consumption or use or for analysis, According to the latter part of the definition as held by the Kerala decision referred to by Mr. Ghosh, the fictional sale need not be for human consumption or use. The learned Judges deciding that case pointed out the incongruity involved in the case of an actual sale demanding the same to be for human consumption or use and the fictional sale requiring only an agreement or offer for sale or the possession of an article of food which may not even be meant for human consumption. Adulteration of the article in both cases would attract the mischief of Section 16. By implication, there is a divergence of views between the Bench decision of our Court in Ghasiram's case and the Full Bench decision of the Kerala High Court. As stated above, according to the Ghasiram's case, it is always open to the defence to plead and to prove that the sale or the storage was of an article of food which was never meant for human consumption or use. I proceed to consider the facts of this case on the basis of the view expressed in Ghasiram's case.

12. An argument of Mr. Datta was that the prosecution in this case could not adduce evidence that the oil found with the respondent mill was meant for or used for human consumption. This argument is clearly unacceptable. The duty of the prosecution does not extend that far. It ends with the proof that the article is normally an article of food which is meant for human consumption and Jinjili oil is one such. Once this is proved, the onus would be on the defence to establish that this oil found in possession of the accused was never meant for sale as food for human consumption. The defence examined D. Ws. 2 and 4 to prove that the oil was meant for industrial purposes. The term 'industrial purpose' in the context of the evidence is misleading. The evidence of D. W. 2 who was an employee of Messrs. Hindusthan Lever Ltd. was that he had purchased for his employers Jinjili oil from the mill of the respondent which was required for manufacturing Dalda. His further evidence was that Til Oil, soyabin oil and groundnut oil and cotton seed oil are used by Messrs. Hindusthan Lever Ltd. for manufacturing Dalda. D. W. 4 was an employee of Messrs. Vegetable Product Ltd. His evidence was that his firm purchases oil from the respondent mill for production of vegetable ghee or vanaspati. Vanaspati, according to him, is prepared out of Til Oil, groundnut oil and Cottonseed oil. According to the defence, thus, the industrial purpose for which Jinjill oil manufactured by the mill is used is for the purpose of manufacture of Dalda or Vanaspati. Dalda or Vanaspati is an article of food and anything that goes into its preparation would be an article of food under the Act in accordance with the definition of the term in Section 2(v)(a) of the P. F. A. Act. Mr. Datta's contention was that there was no evidence that Vanaspati produced by Messrs. Hindusthan Lever Ltd. or by Messrs. Vegetable Products Ltd. out of Jinjili oil purchased from the mill was adulterated. But that is not a question which is germane to the issue. If Dalda or Vanaspati is an article of food, as it is, anything that goes into the manufacture thereof would be food. The evidence adduced on behalf of the defence thus itself establishes that the Jinjili oil that was found in possession of the respondent mill goes into the preparation of food, and is as such an article of food. It was not only meant for sale but was actually sold as food and, if it was adulterated, the liability under Section 16 of the Act could not be avoided. The fact that chemical analysis of the oil whereof sample was taken proved that it was adulterated was not

disputed.

13. In view of the above, I must hold that the respondent mill has been guilty of selling an adulterated article of food for human consumption.

14. The appeal, accordingly, succeeds in part. It is allowed as against respondent No. 1, Messrs, United Oil Mills, and is dismissed as against respondent No. 2. I find respondent No. 1 guilty under Section 16(1)(a) (i)/7(i) of the Prevention of Food Adulteration Act and I convict it thereunder and sentence it to pay a fine of Rs. 2,000. If the fine directed to be paid is not paid within two months from this date. D. W. will issue.

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