

State Vs. Madan Dhanji

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Court : Mumbai

Decided On : Sep-18-1953

Reported in : (1954)56BOMLR128

Judge : Bavdekar and ;Vyas, JJ.

Appeal No. : Criminal Appeal No. 961 of 1953

Appellant : State

Respondent : Madan Dhanji

Judgement :

Vyas, J.

1. This is an appeal by the State of Bombay against the acquittal of the accused Madan Dhajiji who was charged under Section 4(7)(a) of the Bombay Prevention of Adulteration Act with an offence of selling to the Medical Inspector Dr. Dange ghee which was not of the nature, substance or quality demanded by the Medical Inspector.

2. The facts on which the prosecution case is based are that the Medical Inspector Dr. Dange visited the premises of the accused and purchased 1/4 seer of ghee from the accused. He divided the said 1/4 seer of ghee in three equal parts and put each part in a separate container and sealed all the containers in the presence

of the accused. He then gave one of those sealed containers to the accused and sent one sealed container to the Public Analyst, The Public Analyst found on scientific test that the ghee had excess acidity of 1.8 per cent, over the standard acidity of 2.5 per cent. referred to in Rule 6(B)(1) of the Bombay Prevention of Adulteration of Articles of Food Rules. On these facts, the accused was prosecuted upon the allegation that the ghee sold by him to the Medical Inspector was not of the nature, substance or quality it purported to be and that, therefore, he had committed an offence under Section 4(1)(a) of the Bombay Prevention of Adulteration Act.

3. The prosecution relies on Rule 6(B)(1) of the rules framed under Section 19(1)(c) of the Bombay Prevention of Adulteration Act for contending that the ghee sold to the Medical Inspector was not of the nature, substance or quality it purported to be. Now, Section 19(1)(c) of the Act reads :

The Government of Bombay may, after previous publication, and in the case of the City of Bombay (after consultation) with the Corporation of the City of Bombay and in the case of other local areas (after consultation) with the local authorities concerned, make rules, not inconsistent with the provisions of this Act, for....

(c) determining what deficiency in any of the normal constituents of any article of food or what addition of extraneous matter shall raise a presumption, until the contrary is proved, that such food is injurious to health within the meaning of Section 3 or is not of the nature, substance or quality it purports to be within the meaning of Section 4; ...

4. Rule 6(B)(1) of the rules framed under Section 19(1)(c) says :

The following articles of food shall be presumed, until the contrary is proved, to be not of the nature, substance or quality which they purport to be: (i) Ghee which has a Butyro refractometer reading at 40C of less than 40 or more than 44.5, or a Reichert Woollny value of less than 24, or which has an acidity of more than 2.5 per cent, calculated as Oleic Acid.

5. The learned trial Magistrate held that Rule 6(B)(1) was inconsistent with the provisions of Section 19(1)(c) of the Act, that therefore it was ultra vires of the Act, that accordingly no presumption could arise from the 1.8 per cent. excess of acidity in the ghoe over the standard acidity of 2.5 per cent. that the ghee was not of the nature, substance or quality it purported to be, and acquitted the accused.

6. The only point for decision in this appeal is whether Rule 6(B)(1) of the Bombay Prevention of Adulteration of Articles of Food Rules is inconsistent with the provisions of Section 19(1)(c) of the Act, and our answer to that question is that it is not shown that the rule so far as the words 'which has an acidity of more than 2.5 per cent. calculated as oleic acid' are concerned is consistent with the provisions of Section 19(1)(c) of the Act. To that extent, it is not shown that the rule is intra vires.

7. The learned Magistrate's reasoning for arriving at the conclusion that Rule 6(B)(1) is inconsistent with the provisions of Section 19(1)(c) of the Act and, therefore, ultra vires of the Act is this : Section 19(1)(c) directs the raising of presumption as to the nature, substance or quality of an article of food from a determination of the deficiency in any of the normal constituents of the said article of food or from a determination of the addition of extraneous matter to the normal constituents of the said article. The section does not contemplate the raising of presumption as to the nature, substance or quality of an article of food from any circumstance other than the deficiency in any of the normal constituents of the said article or other than the addition of extraneous matter to the normal constituents of that article. In the learned Magistrate's opinion, 1.8 per cent. excess of acidity in the ghee over the 2.5 per cent. acidity referred to in Rule 6(B)(1) is a factor or a circumstance other than the two factors laid down, in Section 19 (1)(c), namely the factors of deficiency in, or addition of extraneous matter to, the normal constituents of an article of food and, therefore, Rule 6(B)(1) which adopted the factor of the excess of acidity over the 2.5 per cent, acidity as a basis for drawing a presumption as to the nature, substance or quality of an article of food was inconsistent with Section 19(1)(c) of the Act and, therefore, ultra vires of the Act.

8. Now, we could say that the Rule 6(B)(1) is intra vires of the Act in so far as the words 'which has an. acidity of more than 2.5 per cent. calculated as Oleic Acid' are concerned, only if we could be satisfied that whenever there is deficiency in any of the normal constituents of ghee or whenever there is addition of extraneous matter to the normal constituents of ghee, there is necessarily an excess of acidity in ghee over the 2.5 per cent, acidity. If it could be shown that the excess of acidity over the 2.5 per cent. is a necessary result of deficiency in any of the normal constituents of ghee or a necessary result of the addition of extraneous matter to the- normal constituents of ghee, it would be the same thing to say that a certain proportion of deficiency in, or addition of extraneous matter to, the normal constituents of ghee shall raise a presumption as to the nature, substance or quality as saying that a certain excess of acidity over the 2.5 per cent, in the ghee shall raise a presumption as to the nature, substance or quality, etc. of the ghee. Here, in this case, however, there is nothing to show that the excess of acidity in ghee over the 2.5 per cent. is always referable either to the deficiency in any of the normal constituents of ghee or to the addition of extraneous matter to the said normal constituents. As a matter of fact, if we turn to the evidence of the Public Analyst, he has deposed to the contrary. He has said that the 'presence of ghee acidity does not mean that any thing had been added nor does it mean that any thing has been abstracted.' Therefore, if we accept the evidence of the Public Analyst, it would mean that acidity in ghee is a circumstance which is quite independent of or irrespective of or which has got nothing to do with the deficiency in any of the normal constituents of ghee or addition of extraneous matter to those normal constituents. Therefore, as the state of the evidence stands before us, we are not in a position to come to the conclusion that Rule 6(B)(1), so far as the words 'which has an acidity of more than 2.5 per cent. calculated as Oleic Acid' are concerned, is intra vires of the Act.

9. That being so, the order of acquittal must be confirmed and the appeal must be dismissed.

10. If acidity is a circumstance independent or irrespective of, or not referable to, the deficiency in any of the normal constituents of ghee, or is independent or irrespective of or not referable to addition of extraneous matter to the normal

constituents of ghee and is yet a factor to be considered for drawing a presumption as to the injurious character of ghee or as to the nature, substance or quality of ghee, then the State Government should get. 19, Sub-section (1), Clause (c), of the Act suitably amended. On the other hand, if the State wishes to take up a contention in a ghee case that the excess of acidity is the necessary result of deficiency in any of the normal constituents of ghee or of addition of extraneous matter to any of the normal constituents of ghee, then it should place evidence about it before the Court. In the present case, as I have stated above, the evidence of the expert examined on behalf of the State destroyed the case that excess acidity could have resulted from either a deficiency in any of the normal constituents of ghee or addition of any extraneous matter to those constituents. Here the expert has said in terms that the presence of acidity in ghee does not mean that anything had been added to ghee or that anything had been abstracted from it.

Bavdekar, J.

11. If the Public Analyst's evidence that an acidity of more than 2.5 per cent. calculated as Oleic Acid does not necessarily show either deficiency in normal constituents or addition of extraneous matter is correct, then the part of Rule 6(B)(1) which contains the words 'or which has an acidity of more than 2.5 per cent. calculated as Oleic Acid' seems to be ultra vires of the powers conferred by Section 19.

12. If, however, that is not correct, it should in suitable cases be shown by leading evidence that an acidity of more than 2.5 per cent, calculated as Oleic Acid involves either a deficiency in normal constituents or addition of extraneous matter or both.

13. If, on the other hand, Rule 6(B)(1) is intended to apply to cases in which ghee may be defective irrespective of deficiency in normal constituents or addition of extraneous matter, then Section 19(1)(c) would seem to require amendment. At present, it does not empower Government to provide by a rule, except in cases where there is a deficiency of normal constituents or addition of extraneous matter,

what circumstances ascertained by analysis or otherwise would be sufficient for deeming that any article of food is not of the nature, substance or quality which it purports to be.

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