

State of Maharashtra Vs. Narayan S/O Kanhyasingh Chavan

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Court : Mumbai

Decided On : Jun-24-2002

Reported in : (2002)104BOMLR871

Judge : V.K. Barde, J.

Appeal No. : Criminal Appeal No. 276 of 1986

Appellant : State of Maharashtra

Respondent : Narayan S/O Kanhyasingh Chavan

Disposition : Appeal dismissed

Judgement :

V.K. Barde, J.

1. This appeal is against acquittal filed by the State. The respondent was prosecuted for the offence punishable under Section 16(1) and (2) r/w Section 7(i) r/w Rule 44(e) of the Food Adulteration Act.

2. The case of the prosecution is as follows :

On 26.7.84 Food Inspector visited the M/s. Laxmi Bhavan Hotel at Nanded alongwith panchas. There was a tin containing oil, he enquired with the respondent about the oil and he told that it was ground nut oil. 450 gm. oil was

purchased as sample by the Food Inspector and then it was divided in three equal parts and kept in three dry, clean bottles. The sample bottles were sealed as per the Rules. Necessary documents were issued to the respondent. The bottle of sample thereafter sent for analysis to Public Analyst and the Public Analyst reported that the sample was not of the groundnut oil but a mixture of oils. Hence he obtained the permission for prosecution and criminal case was filed, it was numbered as Criminal Case No. 50/1985.

3. The learned Chief Judicial Magistrate recorded the evidence of the complainant, framed charge against the accused for the same offences and thereafter at the conclusion of the trial recorded the statement under Section 313 of Cr. P.C. The accused took the defence that the oil was not kept for sale and it was kept for the preparation of food articles which were to be served in the hotel. The learned Chief Judicial Magistrate, therefore, came to the conclusion that the oil was not for sale and therefore, acquitted the accused.

4. Here purchase of the oil from the hotel of the respondent, issuance of the necessary document, sending of the sample to Public Analyst and the report of the Public Analyst and thereafter further compliance as per provisions of Food Adulteration Act are not challenged. The only ground on which the accused was acquitted by the learned Chief Judicial Magistrate is that the oil was not kept for sale.

5. The learned A.P.P. has relied upon the ruling of the Supreme Court in the matter of Municipal Corporation of Delhi v. Laxmi Narain Tandon etc. : 1976 CriLJ547 . He has specifically relied upon the observations of Their Lordships in para No. 24 of the reporting that

The primary object of the Food Act is to prevent in the interest of health of the community, the supply of adulterated foodstuffs by a person as a part of his business activity.

6. Therefore, the learned A.P.P. has argued that there was the adulterated oil and it was going to be used for the preparation of food products then ultimately adulterated oil would have been sold to the customer. It may be that the oil, as it

was not kept for sale but the oil was to be used for the preparation of food articles which were to be sold and therefore, the storage of this oil falls within the mischief of Section 7 as well as Section 16 of the Prevention of Food Adulteration Act. The learned Counsel for the respondent has also relied upon this very ruling of the Supreme Court but on the observation made in para No. 14 of the said ruling. The concluding portion of the para No. 14 read as follows :

In short the expression 'store' in Section 7 means 'storing for sale' and consequently storing of an adulterated articles of food for purposes other than for sale would not constitute an offence under Section 16(1)(a).

7. He has, therefore, contended that the oil which was kept in the hotel was not for sale but for preparation of food articles and therefore, no offence is committed by the respondents.

8. He has also relied upon the ruling of this Court to which reference is made by the learned Chief Judicial Magistrate in his judgment i.e. State v. Udayram Mah. L.J. 1978 Note No. 1.

9. The Section 7 of the Prevention of Food Adulteration Act reads as follows:

7. Prohibition of manufacture, sale, etc, of certain articles of food : No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute -

(i) any adulterated food;

(ii) any misbranded food;

(iii) any article of food for the sale of which a licence is prescribed, except in accordance with the condition or the licence;

(iv) any article of food the sale of which is for the time being prohibited by the Food (Health) Authority (in the interest of public health);

(v) any article of food in contravention of any other provision of this Act or or any rule made thereunder (or);

(vi) any adulterant.

Explanation : For the purpose of this section, a person shall be deemed to store any adulterated food or misbranded food or any article of food referred to in Clause (iii) or Clause (iv) if he stores such food for the manufacture there from of any article of food for sale.

10. The explanation was added by Act No. 34 of 1976. This explanation makes it clear that only if there is contravention of the provision Clause (iii) or Clause (iv) then mere storage would be deemed to be stored for sale in case of other clause no such deeming provision is made. In the present case neither Clause (iii) nor the Clause (iv) can be made applicable. So this deeming provision added by explanation would not come into play.

11. The Rule 44(e) reads as follows :

Notwithstanding the provisions of 43 no person shall either by himself or by any servant or general sale (e) a mixture of 2 or more edible oils as an edible oil.

12. So Rule 44 further makes it very clear that the sale of mixture of two or more oils is prohibited, keeping oil which is mixture of two or more oils for the purpose of preparation of food articles is not made punishable under Rule 44(e).

13. The accused respondent has taken the clear stand that he had kept that oil for the purpose of preparation of food articles. It is also to be noted that the accused respondent was running a hotel and it was not a shop for sale of oil. So the explanation given by the accused is quite probable and reliable that the oil was kept there not for sale but for the preparation of food articles. Naturally the storage of that oil was not for sale as contemplated under Rule 44(e) of the Prevention of Food Adulteration Act. It also does not fall within the explanation of Section 7 of the Prevention of Food Adulteration Act. In view of this and relying on the Ruling of the learned Single Judge of this Court referred to above I hold that there is no reason to interfere in the order of acquittal, hence the appeal stands dismissed. Bail bonds of the respondent accused stand cancelled.

