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Court : Karnataka

Decided On : Oct-29-1959

Reported in : AIR1960Kant80; AIR1960Mys80; 1960CriLJ494

Judge : K.S. Hegde and ;Ahmed Ali Khan, JJ.

Acts : Prevention of Food Adulteration Act, 1954 - Sections 2(1), 7, 10(7), 16 and 16(1); Bengal Food Adulteration Act, 1919 - Sections 7(1); Prevention of Food Adulteration Rules, 1955 - Rule 12

Appeal No. : Criminal Appeal No. 264 of 1957

Appellant : State of Mysore

Respondent : Udipi Co-operative Milk Society Ltd. and anr.

Judgement :

Hegde, J.

(1) The respondents were tried and convicted by the learned Additional First Class Magistrate, Karkal, in Criminal Case No. 407 of 1956, for an offence under Section 16(1) read with Section 7 of Prevention of Food Adulteration Act (Act 37 of 1954), which shall be hereinafter called 'the Act'. Each one of them was sentenced to pay a fine of Rs. 100/- and in default to undergo simple imprisonment for one month. But their convictions and sentences were set aside by the learned Sessions

Judge, South Kanara, in Criminal Appeal No. 28 of 1957 on his file. The State has come up in appeal against that order of acquittal.

(2) The first respondent is the Udipi Co-operative Milk Society, Ltd., and the second respondent was a servant under the first respondent during the relevant time. On 31-5-1956 P.W. 1 (M. Sheena Shetty) the Sanitary Inspector of Udipi Municipality found the second accused (respondent 2) going on a cycle with some cans of milk for sale of milk on behalf of the first accused (respondent 1). Suspecting the quality of milk taken for sale, P.W. 1 purchased 4 kudhas of milk from the second respondent as sample for testing. Ex. No. 2 is the yadi prepared under R. 12 of the Prevention of Food Adulteration Rules 1955, in this connection.

It shows that the purchase in question was made in the presence of two witnesses as required by Section 10(7) of 'the Act'. The evidence of P.W. 1 is to the effect that he divided the milk purchased into three equal shares and put them in separate bottles and sealed the same; one of those bottles was given to the second accused, another sent to Court and the third one was sent to the Public Analyst for examination. The report of the Public Analyst marked as Ex. No. 4 shows that the sample contained 6.7 per cent fat, 7.8 per cent solids not fat, and 13 per cent added water.

(3) In the trial court and in the first appellate Court, the defence resisted the prosecution on three grounds: (i) that the Secretary of the Udipi Co-operative Milk Society was not actually in charge of the milk sales and as such was not responsible for the alleged offence; (ii) that there was contravention of section 10(7) of 'the Act' and as such the prosecution is vitiated; and (iii) that P.W. 1 did not take the sample in question, in accordance with the directions contained in Ex. No. D-1, a report submitted to the Government by an expert Committee appointed by it and consequently no reliance can be placed on the report Ex. No. 4.

(4) The learned Trial Judge rejected all these contentions and convicted the accused as mentioned above. But the last two contentions found favour with the learned Sessions Judge. The correctness of the conclusions arrived at by the learned Sessions Judge is challenged before us.

(5) Sri M. S. Nesagri, who urged on behalf of the respondents, has not only pressed the three contentions urged before the Courts below but in addition has also urged that the second respondent who is only a servant, cannot be convicted for sale or distribution of the adulterated milk unless it is shown that he had abetted or aided in the commission of the offence.

(6) In this case, the first accused is the Udipi Co-operative Milk Society and not its Secretary Sri M. Vaman Bhat. This point was evidently overlooked by the Courts below. Otherwise they need not have dealt with the question, how far the Secretary of a Society could be held responsible for the commission of an offence by the Society. The liability of the first accused is an absolute liability as seen from Section 17(1). It is unnecessary for the prosecution to prove that the officers of the Society know that the milk offered for sale was adulterated milk.

(7) P. W. 1 in his evidence has deposed to the circumstances leading to the purchase of the milk in question and how the milk purchased was dealt with. His evidence remains unchallenged. In fact, he was not even cross-examined on that point. Curiously enough in the courts below it was argued that Meera Saheb one of the attestors to Ex. 2 is a subordinate of P.W. 1. We have not found any material in the records to support this contention. It is true that one Meera Saheb is an employee in the Sanitary Department.

But there is no evidence to show that the said Meera Saheb is the attestor to Ex. 2. Nor is there any evidence to show that there were any other persons present at the time of the purchase of the milk under Ex. 2 and P.W. 1 failed to obtain their attestation. As mentioned earlier no questions were directed to P.W. 1 to find out whether there were other persons present when he purchased the milk in question. Sub-clause (7) of Section 10 requires that when the Food Inspector takes any action under clause (a) of sub-section (1), sub-section (2) sub-section (4) or sub-section (6), he shall, as far as possible, call not less than two persons to be present at the time when such action is taken and take their signatures.

Law does not require that these witnesses or any one of them should be examined at the time of the trial. In the circumstances of any particular case, the prosecution may choose to examine one or more of these witnesses. If the Court is unable to

place full faith on the evidence of the concerned Food Inspector the non-examination of the attestors may assume importance.

(8) From the above discussion, it is seen that in this case, there is no contravention of sub-section (7) of Section 10. Nor do we think that a contravention of the said provision however trifling it is per se vitiates the prosecution. Essential test is one of prejudice to the accused apart from the reliability of the evidence adduced. The learned Counsel appearing for the respondents has tried to seek support for his arguments from the decision in re : Raju Konar, : AIR1959 Mad118 . We do not think that the point decided in that case has any application to the facts of the present case.

Ex. D-1 is a report submitted by Expert Committee appointed by the Government, wherein it was recommended that while taking sample of milk for testing, the milk should be stirred with a proper instrument and the container should, if necessary be shaken well and inverted and only after such stirring of the milk should the sample be taken from the quantity. 'In that report it is mentioned that if this procedure is not adopted the solids are liable to stick to the sides and bottom of the vessel and the sample taken without stirring would be deficient in such solids'. (Underlining (here in ' 'is ours). The Government appears to have taken no action on this recommendation. 'Adulterated food' is defined in Section 2(1) of 'the Act' Section 2(1)(a) says :

'Unless the context otherwise requires, an article of food shall be deemed to be adulterated (i)(a) if the article sold by a vendor is not of the nature. Substance or quality demanded by the purchaser and is to his prejudice, or is not of the nature, substance or quality which it purports or is represented to be* * '

Section 7 lays down that :

'No person shall himself or by any person on behalf manufacture for sale, or store, or distribute any adulterated food.'

According to the Public Analyst, there was 13 per cent. added water in the milk taken for sample. Hence there is no doubt that the milk in question was

adulterated milk. Hence the recommendations contained in Ex. D-1 are wholly irrelevant for the purpose of this case. It is urged before us that if the added water was less than 5 per cent then the Public Analyst would not have recommended the prosecution of the accused.. We have nothing to do with the discretion of the Public Analyst. So far as the Courts are concerned if the milk is adulterated, it is an offence and the offenders have to be punished if they are prosecuted. It is for the Government to choose to prosecute them or not.

Moreover even the recommendations contained in Ex. D-1 do not appear to support the defence as there was added water in the present case. Hence this plea also has no substance. The learned sessions Judge should not have allowed himself to be influenced by Ex. D-1 which to our mind appears to be wholly irrelevant.

(9) Lastly we come to the liability of the second respondent. His liability was not questioned in the Courts below. But that is not conclusive. The point urged is that only an owner can be prosecuted for the contravention of Section 7 and not his servant. Section 7 as mentioned earlier says :

'No person shall himself or by any person' on his behalf manufacture for sale or store, or distribute (i) any adulterated food....."

(Underlining (here in ' ') is ours).

The scope of this provision came up for consideration before Somasundaram J. In Public Prosecutor v. Lourduswamy, : AIR1957 Mad631 , wherein his Lordship held that where it is proved that a person was selling adulterated food only on behalf of the master, both the seller--the servant as well as the person on whose behalf the food was sold, viz. the master, are liable. A similar view was taken by Rankin C. J. and Patterson, J. in the case of Peary Mohan Saha v. Harendra Nath Roy, : AIR1930 Cal295 , while interpreting Section 7(1) of Bengal Food Adulteration Act (1919) which provision is pari materia with Section 7 of 'the Act'.

English Courts have also taken the same view is construing the corresponding provisions in the English Act. Vide Pharmaceutical society v. London and

Provincial supply Association, Ltd., 1880-5 AC 857, Hotchin v. Hindmarsh, 1891-2 QB 181. But a different view was taken by a Bench of the Madras High Court consisting of Panchapakesa Ayyar and Basheer Ahmed Sayeed, JJ. In Re : Moses, : AIR1959 Mad185 . Their Lordships held that:

'Sections 7 and 16 of the Prevention of Food Adulteration Act, will not primarily apply to the servant, the secondary seller of adulterated food, unless he sold it for his own benefit, and the servant selling the food on behalf of his master can only be made liable for aid or abetment of the offence or proof of guilty knowledge express or implied.'

While deciding this case their Lordships differed from the Calcutta decision : AIR1930 Cal295 . They distinguished the English decisions on the ground that the language employed in the corresponding language used in Section 7. Section 1(2) of the English Act reads as follows:

'No person shall sell or have in his possession for the purpose of sale any food or drug to which any substance has been so added.'

In their Lordships' view the words 'himself or by any person on his behalf' found in Section 7 of our Act takes the liability of the servant. 'Knowledge' is not a necessary ingredient of any offence under Section 7. The liability of a person contravening any of the provisions contained in Section 7 is an absolute liability and is not dependent on the existence of any particular knowledge or intention. In our judgment every 'distributor' of adulterated food is per se liable whether he knows the same to be adulterated or not.

The words 'himself or by any person on his behalf' have been included in the provision with a view to put it beyond controversy that the owner of any adulterated goods sold or distributed is liable for the offence in question whether he sells or distributes the same, himself, or by any person on his behalf. The words in question do not have the effect of taking away the liability of the distributor. There can be hardly any doubt that a servant who sells milk for his master, comes within the mischief of the word 'distribute' contained in Section 7.

In other words he comes specifically within the prohibition of the words 'no person shall distribute'. With great respect to the learned Judges who decided the case in : AIR1959 Mad185 , we are unable to agree with their reasonings or conclusions. Any offence under Section 7 being one against public health, legislature probably thought it necessary, in the interest of the public to penalise every contravention irrespective of there being any mens rea.

This type of legislations are not uncommon in this country as well as in other countries having systems of law similar to ours. Hence we are unable to agree that the second respondent's case stands on a footing different from that of the first.

(10) In the result, we allow the appeal, set aside the acquittal of the respondents and restore the convictions and sentences imposed by the learned additional First Class Magistrate, karkal, on the respondents.

(11) Appeal allowed.

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