

Rameshwar Das Vs. Emperor

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Court : Allahabad

Decided On : Nov-21-1935

Reported in : AIR1936All86; 160Ind.Cas.1027

Appellant : Rameshwar Das

Respondent : Emperor

Judgement :

ORDER

1. This is a criminal revision by Rameshwar Das against his conviction under Section 4(1), U.P. Prevention of Adulteration Act, Act 6 of 1912, and a fine of Rs. 150 or in default one month's E.I. The trial was summary and an application in revision was dismissed by the learned Sessions Judge. Two legal grounds have been taken in revision. First, that the Magistrate had no jurisdiction, and second that the applicant could not be convicted when the goods were exposed to sale by somebody else. The enquiry began with a post-card addressed to the Municipal Board of Allahabad from Katni to the effect that the accused was sending a consignment of 350 tins of ghee to Allahabad which was unfit for human consumption. M. Barkatullah Khan, the sanitary inspector of the Municipality, took a sample from one of the 350 tins of ghee on the 2nd May 1934 which he apparently found at the godown of the firm of Shyam Narain Bhagwati Narain Arhatiyas to whom the accused firm had sent the consignment from Katni. A certificate was given on 23rd May 1934 by the officiating Public Analyst to Government stating

I am of opinion that the said sample contained a small proportion of fat or oil foreign to pure ghee.

2. On this a prosecution was started by the Executive Officer of the Municipal Board of Allahabad against the accused Premsookh Das Rameshwar Das, ghee dealers of Katni, and the information form sets out that the charge is for selling and offering for sale in the Allahabad market ghee found adulterated.' The Magistrate in his summary form entered before the accused that the accused admitted sending 350 tins of ghee to the store-keeper in Allahabad.

I did not sell or expose for sale. Admitted that the sample taken was taken from these tins. Letters on the file are admitted.

3. The evidence of M. Barkatullah Khan is taken down as taking two samples one of which was found to be impure and the other taken later was found to be pure. Bhagwati Narain stated that he was an arhatia and kept the consignment received from the accused in his godown awaiting instructions for sale in the Allahabad market. The defence was that the accused did not sell or offer or expose for sale or manufacture for sale the consignment in question. The Magistrate states that he considered the accused guilty because the accused admittedly sent the consignment to Allahabad with a view to sell in the Allahabad market. The learned Sessions Judge in his order states that the consignment 'was certainly exposed for sale at the agent's store-room at Allahabad.' If this were correct there would be no difficulty in regard to the question of whether an offence was committed or not. The letters which were admitted by the accused include a letter from the accused dated 30th May 1934 in which they state that they have received the consignment from Rutlam in the Punjab and sent it from Katni to Allahabad to their arhatiyas Shyam Narain and Bhagwati Narain 'to store for us and which (was) to be sold by us at the market rate.' The letter went on to complain of their loss due to the locking up to the stock and the report by the Medical Officer of Health that the ghee was adulterated, and they were aggrieved by this order and that the tins may not have been cleaned properly and so caused the impurity. The (letter ends up with the request that the Chairman of the Municipal Board should

decide our case at an early date and allow us the privileges of selling the tins of ghee except 'the two which were tested.

4. The letter from the arhatiyas dated 9th June 1934 also addressed to the Chairman of the Municipal Board states that they received a consignment of 350 tins sent by accused from Katni to Allahabad and were requested to store it in their godown which they did on rent and the ghee was to be sold by the accused firm and the arhatiyas would have acquired certain fixed commissions. The first point of law which was raised was that the certificate of the Officiating Public Analyst was not admissible because learned Counsel alleged that he was not appointed by Government and therefore he did not come under the definition of 'public analyst' in Section 2. 'We find from the civil list for 15th May 1935 that the gentleman in question Dr. B. M. Gupta is shown as permanent Deputy Public Analyst to Government and Officiating Public Analyst for three months from 1st May 1935. On the date in question therefore he was an officiating public analyst and must clearly have been appointed by Government as he is so entered in the Civil List. The definition 'of 'public analyst' includes a person appointed to exercise the powers of a public analyst, and the officer therefore was empowered to grant the certificate. The next point which was argued was in regard to the onus of proof about adulteration and it was argued that the prosecution was premature because it was not proved that the accused or anyone else had offered or exposed for sale the consignment as ghee. We consider that it is open to the Court to conclude from the certificate of the Public Analyst that the consignment of 350 tins or part of it came under Section 4(1) as

any article of food...which is not of the nature, substance or quality which it purports to be.

5. The accused in their correspondence allude to the consignment as '350 tins of ghee' and at the end of their letter of 30th May 1934 they ask for the 'privilege of selling the tins of ghee.' We are of opinion that it was for the defence to establish that the case would come under proviso (c) of Section 4(1) by proving that before the sale the seller brought to the notice of the purchaser either by means of a label distinctly and legibly written or printed on or with the article or otherwise the fact

that such matter or ingredient had been so added or mixed. Under Section 105, Evidence Act, the duty lay on defence of proving that the case came within this exception. The main question argued for the defence was that the evidence on the record was not sufficient to establish that the offence under Section 4(1) had been committed at Allahabad or that the accused had committed that offence. In order to determine this question it appears to us that the evidence should be recorded by a Magistrate sufficiently fully and not in the brief method of a summary trial. In particular it is important to see whether there is any evidence to support the finding of the learned Sessions Judge that the ghee was certainly exposed for sale at the agent's store-room in Allahabad.' A suggestion was also made that M. Barkatullah Khan, the inspector, brought the tin of ghee which he took as a sample on 2nd May 1934 and that this would amount to a sale under the Act. Evidence on this point should also be taken. It should also be shown by the evidence of this witness as to whether he found the 350 tins, of ghee or any of them in the godown of the arhatiya locked up or whether this place was open for the public to go and see the ghee under conditions which would amount to offering for sale. As the record does not contain the statement of the witness on this point we find it necessary to set aside the conviction and sentence and to remand this case for retrial by such Magistrate as the District Magistrate of Allahabad shall direct.