

Fakhruddin Vs. the State

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Court : Allahabad

Decided On : Feb-06-1976

Reported in : 1976CriLJ1210

Judge : Hari Swarup,; Chandra Prakash and ;M.P. Saxena, JJ.

Appellant : Fakhruddin

Respondent : The State

Advocate for Def. : Mr. Mehta

Judgement :

Hari Swabup, J.

1. Two questions of law have been referred to us for opinion. The questions arose in a criminal revision filed by the accused against his conviction under Section 7/16 of the Prevention of Food Adulteration Act. The questions of law referred for our opinion were in the following terms:

(1) Whether the transaction in which the possessor of an adulterated food refuses to sell but only permits the sample to be taken and does not take the price therefor amounts to 'sale' within the meaning of Section 2(xiii) of the Prevention of Food Adulteration Act?

(2) Whether for an offence under Section 7/16 of the Prevention of Food Adulteration Act, it is essential that the adulterated food must be stored for sale or distributed by way of sale?

At the time of hearing, learned Counsel for the accused contended that the evidence in the case was not to the effect that the accused had refused to take the payment but was to the effect that the price was not paid by the Food Inspector who collected the sample. In view of this assertion we thought it proper to amend the first question and have modified the first question to read as follows:

Whether the transaction in which the possessor of an adulterated food refuses to sell but only lets the sample be taken and no price for the same is paid to him by the Food Inspector amounts to 'sale' within the meaning of Section 2(xiii) of the prevention of Food Adulteration Act?

2. The Prevention of Food Adulteration Act lays down the procedure for collection of sample by the Food Inspectors. Section 10 deals with the power of Food Inspectors. Sub-section (1) thereof provides:

A food inspector shall have power-

(a) to take samples of any article of food from-

(i) any person selling such article.

(ii) any person who is in the course of conveying, delivering or preparing to deliver such article to a purchaser or consignee;

(iii) a consignee after delivery of any such article to him

Sub-section (3) of Section 10 provides:

Where any sample is taken under Clause (a) of Sub-section (1) or Sub-section (2), its cost calculated at the rate at which the article is usually sold to the public shall be paid to the person from whom it is taken.

Section 11 provides the procedure to be followed by the Food Inspectors. Sub-section (1) provides:

When a food inspector takes a sample of food for analysis, he shall-

(a) give notice in writing then and there of his intention to have it so analysed to the person from whom he has taken the sample....'Sale' has been defined in Section 2(xiii) of the Prevention of Food Adulteration Act as:'Sale' with its grammatical variations and cognate expressions, means the sale of any article of food, whether for cash or on credit or by way of exchange and whether by wholesale or retail, 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, and includes also an attempt to sell any such article.' The definition of 'sale' in the Prevention of Food Adulteration Act has thus been given a much wider meaning than it has in the Sale of Goods Act. Under the Prevention of Food Adulteration Act even an agreement for sale, an offer for sale, exposition for sale or even having in possession for sale an article of food is 'sale'. An attempt to sell is also a 'sale'. The purpose for which the purchase of food can be made is also its analysis.

3. As the term 'sale' does not find a specific definition in the Prevention of Food Adulteration Act, it has to be given the general meaning of sale. As ruled by the Supreme Court in I. T. Commr., M.P. v. Dewas Cine Corporation : [1968]68ITR240(SC) , 'Sale' according to its ordinary meaning is a transfer of the property for a price. Under the Prevention of Food Adulteration Act when a Food Inspector takes the sample and the law requires him to pay a price the transaction would be a 'sale' if the transfer of property takes place in the course of the taking of the sample. The same result will follow if the definition of 'sale' given in the Sale of Goods Act is applied to the definition of 'sale' in the Prevention of Food Adulteration Act. According to the Law of Contract by G. C. Cheshire and C. H. S. Fifoot, 7th Edition page 147, 'transfer of property constitutes the essence of a contract of sale'. As soon as the demand is made and the goods to be taken as sample are separated from the lot, the transfer of property takes place by virtue of the provisions of the Sale of Goods Act.

4. Under Section 3 of the Sale of Goods Act the provisions of Indian Contract Act have been made applicable to contracts for the sale of goods under the Sale of Goods Act Section 4 of the Sale of Goods Act runs as under:

(1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

Section 5 of the Sale of Goods Act provides:

(1) A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. The contract may provide for the immediate delivery of the goods or immediate payment of the price or both, or for the delivery for payment by instalments, or that the delivery or payment or both shall be postponed.

(2) Subject to the provisions of any law for the time being in force, a contract of sale may be made in writing or by word of mouth, or partly in writing and partly by word of mouth or may be implied from the conduct of the parties.' Prevention of Food Adulteration Act contemplates the sale of existing goods. The property in such goods passes from the seller to the buyer on the goods becoming in a deliverable state. According to Section 22 of the Sale of Goods Act if the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof. The effect of Sections 20, 21, 22 and 23 of the Sale of Goods Act is that the property in the goods stands

transferred as soon as the goods are ascertained and are in a deliverable condition. Under the Prevention of Food Adulteration Act, therefore, the property will pass on the following (sic) (taking) of the sample.

5. According to the learned Counsel, the agreement to sell or contract of sale can come into existence only where the person possessing the goods accepts voluntarily the offer to purchase made by the Food Inspector and that there can be no contract of sale unless there is voluntary acceptance of the offer. In support of this contention learned Counsel relied on certain observations of this Court in *Municipal Board Faizabad v. Lal Chand* : AIR1964 All199 . The observations are:

It was not obligatory upon the respondents to sell the milk to the Food Inspector. When the Food Inspector came to take the sample they could say that he could very well take the sample but they were not going to sell it. They did not do any such thing ...No doubt it was the duty of the Food Inspector as provided under Section 10(3) to pay the price but if the respondents had refused to take the money, the Food Inspector could not have compelled them to take it. If they had done so, they would not have committed any offence under Section 16(I)(b) of the Act which provides that the preventing of a Food Inspector from exercising any power conferred on him by the Act is an offence. By not taking the price, they were not preventing the Food Inspector from exercising his powers.

In that case the question which is before us was not a question at issue. The Court did find that the sample had been given and price had been accepted. The observation thus is only in the nature of an obiter dictum. Further, these observations do not take into consideration the various provisions of the Sale of Goods Act which provide how a contract of sale comes into existence. Another case relied on by the learned Counsel is *Public Prosecutor v. Matha Satyam* 1970 Cri LJ 393 (Andh Pra). In that case the observations in the case of *Municipal Board Faizabad* (supra) were relied upon and it was held that if a person refuses to receive the price, it was indicative of the fact that he did not make the sale of the article of food. The relevant observations are:

When a person allows or does not prevent sample of article of food in his possession being taken for analysis and receives the amount tendered to him as

cost by the Food Inspector under Section 10(3) of the Act, it will be presumed that he made a sale of the article for analysis as defined in Section 2(xiii). But the presumption is rebuttable.

It was held to have not been rebutted in that case. Thus in this case also the finding of the court was that the accused had sold the goods. In this judgment also the effect of various provisions of the Sale of Goods Act were not considered. Further, both these cases considered the matter from the point of view of the offence under Section 16(1)(b) and not 16(1)(a) of the Act.

6. The Supreme Court had the occasion to consider the matter in *Andhra Sugars Ltd. v. State of A.P.* : [1968]1SCR705 . That was a case concerning the provisions of the Andhra Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1961. It was a case in which a cane-grower had to make an offer to the factory and the occupier of the factory was bound to accept it under law. Similar is the case under the Prevention of Food Adulteration Act. A Food Inspector has a right to make an offer to purchase, i.e., to take the goods on payment of price and the possessor of goods is under a statutory obligation to accept that offer and part with the goods. In that case the Supreme Court observed:

But if he makes an offer, the occupier of the factory is bound to accept it. The resulting agreement is recorded in writing and is signed by the parties. The consent of the occupier of the factory to the agreement is not caused by coercion, undue influence, fraud, misrepresentation or mistake. His consent is free as defined in Section 14 of the Contract Act though he is obliged by law to enter into the agreement. The compulsion of law is not coercion as defined in Section 15 of the Act. In spite of the compulsion, the agreement is neither void nor voidable. In the eye of the law, the agreement is freely made. The parties are competent to contract. The agreement is made for a lawful consideration and with a lawful object and is not void under any provisions of law. The agreements are enforceable by law and are contract of sale of sugarcane as denned in Section 4 of the Sale of Goods Act.

In the case of *Mangaldas v. Maharashtra State* : 1966 CriLJ106 it was observed:

No doubt a contract comes into existence by the acceptance of a proposal made by one person to another by that other person. That other person is not bound to accept the proposal but it may not necessarily follow that where that other person had no choice but to accept the proposal the transaction would never amount to a contract. Apart from this we need not, however, consider this argument because throughout the case was argued on the footing that the transaction was a 'sale'. That was evidently because here we have a special definition of 'sale' in Section 2(xiii) of the Act which includes within its ambit a sale for analysis. It is, therefore, difficult to appreciate the reasons which led Raman Nayar, J., to hold that a transaction like the present does not amount to a sale.

Under the Sale of Goods Act a contract in writing is not necessary. It can come into existence even by conduct. The law laid down by the Supreme Court in *Andhra Sugars Ltd. v. State of A.P.* and in *Mangaldas v. Maharashtra State* is sufficient to negative the contention of the learned Counsel for the accused that a sale made under compulsion' of law is not a sale or that an agreement to sell under compulsion is not an agreement to sell.

7. The next contention of the learned Counsel for the accused is that the sale cannot be deemed to be complete unless the payment is made or accepted by the seller. There is a fallacy in this argument as a sale is not dependent upon payment. Payment is made at a stage subsequent to the stage of sale. As already seen from the various provisions in the Sale of Goods Act, first one party makes an offer to purchase, when the other party accepts it, it becomes an agreement to sell. When the transfer of property takes place, that contract ripens into a sale. The price is payable at the time of delivery or later on if the parties agreed. The delivery of property and the payment of price are matters which concern not the making of the contract but its performance. Under Section 31 of the Sale of Goods Act the payment is to be made in accordance with the terms of the contract of sale. Under Section 32 of the Sale of Goods Act: 'Unless otherwise agreed, delivery of goods and payment of the price are concurrent conditions, that is to say, the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods'. The payment of price is thus a

condition concurrent with the delivery of goods and not concurrent either with the agreement of sale or the making of the sale. The sale must in all cases precede delivery and consequently the payment of price. Hence the non-payment of the price will not negative the making of the sale but only give the seller a right to realise the price or refuse to deliver the goods unless the price is immediately paid. The rights of unpaid seller are contained in Chapter V of the Sale of Goods Act. Section 46(1)(c) of the Sale of Goods Act gives a right of re-sale of the property, and where the property in goods is not passed to the buyer, to refuse to give the delivery. But there is no provision under the Sale of Goods Act or under the Prevention of Food Adulteration Act which might postpone the making of the sale or the transfer of property till the moment of delivery of goods or the payment of price. Non-payment of price by the purchaser cannot, therefore, have the effect of preventing a sale coming into existence.

8. The Food Inspector can take a sample of food only in exercise of his powers under the Prevention of Food Adulteration Act, and he has to follow the procedure laid down under the Act, He is not authorised to take the sample of any food for analysis except for a price as contemplated by Sub-section (3) of Section 10 of the Act. He is thus required by law to make an offer to purchase a certain quantity out of the food held by any person. In pursuance of that offer to purchase, the law requires, under compulsion of penalty contemplated by Section 16(1)(b) of the Act, the person holding the goods to accept that offer and let the Food Inspector have the sample for analysis. The Prevention of Food Adulteration Act does not contemplate the making of a gift by the possessor of food to the Food Inspector for analysis. He is required to part with his property only for a price.

9. Under Section 10(3) of the Prevention of Food Adulteration Act the payment of the price has to be made by the Food Inspector, according to the market price of the goods he purchases for analysis. Though the provision creates a liability to pay for the goods, it does not have the effect of altering the scheme of the Sale of Goods Act which provides for the sale coming into existence on the transfer of property by the seller to the buyer.

10. We find no provision of law under which a refusal by a person to accept the price can convert the transaction of sale into some other type of transaction leading to the transfer of property in goods. If the seller accepts the price, the whole transaction comes to an end. If the purchaser does not pay the price he does not perform his part of the contract and for that he may be liable to pay the price and the seller may have certain rights which are known as the unpaid seller's lien. But the non-payment of price cannot have the effect of converting a sale into a gift which is not contemplated by the law in a case where the Food Inspector purchases the goods for analysis.

11. When the Food Inspector, in exercise of his powers under Section 10 of the Act, takes the sample of any article of food from a person, he necessarily makes an offer to purchase the goods. That offer is under compulsion of law bound to be accepted by the person possessing the article of food and a contract of sale comes into existence. Under the Prevention of Food Adulteration Act it has to be deemed to be 'sale'. As soon as the goods are ascertained, a transfer of property in the goods takes place and the sale becomes complete even under the Sale of Goods Act. Our answer to the first question, therefore, must be in the affirmative.

12. The second question depends upon the interpretation of Sections 7 and 16 of the Prevention of Food Adulteration Act. Section 7 reads as under:

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

Section 16 is also in similar terms.

Penalties . - (1) If any person- (a) Whether by himself or by any other person on his behalf imports into India or manufactures for sale, or stores, sells or distributes any article of food-(i) which is adulterated

No argument has been advanced before us that the distribution should also be for sale, obviously for the reason that such a contention is not at all plausible. The contention of the learned Counsel for the accused is that we should read after the words 'store' and 'stores' in Sections 7 and 16 the words 'for sale'. We are,

however, unable to find any justification for adding words in the sections. A court can add words in a provision of law if they are necessary for giving the existing words a meaning, i.e., if the meaning is not clear and some words are necessary to be added to make the meaning clear, it is permissible to add words only to make obvious what is latent, but otherwise it is not permissible for the courts to add words to a provision enacted by the Legislature. We do not find any lack of clarity in the words of Section 7 or Section 16 and therefore find ourselves unable to accept the contention of the learned Counsel that we should add words after the word 'store' in Section 7 and 'stores' in Section 16.

13. Learned Counsel then contended that the words 'for sale' should be read in the two sections by implication because these words occur before 'or store' in Section 7 after the word 'manufacture' and before the words 'or stores' after the word 'manufactures' in Section 16. We find no justification for doing so as in our opinion by no canon of grammatical construction such a thing is possible. If the words 'for sale' had occurred after the word 'store', they could have been read in conjunction both with the word 'manufacture' and 'store' but as they occur after the word 'manufacture' but before the words 'or store', it is not possible to read the words 'for sale' as also controlling the word 'store' in Section 7 or the word 'stores' in Section 16.

14. Learned Counsel for the accused in support of his contention has placed reliance on the decision of the Delhi High Court in *Delhi Corporation v. Laxmi Narain* : AIR1970 Delhi244 . The only reason given in the judgment for adding the words 'for sale' after the word 'store' in Section 7 and 'stores' in Section 16, runs in the following terms:

Except Sections 7 and 16 wherever the Act refers to storing it is storing for sale. It seems to us that the juxtaposition in which the expression 'or store' occurs in Sections 7 and 16 of the Act and the scheme of the Act do not leave any doubt that the intention of the storing being 'for sale' was implicit in the word 'store' as used in those Sections.

The next case relied upon by the learned Counsel is *Food Inspector v. Punsai Desai* 0065/1959 : AIR1959 Ker190 . The first reason given for adding the words

'for sale' after 'store' is that the words have been added against the word 'manufacture'. It was for the Legislature to decide whether manufacture of adulterated goods not meant for sale should be prohibited or not. That could be no ground for holding that the storage of adulterated goods be also deemed as not prohibited by the legislation. It would amount to judicial legislation. The other reason given by the learned Judges is about the mixing of different articles of food for domestic consumption. Such goods after mixture become a new article of food and hence may not come under the definition of adulterated food. The learned Judges do not appear to have considered the plain grammatical meaning of the words in the two sections, viz., Section 7 and Section 16 of the Act. With great respect we are unable to agree with the view taken by the learned Judges in these cases. Similarly, in the case of *Narain Das v. State* : AIR1962 All82 this Court did not consider the plain grammatical version of the sections. It is not for the court to substitute its wisdom for the wisdom of the Legislature and add words in the section to take a particular action out of the mischief of an enactment. The reasons given in this judgment also do not appear to us to be sound. The milk after mixture of water for being used in the household for particular purpose would be a different food. No reasons have been given again for holding that the language of Section 10(2) or Section 10(4) means to suggest that the Act was designed to prevent only the sale of adulterated food. This case was followed by the Calcutta High Court in *Girdhari v. Calcutta Corporation* : AIR1966 Cal634 , The learned Judges thought that absurd results will follow if the words 'for sale' are not added after 'store', but no absurdity has been pointed out which might result. We therefore find no adequate reason or justification for the view taken even in these cases. The Punjab High Court in *Rameshwar Das v. State* relying on the decision in *Food Inspector v. Punsu Desai* (supra) and *Narain Das v. State* (supra) came to the same conclusion that the storage should be the storage for sale. Similar reasonings have been given in this decision also,

15. The case of *Narain Das v. State* 1962-1 Cri LJ 120 (All) came for consideration before another Bench of this Court in *Municipal Board, Faizabad v. Lal Chand* 1964-1 Cri LJ 502 (All) (supra). This case was distinguished. The Supreme Court had occasion to consider all these cases in *Food Inspector, Calicut v. C. Gopalan* : 1971 CriLJ1277 . It was observed: 'Mr. Mehta, learned Counsel for the

respondents referred us to the decisions reported in *Food Inspector, Kozhikode v. Punsai Desai* 0065/1959 : AIR1959 Ker190 ; *Narain Das v. State* : AIR1962 All82 and *Hameshwar Das Radhey Lal v. State* . In all those decisions the Court has considered the question as to whether the storage of an article under the Act must be for the purpose of sale. We have already indicated that the said question does not arise for consideration before us and we do not propose to refer to those decisions in detail. But we may point out that the decision in AIR 1962 All 82, has been distinguished by the same Court in : AIR1964 All199 to which we have already referred.' The last sentence does throw a doubt on the correctness of the view taken in the case of *Narain Das* (supra) and other cases. The position is further clarified and crystallized by the observation of the Supreme Court in *Ashu Jaiwant v. State of Maharashtra* : 1975 CriLJ1868 . The relevant observations of the Supreme Court are to the following effect:

It is true that mens rea in the ordinary or usual sense of this term is not required for proving an offence defined by Section 7 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'the Act'). It is enough if an article of adulterated food is either manufactured for sale, or stored, or sold or distributed in contravention of any provision of the Act or of any rule made thereunder.

The language in which the purport of Section 7 has been given by the Supreme Court is clear to indicate that storage need not be for sale.

16. Besides the plain grammatical construction of the Sections 7 and 16 which leads to the only conclusion that storage need not be for sale, the object of the Act and the purpose for which the Act was framed, as also the scheme of the Act, go to indicate that the storage must not necessarily be for sale to make the person liable. The prevention of Food Adulteration Act is an enactment under Entry 18 of List III, Concurrent List, in Seventh Schedule of the Constitution which provides for enactments in respect of 'adulteration of food stuffs and other goods.' The object of the Act is the prevention of adulteration of food stuffs. The purpose of the Act is to prevent the people from getting the occasion to consume adulterated food. 'Sale' is not the only mode of transfer of goods from one hand to another, or for making it available for consumption. The law appears to prevent the storage of

adulterated food because the purpose of storage can be only the future consumption of the stored food. There is thus no reason why storage not meant for sale be not prohibited.

17. According to Section 2 of the Prevention of Food Adulteration Act food may be adulterated in various manners. Clauses (b) to (1) of Sub-section (1) of Section 2 deal with conditions which show no nexus with the sale. It is only condition (a) which may have something to do with the sale. Hence it is not possible to hold that the scheme of the Act requires that storage to be made punishable must be storage for sale. Section 5 of the Act prohibits the import of adulterated food. Section 16 again makes penal the import of adulterated food. There is nothing to show that Section 16 read with Section 5 makes only such import of adulterated food penal which is meant for sale. The law has prohibited also the distribution of adulterated food. The free distribution of food; such as in educational or charitable institutions, can have certainly no element of sale therein. The enactment cannot be deemed not to prohibit storage of adulterated food meant for free distribution. The scheme of the inculpatory sections clearly is to penalise the import and also the storage of adulterated food whether it be meant for sale or not. Learned Counsel drew our attention to some other sections of the Act which have mentioned the words sale, seller or vendor. But those are only the machinery sections of the Act. They cannot control the charging or the inculpatory and penalty sections, viz., Sections 5, 7 and 16 of the Act.

18. Section 10 of the Act also goes to indicate that the storage need not necessarily be for sale. Section 10(1) of the Act gives the Food Inspector power to take sample of any article of food from not only persons selling such articles but also from persons who are in the course of conveying, delivering or preparing to deliver such articles to a purchaser or consignee and also from a consignee after delivery of any such article to him. A consignee need not be a purchaser. There may be no sale before the goods are delivered to the consignee. A person may be conveying the goods to the consignee without there being any sale of articles. When the sample is taken from a consignee after delivery to him, it would be a sample taken from his store. It may or may not be meant for sale. If the Food Inspector has been given the power to take sample from a person out of a stock

which may not be meant for sale and to send such sample for analysis to Public Analyst under Clause (b) of Sub-section (1) of Section 10, there can be no reason for holding that the storage for being punishable must be storage for sale because such an interpretation will make the power under Section 10 a fruitless or futile power.

19. The whole scheme of the Act and the language of the relevant sections indicate that the storage and distribution contemplated by Sections 7 and 16 of the Prevention of Food Adulteration Act need not be storage for sale or distribution by way of sale. Our answer to the second question must accordingly be in the negative.

20. We answer the first question in the affirmative and the second question in the negative.

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