

Ganga Ram Vs. State

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Court : Allahabad

Decided On : Nov-11-1960

Reported in : 1961CriLJ447

Judge : M.C. Desai, J.

Appellant : Ganga Ram

Respondent : State

Judgement :

ORDER

M.C. Desai, J.

1. The applicant Ganga Ram in this case and his brother Sarju Prasad who is applicant in the connected case have been convicted under Section 16 of the Prevention of Food Adulteration Act for contravening the provisions of Section 7(i) of the same Act. It is admitted that the two applicants form a partnership, which owns a shop in which mustard oil is sold and that at the moment when a food inspector took a sample of mustard oil only Ganga Ram was present, The sample was analysed and was found to contain a foreign ingredient which made: the mustard oil adulterated food.

2. There is nothing to be said against the conviction of Ganga Ram on merits. The sentence of Rs. 300/- fine cannot be said to be excessive at all. Such an offence

deserves severe punishment. The only question raised on his behalf was that he did not contravene Rule 44(e) of the Prevention of Food Adulteration Rules. Under this provision selling an admixture of two or more edible oils as edible oil is prohibited.

Since the analyst found that mustard oil was mixed, not with another edible oil or other edible oils, but with some foreign ingredient it was argued that there was no infringement of Rule 44. But he has not been convicted for this infringement at all. He might not have infringed Rule 44 but it does not follow that he did not infringe Section 7(i), which is an entirely different provision. If he had infringed Rule 44 he would have been guilty under Section 7(v) but he has been convicted only under Section 7.

3. As regards the other applicant, Sarju Prasad, who was not present when the sample was taken, Sri Chandra Shekhar Saran relied upon. Section 17 of the Act. Nothing in this section helps

him at all. Since the shop was owned by a partnership it means that it was owned by a company-Section 17(1) provides that when an offence is committed by a company, not only the company but also every person who at the time the offence was committed was in charge of, and was responsible to the company for the, conduct of the business of the company would be guilty of the offence unless he proved that the offence was committed without his knowledge or in spite of due diligence exercised by him to prevent its commission.

There are two things which are clear; one that this provision imposes a, liability on a person in addition to the liability imposed upon the company and second that it is only that person, who can escape the liability by proving absence of knowledge or exercise of due diligence. The company is held liable whether under Section 7 or under Section 16 and no question of want of knowledge or exercise of due diligence arises in its case. Sarju Prasad has not been punished as a person in-charge of, and responsible to the partnership for the conduct of, the business of the partnership; he has been punished as the company itself and no defence such as is mentioned in the proviso to Section 17 is open to him.

Section 7 is to the effect: that no person shall himself or by any person on his behalf store or sell any adulterated food. In the case of a partnership every partner is an agent of the others; so Ganga Ram, who stored and sold adulterated mustard oil, was Sarju Prasad's agent. When Ganga Ram stored and sold adulterated food, it means that Sarju Prasad stored and sold it by a person on his behalf. Section 16 punishes contravention of Section 7; so Sarju Prasad became liable to punishment for storing and selling adulterated food through his agent, Ganga Ram. Thus he was guilty regardless of Section 17 and he was rightly convicted.

4. The application is dismissed.

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