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The State Vs. Uma Charan Ram

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Court : Orissa

Decided On : Oct-26-1965

Reported in : AIR1966Ori81; 1966CriLJ562

Judge : R.K. Das, J.

Acts : Prevention of Food Adulteration Act, 1954 - Sections 2, 13, 13(3), 13(5) and 16; Prevention of Food Adulteration Rules, 1955 - Rule 7

Appeal No. : Govt. Appeal No. 24 of 1964

Appellant : The State

Respondent : Uma Charan Ram

Advocate for Def. : H. Kanungo and ;R.N. Mohanty, Advs.

Advocate for Pet/Ap. : Govt. Adv.

Disposition : Appeal allowed

Judgement :

R.K. Das, J.

1. This appeal by the State is directed against an order of the Sub-Divisional Magistrate, Karanjia, dated 26-8-1964 acquitting the respondent of an offence under Section 16 of the Prevention of Food Adulteration Act.

2. The respondent Uma Charan Ram owns a grocery shop at Jashipur in the district of Mayurbhanj. On 9-2-63, the Food Inspector (P. W. 1) inspected his shop and purchased samples of some cocoanut oil for the purpose of analysis and despatched the same in the usual course for examination by the Public Analyst with a view to find out if the said oil was pure or adulterated. He received a report (Ex. 4) from the Public Analyst saying that the sample of cocoanut oil was found to be adulterated. On receipt of Ex. 4, P.W. 1 filed a complaint (Ex. 5), after obtaining necessary sanction from the District Health Officer. On the basis of the complaint, cognizance was taken and the accused was tried for an offence under Section 16(1)(a) of the Prevention of Food Adulteration Act (Act XXXVII of 1954) (hereinafter described as 'the Act').

3. The accused admitted that he sold the sample of cocoanut oil to the Food Inspector, PW. 1. His plea was that the cocoanut oil was not adulterated by him and it might have got adulterated due to the carelessness of the customers for which he was not responsible. His substantial plea, however, was that the cocoanut oil is not used as an article of food in the area where he was selling it and as such he was not liable to be prosecuted under the Act.

4. The learned Magistrate found that the cocoanut oil sold by the respondent was adulterated, but relied upon the evidence of some of the prosecution witnesses who admitted that cocoanut oil is not used as an article of food in the area and held that since it was not an article of food in Orissa, the accused cannot be held guilty under Section 16 of the Act. He accordingly acquitted the accused. Hence this appeal by the State.

5. The main question for consideration is whether cocoanut oil comes within the definition of 'food' as given in Section 2(v) of the Act which defines 'food' to mean:

'Any article used as food or drink for human consumption other than drugs and water and includes: (a) any article which ordinarily enters into or is used in the composition or preparation of human food, ... '

Section 2(i) says that an article of food shall be deemed to be adulterated if the quality or purity of the article falls below the prescribed standard. Under Rule 5,

framed under the Act the standard of various articles of food has been specified. In appendix B, item No. 17 cocoanut oil has been shown as one of the edible oils and its standard has been prescribed. The report of the Public analyst shows that it is below the standard and is thus adulterated. No doubt so far as Orissa is concerned, cocoanut oil is not generally used as an article of food or as a medium in the preparation of food, but undoubtedly it is so used in other parts of the country. The question, therefore is whether it can still be taken as an article of food in Orissa for the purpose of the Act even though it is not so used in Orissa. A similar question came up for consideration before a Full Bench of the Allahabad High Court in a case reported in AIR 1963 All 433(FB), Municipal Board, Kanpur v. Janki Prasad. There the question was whether the sale of adulterated Linseed oil, which is not used as an edible article in Uttar Pradesh, amounts to an offence under Section 16 of the Act. Their Lordships held that the fact that Linseed oil is not used in Uttar Pradesh as a medium of food is immaterial because the Act is an All-India Act, and if linseed oil can be considered to be food in areas where it is used as cooking medium or for other food purposes, it would also be deemed to be a 'food' in Uttar Pradesh. Similarly when cocoanut oil is used as an article of food in some other parts of the country then it must also be deemed to be 'food' in Orissa and sale of such adulterated oil would amount to an offence under Section 16 of the Act. The fact that it is being used in Orissa for some other purposes is also wholly immaterial.

6. The Punjab High Court in a case reported in AIR 1964 Punj 427, Leela Ram v. State, took the view that as Hing is ordinarily used for human consumption, its occasional use for agricultural purposes, would not take it out of the category of food. Thus, the mere fact that cocoanut oil has an alternative use in the State of Orissa and is not used as an article of food in this part of the country, is of no consequence in determining the question if the accused was found to have sold some adulterated stuff of edible oil. The reasoning adopted by the learned Magistrate is wholly untenable and cannot be accepted.

7. Section 16(1)(a) of the Act penalises the sale of adulterated food. That a 'sale' by way of a sample to the Food Inspector even for the purpose of analysis is a 'sale' within the meaning of the Act, cannot be disputed, in view of the decision of

the Supreme Court in Cri. Appeal No. 57 of 1963 Mangaldas Raghabjee Ruperoll v. State of Maharashtra and Criminal Appeal 113 of 1963 Daryanomal v. State of Maharashtra: (AIR 1966 SC 128).

8. Mr. Kanungo, learned Counsel for the respondent, however, urged that the Rules 7 and 18 of the Prevention of Food Adulteration Rules (hereinafter described as 'Rules') have not been followed in this case and as such the report of the Public Analyst cannot be accepted as sufficient evidence of adulteration of food and for convicting the accused under section 16 of the Act. It is necessary to quote these Rules here. Rule 7 provides that

'Duties of Public Analyst; (1) On receipt of a packet containing a sample for analysis from a Food Inspector or any other person, the public analyst or an officer authorised by him, shall compare the seals on the container and the outer cover with the specimen impression received separately and shall note the condition of the seals thereon. (2) The Public analyst shall cause to be analysed such samples of articles of food as may be sent to him by the Inspector or by any other person under the Act. (3) After the analysis has been completed he shall forthwith supply to the person concerned a report in Form III of the result of such analysis.'

Rule 18 reads as follows:

'Memorandum and impression of seal to be sent separately by post. A copy of the memorandum and specimen impression of the seal used to seal the packet shall be sent to the Public Analyst separately by registered post or delivered to him or to any person authorised by him.'

It was urged that there is nothing on record to show that Rules 7 and 18 were duly complied with and the specimen of the seal, used to seal the packet, was sent to the public analyst by registered post or that the public analyst compared the said seal with the seal given on the container. But there cannot be any dispute over the fact that the report, Ex. 4 was given in the prescribed form. In the prescribed form, however, the public analyst is simply called upon to state that he received the sample for analysis properly sealed and that he found the seal intact and unbroken. There is nothing in the Form to show that he is required to make any

mention of the fact of his having received the specimen impression of the seal or that he had made comparison of the same. It is clear from the report that it was given in the prescribed form and that the Public Analyst analysed the sample sent by P. W. 1 and found the same to be adulterated. Section 13 of the Act deals with the report of the Public Analyst in ascertaining whether the food was adulterated or not and under Section 13 the report of the Public Analyst shall without formal proof be admissible in evidence. But what value is to be attached to such a report has necessarily to be determined by the Court.

Under Sub-section (2) of Section 13 the accused, however, has an opportunity on payment of the prescribed fee to make an application to the Court for sending the sample of the alleged adulterated article purchased by the Food Inspector under Section 11 to the Director of the Central Food Laboratory for a certificate. The certificate issued by the Director would then supersede the report of the Public Analyst. Under Section 13(5) the report of the Director of the Central Food Laboratory is not only made admissible in evidence, but it is conclusive of the fact contained therein. The accused, however, has not taken any such steps in this case to challenge the report of the Public Analyst, nor has it been challenged in cross-examination of P.W. 1. It was also open to the accused to examine P.W.1 as a witness and to take other appropriate steps for the purpose. From the evidence of PW. 1 it appears that he took the samples, gave one to the accused under receipt, Ex. 2, divided the article into three parts as required under the law, then all the containers were duly fastened and sealed in the presence of the accused and the witnesses and one was sent to the Public Analyst while the other was kept by himself for production in Court. In other words, he complied with all the requirements of the rules so far as he is concerned. No doubt, he has not said in so many words that he complied with the provisions of Rule 7 while sending the specimen impression of the seal to the Public Analyst.

In this connection, Mr. Kanungo relied upon a decision of the single Judge of Gujrat High Court in the case of State of Gujrat v. Shantaben reported in AIR 1964 Gujarat 136, where the learned Judge took the view that in the absence of any mention in the report of the Public Analyst that he compared the seal of the container with the specimen seal sent to him by post, it cannot be made sure that

the sample which was received was not tampered with on the way and that Rules 7 and 18 which are framed to prevent such possibility cannot be said to have been complied with. It is on that ground alone he refused to accept the report of the Public Analyst and dismissed the appeal of the State filed against the order of acquittal. With great respect, I cannot agree with the view taken by the learned Judge. The Public Analyst has to submit his report in Form III prescribed under the Rules. That form does not prescribe anything calling on the Public Analyst to make an endorsement to the effect that he compared the seals on the container with the specimen seals sent to him. In the absence of any such column in the said form, it cannot be said that the report was in any way irregular. Further, Section 13(5) provides that any document purporting to be a report signed by the Public Analyst unless it has been superseded under Sub-section (3) or any other document purporting to be a certificate signed by the Director of the Central Food Laboratory, may be used as evidence of facts stated therein, in any proceeding under this Act or under Sections 372 to 376 of the Indian Penal Code. As I have said above, the accused did not challenge the position in course of the trial and the learned Magistrate acquitted the accused mainly on the ground that the cocoanut oil is not used as an article of food in Orissa and as such it does not come within the meaning of 'food' under the Act. As stated above, this conclusion of the learned Magistrate is clearly wrong and cannot be maintained.

9. In the result, the order of acquittal of the respondent is set aside. The respondent-accused is convicted under Section 16(1)(a) of the Act and is sentenced to pay a fine of Rs. 50/- in default to undergo R. I. for one month.

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