

Niranjan Behera Vs. Satyanarayan Mahaswari

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Court : Orissa

Decided On : Sep-25-1981

Reported in : 52(1981)CLT485; 1981CriLJ1790

Judge : P.K. Mohanti and ;B.N. Misra, JJ.

Appellant : Niranjan Behera

Respondent : Satyanarayan Mahaswari

Judgement :

P.K. Mohanti, J.

1. The appeal arises out of a judgment of the learned Chief Judicial Magistrate. Ganjam acquitting the respondent of an offence under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act. 1954.

2. Appellant is the Food Inspector of the Berhampur Municipality. On 13-1-76 he visited the shop of the respondent for inspection of food articles exposed for sale for human consumption. After observing the formalities he purchased 1500 grams of Vanaspati as sample from a closed and sealed tin and paid Rs. 12.72 paise towards its price. He divided the sample into three equal parts and placed them in three clean and dry bottles and sealed and labelled them. One bottle containing the sample was sent to the Public Analyst and the other two bottles were handed over to the local Health authority as required by law. The Public

Analyst of the Government of Orissa opined that the sample in question was adulterated. After obtaining necessary sanction under Section 20 of the Act. the appellant filed prosecution report against the respondent.

3. The respondent pleaded not guilty to the charge and contended that on 11-11-76 he had purchased a sealed tin of Vanaspati of Kalpana brand from M/s. Santosh Trading & Co. and stored the same in his shoo and when the appellant demanded to purchase he sold 1500 warns from out of the said tin. He examined himself as a witness and proved a credit bill dated 11-11-76 (Ext. A) granted by M/s. Santosh Trading & Co. evidencing the sale.

4. The trial court held that the respondent had purchased the Vanaspati from M/s. Santosh Trading & Co. under the credit bill Ext. A and sold it in the same state as he purchased. Accordingly it held that the respondent was protected under Section 19(2)(a)(ii) of the Act and acquitted him of the charge.

5. According to Section 19(2) of the Act, a vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he had purchased the article of food from any manufacturer, distributor Or dealer with a written warranty in the prescribed form and that the article of food while in his possession was properly stored and that he had sold it in the same state as he purchased it

6. Mr. R. C. Misra, the learned Counsel appearing for the appellant submitted that under R. 12-A of the Prevention of Food Adulteration Rules every manufacturer, distributor or dealer selling an article of food to a vendor should give either separately m in the bill, cash memo, or label, a warranty in Form Vi-A and since the credit bill in this case does not contain the warranty in Form VI-A the respondent was not entitled to protection under Section 18(1) of the Act,

Mr. Bohidar, the learned Counsel for the respondent on the other hand contended that under the proviso to Section 14 of the Act the credit bill Ext. A is, by legal fiction, deemed to be a written warranty in Form VI-A and as such the respondent is entitled to the benefit of Section 19(2).

7. Section 14 of the Act provides as follows;

14. Manufacturers, distributors and dealers to give warranty.

No manufacturer Or distributor of, or dealer in any article of food shall sell such article to any vendor unless he also gives a warranty in writing in the prescribed form about the nature and quality of such article to the vendor.

Provided that a bill, cash memorandum or invoice in respect of the sale of any article of food given by a manufacturer Or distributor of, or dealer in. such article to the vendor thereof shall be deemed to be a warranty given by such manufacturer, distributor or dealer under this section. Explanation. In this section in Sub-section (2) of Section 19 and in Section 20-A the expression 'distributor' shall include a commission agent.

The proviso was inserted by Amendment Act 34 of 1976 which came into force on 1-4-76.

8. According to the proviso, a bill or a cash memo, or invoice in respect of the sale of any article of food given by a manufacturer, distributor or a dealer in such article to a vendor shall be deemed to be a warranty given by such manufacturer, distributor or dealer. The proviso does not contemplate that the bill, cash memo, or invoice should contain the warranty in Form VI. Thus where a bill, cash memo, or invoice is given at the time of sale, a separate warranty in Form VI-A is unnecessary. The bill, cash memo, or invoice will be deemed to be a warranty even though it does not contain the details as to the nature or. quality of the article sold. If the legislature intended that a bill, cash memo, or invoice should be given in terms of R. 12-A then there was no question of deeming it to be a warranty under the proviso to a 14. In our opinion, though there is no written warranty in the prescribed form, the production of credit bill (Ext A) is a sufficient compliance of the law which Rives protection from prosecution to the respondent under Sub-section (2) of the Act. We are in this view fortified by two decisions of the Andhra Pradesh High Court and the Allahabad High Court reported in 1978 Cri LJ 1385. (Chunduri Gopalakrishna Murthy v. State) and 1978 Cri LJ 1664 (Vishhu Awatar v. State) respectively.

9. Mr. R. C. Misra, the learned Counsel for the appellant referred to the case of *Municipal Corporation of Delhi v. Tek Chand Bhatia* : 1980 CriLJ316 which was decided on 11-10-1979 and submitted that although the proviso to Section 14 had come into force with effect from 1-4-1976 the respondent was convicted under Section 16(1)(a) of the Act for non-production of a written warranty in the prescribed form. His contention is that a vendor, in order to avail of the benefit of Section 19(2), is required to produce a written warranty Or a manufacturer's label guaranteeing purity of goods notwithstanding the deeming provision in the proviso to S- 14 of the Act, The facts of the case referred to above are that samples of cashewnuts were taken from sealed tins on 1-8-68 and were found to be adulterated. The sealed tins had been purchased by the respondent under an invoice which contained a description of the goods as 'SW Best Barma'. The trying Magistrate found that the invoice produced by the respondent contained a warranty which absolved him from liability. The question for consideration before their Lordships of the Supreme Court was whether the respondent was protected under Section 19(2) of the Act. It was contended on behalf Of the respondent that the description 'SW Best Borma' amounted to a warranty as to quality. The contention did not find favour with their Lordships. It was held, on a consideration of the provisions of Section 19(2) of the Act and R- 12-A (as it stood before the Amendment in 1968) that respondent was not protected under Section 19(2) read with R- 12-A. The proviso to Section 14 did not come in for consideration before their Lordships. We fail to appreciate how this decision helps the appellant in this case.

10. The principle behind Section 19(2) of the Act is that if an article of food suspected to be adulterated is seized from a vendor and the same is found to be covered by a warranty, any offence committed under the Act may attach not to the person from whom the samples are taken. but to. the actual trader who may- be to have been responsible for adulteration. The reason for introducing the proviso in S- 14 is stated in the report of the Joint Committee of parliament as follows:

Section 14 of the principal Act imposes obligation on every manufacturer, distributor or dealer to give a warranty in writing in respect of the nature and quality of every article of food sold by him to a vendor. During the course of the

evidence tendered before the Committee representatives of the retailers represented that the requirement of law was not being followed by the manufacturers or dealers as a result of which the vendors had to suffer. The Committee has remedied the situation by inserting a proviso to the Section to the effect that a bill, cash memorandum or invoice given by a manufacturer, distributor or dealer in respect of any article of food purchased by the vendor shall be deemed to be a warranty.

It will thus be seen that the statutory fiction was created for the benefit of the vendors by providing that a bill, a cash memorandum or an invoice will be deemed to be a warranty given by a manufacturer, distributor or dealer under Section 14 of the Act. In the instant case, the credit bill Ext. A shall be deemed to be a warranty in writing in the prescribed form given by the distributor under Section 14 of the Act. The respondent having produced the deemed warranty is entitled to the benefit of Section 19(2) of the Act.

11. Rule 12-A of the Prevention of Food Adulteration Rules, as amended by OSR 1533 dated 8-7-68, requires every manufacturer, distributor or dealer selling an article of food to vendor to give either separately or in the bill, cash memo, or label a warranty in Form No. VI-A. This rule has not undergone any change after the proviso to Section 14 was added in 1976. The rule cannot override the provisions of the statute. If a bill, cash memo or invoice is given in terms of R- 12-A then that itself is the warranty and there is no question of deeming it to be a warranty under the proviso to Section 14.

12. No doubt, the credit bill Ext. A was not shown to the appellant at the time of his inspection and was produced only at the stage of trial. The Act does not provide that the warranty shall be shown to the Food Inspector, at the time of seizure of the food article. In our opinion, the fact that the credit bill was not shown to the Food Inspector at the time of seizure is not a reason why it should be disbelieved outright. That fact may raise a suspicion as to its genuineness. But it would be a question of fact to be decided on the evidence adduced. In the instant case, genuineness of Ext. A was not doubted by the trial court. Having heard the learned Counsel for the parties, we do not also entertain any doubt about its genuineness.

It is in evidence that the sealed tin of Vanaspati from which the sample was taken was purchased on 11-11-1976 and two days thereafter, that is. on 13-11-76 the seizure was made by the Food Inspector. On a consideration of the evidence of the respondent, we held that Ext A is a genuine document.

13. Mr. Bohidar, the learned Counsel appearing for the respondent attempted to support the order of acquittal by contending that non-compliance with the provisions of R. 22-A of the Prevention of Food Adulteration Rules is fatal to the prosecution. R. 22-A provides;

Where food is sold or stocked for sale or for distribution in sealed containers, having identical label declaration, the contents of one or more of such containers as may be required to satisfy the quantity prescribed in Rule 22 shall be treated to be a part of the sample.

Mr. Bohidar's contention is that the samples having been taken from the sealed tin there is clear violation of the mode prescribed for taking the sample for analysis. This rule is meant for safeguarding the interest of the manufacturer who is not an accused in this case. Moreover, it appears that there was only One sealed tin in the shop of the respondent and the Food Inspector got it opened in his presence and took the sample which was found adulterated. In our opinion, in the facts and circumstances of this case non-compliance of R. 22-A is of no avail to the respondent.

14. In view of our foregoing findings, we dismiss the appeal and uphold the order of acquittal.

B. N. Misra, J.

15. I agree.