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SooperKanoon Citation : sooperkanoon.com/684331

Court : Delhi

Decided On : Sep-27-1971

Reported in : ILR1971Delhi293

Judge : M.R.A. Ansari;V.D. Misra and ; Rajindar Sachar, JJ.

Acts : Prevention of Food Adulteration Act, 1954 - Sections 7 and 10

Appeal No. : Criminal Revision Appeal No. 305 of 1967

Appellant : Madan Lal

Respondent : State

Advocate for Pet/Ap. : Ghanshyam Das,; K.L. Arora and; D.R. Sethi, Advs

Judgement :

M.R.A. Ansari, J.

(1) This revision petition as well as the two appeals, namely. Criminal Appeals Nos, 76 and 77 of 1968, raise common questions of law and may, thereforee, be disposed of by a common judgment. The facts of each of the cases may briefly be stated:-

(2) In Criminal Revision No. 305/67 the petitioner had a shop at which he sold sweets and lassi. On 4-6-1966, the Food Inspector of the Municipal Corporation of

Delhi went to the petitioner's shop and found a certain quantity of bura kept in a drum in a portion of the petitioner's shop. The Food Inspector informed the petitioner that he wanted to take a sample of the said bura for the purpose of analysis. The petitioner informed the Food Inspector that he was not storing bura for the purpose of sale but only for the purpose of using it in the preparation of lassi. The Food Inspector, however, took 600 grams of bura from the drum and tendered payment of Rs. 1.10 paise to the petitioner as price of the bura taken by him. The petitioner, however, declined to accept the amount. The Food Inspector then divided the sample of bura into three portions and put the three portions into three separate bottles and sealed the bottles. He handed over one of the bottles to the petitioner and obtained a receipt from him. He sent one of the other two bottles to the Public Analyst and the latter sent his report to the effect that the sample of bura sent to him was adulterated inasmuch as there was deficiency of 7.2 per cent in the total sugar expressed as sucrose per cent. On the basis of the report of the Public Analyst, a complaint was filed against the petitioner in the Court of the Magistrate, 1st Class. Delhi, for an offence under sections 7/16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the Act). In the trial Court, the petitioner did not dispute either that the Food Inspector had taken the sample of bura from his shop or that the said bura was adulterated; but took the plea that he had not kept the said bura in his shop for sale as such but only for the purpose of using it in the preparation of lassi. The learned Magistrate, while accepting the plea of the petitioner that he had not kept bura in his shop for sale as such but only for using it in the preparation of lassi which was sold by him to the public, held that the petitioner committed an offence under sections 7/16 of the Act. He, thereforee, convicted the petitioner under sections 7/16 of the Act and sentenced him to undergo imprisonment till the rising of the Court and also to pay a fine of Rs. 1,000 and in default of payment of fine, to undergo rigorous imprisonment for six months. The conviction of the petitioner as well as the sentence passed against him were confirmed on appeal by the Additional Sessions Judge, Delhi.

(3) In Criminal Appeal No. 76/68, the respondent was running a restaurant in East Patel Nagar, New Delhi, where he sold tea and coffee. On 25-5-1967, the Food Inspector of the Municipal Corporation of Delhi went to the respondent's restaurant

and found a certain quantity of toned milk in a patila. The Food Inspector informed the respondent that he wanted to take a sample from the said milk for the purpose of analysis. The respondent told the Food Inspector that he was not selling the milk in the restaurant but was using it only in the preparation of tea and coffee. The Food Inspector, however, took 660 ml. of toned milk from the Patila and tendered payment of 35 paise as price thereof. The respondent accepted this price only under protest. The Food Inspector then followed the procedure prescribed for the taking of samples for the purpose of analysis. The sample sent to the Public Analyst was found to be adulterated as it did not conform to the standard prescribed for toned milk under the Act. The respondent was, thereforee, prosecuted for an offence under sections 7/16 of the Act. During the trial, the respondent led evidence to prove that he did not sell toned milk as such in his restaurant but that he sold only tea and coffee and that he used the toned milk only in the preparation of tea and coffee. The learned trial Court accepted this evidence and held that the respondent did not sell toned milk as such in his restaurant but sold tea and coffee and used the toned milk only in the preparation of the tea and the coffee. The learned trial Court further held that as the respondent did not sell the toned milk as such in his restaurant. he did not commit any offence under sections 7/16 of the Act even if such toned milk was found to be adulterated. He, thereforee, acquitted the respondent. The Municipal Corporation has filed the present appeal by special leave against the acquittal of the respondent.

(4) The facts in Criminal Appeal No. 77/68 are similar. The first respondent in this case is M/s Indian Coffee Workers Cooperative Society Ltd. which was running a canteen called Indian Coffee House in the 'Y' Shape Building, Indraprastha Estate, New Delhi, and the second respondent was working as Manager-cum-Salesman in the said canteen.

(5) On 1-5-1967, the Food Inspector of the Municipal Corporation of Delhi went to the Indian Coffee House and found a certain quantity of toned milk stored in the canteen. When the Food Inspector wanted to purchase a sample of the toned milk for analysis from the second respondent the latter told him that the toned milk is not for sale and that it was used only in the preparation of coffee. The Food

Inspector, however, took 660 ml. of the milk and paid 55 paise as price thereof. The second respondent accepted the price only under protest. The Food Inspector then followed the procedure prescribed for taking the samples and the sample sent to the Public Analyst was found to be adulterated inasmuch as it did not conform to the standard prescribed under the Act and the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as the Rules) to toned milk. The respondent was, thereforee, prosecuted for an offence under sections 7/16 of the Act. The respondents took up the defense in the trial Court that they were not selling toned milk in the canteen but were only selling coffee and the toned milk was used only in the preparation of coffee. They led evidence in support of this defense and the learned trial Court accepted this evidence and held that as the respondents did not sell the toned milk as such in the canteen but sold only coffee and used the toned milk in the preparation of the coffee, they did not commit any offence under section 7/16 of the Act. The respondents were, thereforee, acquitted. The Municipal Corporation of Delhi has filed the present appeal against their acquittal by special leave.

(6) From the above narration of the facts of each case it would appear that the common feature in all the three cases is that admittedly the articles of food, namely, bura in one case and the toned milk in the other two cases, were neither sold nor stored for sale as such but were used only in the preparation of other articles of food, namely, lassi in the one case and tea and coffee in the other two cases. Bura and toned milk undoubtedly are articles of food which come under the definition of food under section 2(v) of the Act In Appendix to the Rules certain standards of purity are prescribed for these articles of food. In the present cases, there is no dispute that these articles of food did not conform to the standard prescribed in Appendix B to the Rules. It follows that these articles of food were adulterated within the meaning of section 2(i)(l) of the Act. If these articles of food were either sold or stored for sale as such, there can be no doubt that the persons selling or storing for sale such articles would be guilty of an offence under sections 7/16 of the Act. It may also be stated that the Rules do not prescribe any standard of purity for the article of food in the preparation of which bura and the toned milk are used. namely, lassi, tea and coffee. The persons, who sell the lassi, tea or coffee, do not, thereforee, commit any offence under the Act even if the said

articles of food contain bura or toned milk which do not conform to the standards prescribed for them under the Rules. These persons would be guilty of an offence under sections 7/16 of Act only if they sell or store for sale the bum and the toned milk. The question, thereforee, for consideration in the present cases is whether under the circumstances it can be said that these persons had sold or stored for sale the bura or the toned milk.

(7) We have advisedly used the words 'store for sale' in the previous paragraph as constituting an offence under sections 7/16 of the Act although the words 'for sale' are not used either in section 7 or section 16(1)(a) of the Act. A Division Bench of this Court had held in Municipal Corporation of Delhi v. Jetha Nand, 1969 (5) D.L.T. 605 that the absence of the words 'for sale' after the word 'store' in sections 7 and 16 of the Act was deliberate and that storing was an offence by itself whether it was for sale or not. But a Full Bench of this Court in the case of Municipal Corporation of Delhi v. Laxmi Narain Tandon and another : AIR1970 Delhi244 has dissented from this view and has held that the word 'store' used in sections 7 and 16 of the Act means 'storing for sale'. Although this question came up for consideration before the Supreme Court in the case of the Food Inspector v. Cherukattil Gopalan and another : 1971 CriLJ1277 , the question was not decided but was left open by the Supreme Court with the following observations:-

'IT is not necessary for us in the case before us to consider whether the expression 'stored' occurring in Section 7 and section 16 should be interpreted as storage for purposes of sale. The use on hand can be disposed of without deciding that aspect.'

(8) thereforee, so far as this Court is concerned, the decision of the Full Bench of this Court is binding on us and we are in respectful agreement with it. The petitioner in the criminal revision and the respondents in the two appeals cannot, thereforee, be held to have committed an offence under sections 7/16 of the Act for merely storing the bura and the toned milk respectively. They can be held guilty of an offence only if it is proved that they had sold or stored for sale the bura or the toned milk.

(9) We shall take the two criminal appeals first, because the facts of these two cases, while being similar with one another, are slightly different from the facts of the criminal revision. In these two cases, the respondents, though unwilling to sell the toned milk to the Food Inspector, however, allowed him to take samples of the toned milk and also accepted the price of the said samples, though under protest. If these persons had voluntarily sold the toned milk to the Food Inspector and accepted its price without protest, then, there can be no doubt that the transaction would amount to a sale within the meaning of section 2(xiii) of the Act and since the article of food which they sold was found to be adulterated, they would be guilty of an offence under sections 7/16 of the Act notwithstanding the fact that they were not dealers in the article of food as such which they had thus sold to the Food Inspector but were using the said article of food only in the preparation of some other articles of food for which no standard of purity was prescribed under the Rules. This position is now settled by the Supreme Court in the case of Food Inspector v. Cherukattil Gopalan and another referred to above. In that case also, the accused were running a tea-stall and were keeping in store sugar in the premises of the tea-stall to be used in the preparation of tea sold to the customers. A sample from this sugar was purchased by the Food Inspector for analysis and the sample was found to be adulterated. A plea was taken by the accused that no offence was committed by them as they did not sell sugar as such and were not dealers in sugar and that they used the sugar only in the preparation of tea which they sold to the customers in their tea-stall. This plea was accepted by the trial Court before whom they were prosecuted and they were acquitted. The appeal filed by the State in the High Court was also dismissed. The High Court was of the view that the prosecution would have to establish that the persons from whom the article of food had been purchased were those 'selling those articles as such' and that as the sugar stored in the tea-stall of the accused was not kept for sale as such but for being utilised in the preparation of tea which was being sold to the customers, the purchase by the Food Inspector of sugar from the accused could not be considered to be a purchase under the Act so as to make them liable for the offence with which they were charged. The Supreme Court, however, did not approve of the principle enunciated by the High Court. The Supreme Court also disapproved of a similar rule laid down in two other decisions, namely. The Public

Prosecutor v. Kandasamy Reddiar : AIR1959 Mad333 and In Re: Govinda Rao : AIR 1960 AP366 to the effect that the article of food purchased by the Food Inspector must be shown to have been kept by the accused for the purpose of sale as such or that the person H from whom an article of food is purchased by the Food Inspector must be a dealer in such article of food. The Supreme Court held that those two decisions had not considered the legal effect of a sale to a Food Inspector under the Act and that there was no indication in the Act that when a Food Inspector purchased an article of food from a person, the latter must be a dealer in that article as such. The Supreme Court, thereforee, reversed the decision of the Kerala High Court and held that the accused in that case were guilty under section 7 read with section 16(1)(a)(i) of the Act.

(10) It is no doubt true that in the Supreme Court case cited above, there is no indication either that the accused had expressed their unwillingness to sell the sugar to the Food Inspector on the ground that they were not dealers in sugar as such or that they had accepted the price of the sample under protest; whereas in the two appeals before us, the respondents had expressed their unwillingness to sell the toned milk to the Food Inspector and had informed him that the toned milk was not for sale as such and also that the respondents had received the price of the sample of the toned milk under protest. The question is whether this will make any difference. In our view, the unwillingness on the part of the respondents to sell the toned milk to the Food Inspector or their unwillingness to receive its price is wholly immaterial. If the respondents were selling the toned milk as such in the sense that they were dealers in it and if the Food Inspector wanted to purchase a sample of the toned milk for analysis, it would not be open to them to refuse to sell the sample to the Food Inspector as the latter is given the power under section 10(1) of the Act to take a sample of the toned milk from the respondents and tender to them the price of the sample taken by him. Such a transaction would undoubtedly amount to a sale of the toned milk by the respondents to the Food Inspector. In such cases, it is not necessary that the dealers should be willing parties to the transaction. In Mangaldas Raghavji Ruparel v. State of Maharashtra : [1965]3SCR626 a contention was raised that a sale must be consensual and that this implies that both, the parties to it must act voluntarily and that where the Food Inspector takes a sample in exercise of his powers under section 10 of the Act, it

will not amount to sale. In support of this contention, reliance was placed upon a decision of the Kerala High Court in Food Inspector v. Parameswaran Chettiar, 1962 (1) Cr. L.J. 1520, in which the view was expressed that-

'AS a sale is a voluntary transaction and a seizure or compulsory acquisition in exercise of statutory power is not a sale within the ordinary sense of that word. Nor does the definition of 'sale' in 2(iii) as including a sale of food for analysis make it one, for, the first requisite even under the definition is that there must be a sale.'

(11) The Kerala High Court expressed the further view that-

'IF he (Food Inspector) obtains the article not by a voluntary exchange for a price but in exercise of his statutory power under S. 10 of the Act, the transaction is not a sale notwithstanding that in obedience to sub-s.(3) of S. 10 its cost-and I think the sub-section advisedly uses the long phrase, 'its cost calculated at the rate at which the article is usually sold to the public' instead of the word 'price' is paid to the person from whom the sample is taken.'

(12) Their Lordships of the Supreme Court disagreed with the Kerala High Court and observed as follows:-

'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.'

(13) Applying the rule laid down by the Supreme Court in Munguldass case, it must be held that if the respondents in the two appeals were dealers in toned milk as such, they would be guilty of an offence under the Act notwithstanding the fact that they did not agree to sell the toned milk to the Food Inspector or to accept its price from him. The position will be the same even if the respondents were not dealers in toned milk as such but were using the toned milk in the preparation of tea or coffee which they were selling to the customers. The facts of these two cases come within the scope of the rule laid down by the Supreme Court in

Cherukattil Gopalans case and the respondents in these two cases must be held guilty of an offence under section 16(1)(a)(i) read with section 7 of the Act.

(14) Now we come to the facts of the criminal revision. In this case, the petitioner not only refused to sell the bum to the Food Inspector but also refused to accept its price which was tendered by the Food Inspector, Bawa Gurcharan Singh, learned counsel for the petitioner, contend that the facts of this case do not come within the scope of the rule laid down by the Supreme Court in Cherukuttil Gopalan'sC) case and that, on the other hand, the facts of this case fall within the rule laid down by the Allahabad High Court in Municipal Board, Faizabad v. Lal Chand Surajmal and another : AIR1964 All199 which, according to the learned counsel, has been approved by the Supreme Court in Cherukattil Gopalan's case. In the case before the Allahabad High Court, the accused sold tea in their shop and stored milk in the shop for the purpose of preparing tea. The Food Inspector took a sample of the milk from the accused's shop and paid its price to the accused. The sample of milk thus purchased by the Food Inspector was found to be adulterated. When the accused were prosecuted, their defense was that the milk was not meant for sale but was meant for being mixed with tea. The accused were convicted under sections 7/16 of the Act. The Sessions Judge, however, acquitted the accused on the ground that the milk had not been stored for the purpose of sale but had been stored for the purpose of preparing tea which was to be sold. The matter was taken to the High Court and the High Court reversed the judgment of the Sessions Judge and convicted the accused. The High Court held that the transaction amounted to a sale to the Food Inspector for analysis and, thereforee, came within the definition of sale under section 2(xiii) of the Act. A contention was advanced before the High Court that under section 10(3) of the Act the accused could not refuse to sell the milk to the Food Inspector, that they would be guilty of an offence under section 16(1)(b) of the Act by refusing to sell the milk to the Food Inspector and that if they could not refuse to sell which they were compelled to do, they could not be said to have sold the milk voluntarily or sold it at all in the eye of law. While repelling this contention, the High Court made the following observations: -

'IT was not obligatory upon the respondent 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. The receipt Ex.Ka-3 indicates that they did sell it for sample. 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(1)(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.'

(15) These observations were also quoted with approval by the Division Bench of this Court in Municipal Corporation of Delhi v. Jetha Nmd (supraM') and it would also appear that the decision of the Allahabad High Court in Municipal Board, Faizabad's case was approved by the Supreme Court in Cherukattil Gopalan's case. But it is also clear from a careful reading of the judgment of, the Supreme Court in Cherukattil Gopalan's case that the Supreme Court approved only of that portion of the decision of the Allahabad High Court in the case of the Municipal Board, Faizabad which laid down that the sale of sugar to the Food Inspector amounted to an offence under the Act notwithstanding the fact that the accused in that case were not dealers in sugar but were storing the sugar only for the preparation of tea which they sold to their customers. This is what the Supreme Court has observed in this connection:-

'TO sum up we are in agreement with the decision reported in Municipal Board, Faizabad v. Lal Chand Surajmal and another (supra) and the Public Prosecutor v. Pelanisami Nadar (supra) to the extent to which they lay down the principle that when there is a sale to the Food Inspector under the Act of an article of food, which is found to be adulterated, the accused will be guilty of an offence punishable under Section 16(1)(a)(i) read with section 7 of the Act.'

(16) The underlining is ours. We cannot construe the judgment of the Supreme Court as approving the further observations of the Allahabad High Court which had

been reproduced above. As a matter of fact, these observations were not necessary for the decision of the case before the High Court and were clearly in the nature of obiter dicta. We cannot, thereforee, accept the contention of the learned counsel that these observations of the Allahabad High Court have been approved by the Supreme Court and we ourselves, with respect, cannot agree with the said observations of the Allahabad High Court.

(17) The learned counsel for the petitioner has referred to Rules 43, 44 and 44-A of the Rules and on the basis of these Rules, he has contended that the Legislature has clearly recognised the distinction between an article of food which is sold as such and an article of food which is used as an ingredient in the preparation of another article of food which is sold and that the Legislature had either totally prohibited the use of certain articles of food as ingredients or had prescribed different standards for such ingredients which were not the standards prescribed for the said article of food in Appendix B to the Rules. He has also contained, in particular, that Rule 44 of the Rules which prohibited the sale of certain admixtures did not include bura or sugar. The real purport of Rules 43 and 44 was explained by the Bombay High Court in Ganpat Shantaram More v. Lingappa Balappa Gatade and another : AIR1962 Bom104 . In that case. the Food Inspector purchased 12 ounces of butter from the shop of the accused. This butter, on analysis, was found to be adulterated. The accused was prosecuted for an offence under sections 7/16 of the Act. The accused took the plea that as he had complied with Rule 43 of the Rules by notifying on the label of each package of butter the amount of moisture and fat contained in the butter, he could not be held guilty of an offence under section 7/16 of the Act and that inasmuch as butter was not included among the admixtures mentioned in Rule 44, the sale of butter in adulterated form was not prohibited. Repelling this plea, Mr. Justice Shah (as he then was) explained the significance of Rules 43 and 44 of the Rules as follows: -

'IT may be noted that the rule does not apply in cases of articles which are pure in themselves and which are required by the Act or the Rules to be sold in pure condition. It applies only in case of an article to which something has been added or with which something has been mixed with a view to either enhance the taste of the article or the nutritive value of that article. Nevertheless, such article must

initially conform to the standard prescribed by the Act or the Rules and the addition of any ingredient or admixture contained in that article as also the deficient ingredient, if any, are required to be specified on the label attached to the package containing the article, so that the purchaser might know that the article that he is buying conforms to the standard prescribed by the Act or the Rules, as the case may be, and that, without affecting that standard in any way, the article contains certain kind and quantity of addition or admixture or is deficient in a certain ingredient to a certain extent. The rule can never mean that the vendor of the article can make a declaration on the label of the package containing article specifying the amount of addition, admixture etc., regardless of the standard laid down by the Act or the Rules in respect of that article and contend that having complied with provisions of that rule he cannot be held bound by the provisions of Sec. 7 of the Act, and that he can sell even an 'adulterated' article to any one he liked. If this contention were to be accepted, the result to my mind, would be preposterous, one he liked. If this contention were to be accepted, the result to my mind, would be preposterous because, in every case where such a declaration is made by a vendor of an adulterated article he can always claim to be entitled to sell such article with impunity and the consequence that would necessarily follow there from would be that the public health would considerably suffer from consumption of such article and the object of the Act would be entirely frustrated.'

(18) Rules 43 and 44-A of the Rules cannot, thereforee, come to the help of the petitioner.

(19) Reference has also been made to a decision of the Supreme Court in M. V. Krishnan Nambissan v. State of Kerala : 1966 CriLJ1347 . In this case, the accused was selling "skimmed thick butter-milk' in his shop and the Food Inspector purchased a sample and sent it for analysis. The Public Analyst reported that the solids-not-fat content in the said sample was 7.5 per cent as against 8.5 per cent prescribed for curd and that the sample contained not less than 11 per cent of added water. The sample was again sent to the Central Food Analyst and he reported that the solids-not-fat content in the sample was 6.4 per cent. The accused was prosecuted for an offence under section 16(1)(a)(i) read with section 7 of the Act and Rule 44 of the Rules. The charge against him was that he

exposed for sale 'skimmed thick butter-milk' which on analysis was found to be adulterated with water to the extent of 11 per cent. The accused was acquitted by the trial Court on the ground that no standard of purity was prescribed for butter-milk. and thereforee, the accused could not be convicted for an offence under the Act and the Rules. On an appeal, the High Court took the view that the standard for milk had been fixed by the Rules and the same standard was made applicable to curd and that, as butter-milk was in essence curd from which butter had been extracted, the butter-milk should contain the same quantity of solids-not-fat as curd should contain. On this reasoning, the High Court held that, as the sample showed only 6.4 per cent of solids-not-fat content while it should have contained 8.5 per cent of it, the accused had committed an offence under the said provisions. The Supreme Court, after referring to the standards prescribed in Appendix B to the Rules for milk and milk products, made the following observations:-

'IT will be seen from the said provisions that it is not an ingredient of the definition of butter-milk that it should contain any particular percentage of solids-not-fat. Indeed, no standard in regard its contents is prescribed. The only standard, if it may be described as one, is that it shall be a product obtained after removal of butter from curd by churning or otherwise. It is not suggested that the butter-milk in question was not a product obtained in the manner described there under. Prima facie, thereforee, it follows that the appellant has not committed any offence with which he was charged, namely, that he had added water to the extent of Ii per cent to buttermilk.'

(20) The Supreme Court proceeded to make the following observations:

'IT will be seen from the definitions of the various products in Appendix B to the Rules, which we have already extrtacted, that wherever the rulemaking authority intended to prescribe a specific standard for the contents of a product, it definitely states so. The standard of solids-not-fat are fixed for the milk of cow, buffallow, goat or sheep. Though standards are fixed for the said milk products, in defining 'skimmed milk', 'deshi (cooking) butter' and 'skimmed milk dahi or curd' the standard of quality is prescribed with reference to other products. But when we come to butter-milk, no standard for its contents either specifically or with

reference to other items is prescribed. A comparative study of the said items leaves no room for doubt that the rule-making authority, for reasons, which, we think, are obvious, has not thought fit or feasible to prescribe any such standard in regard to the contents of butter-milk. We cannot by inference read something in the definition of butter-milk which is not there.'

(21) This decision is equally unhelpful to the petitioner because we are not in this case dealing with the question whether the lassi sold by the petitioner was adulterated. If we were dealing with such a question, then, perhaps, applying the rule laid down by the Supreme Court in the case cited above it may be held that lassi was not adulterated notwithstanding the fact that the bura which went in the preparation of the lassi was itself adulterated. In the present case, we are dealing with the question whether the bura which was admittedly adulterated was sold to the Food Inspector by the petitioner.

(22) The learned counsel has further contended that section 10 of the Act gives the power to a Food Inspector to take a sample of an article of food from a person who sells it or who stores it for sale and that it does not empower the Food Inspector to take a sample of such food article from a person who does not sell it or store it for sale but who merely uses it in the preparation of another article of food which he sells. According to the learned counsel, if the person who keeps such an article of food in his premises only for the purposes of using it in the preparation of another article of food and if such a person refuses to sell the said article of food to the Food Inspector and also refuses to accept its price, then, the Food Inspector has no power under section 10 of the Act to take a sample of such article of food from such person. The relevant portion of section 10 of the Act may be reproduced : -

'(1)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.'

'(2)Any Food Inspector may enter and inspect any place where any article of food is manufactured, stored or exposed for sale and take samples of such articles of

food for analysis. (3) 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.'

(23) The article of food referred to in clause (a) of sub-section (1) of section 10 of the Act has to be considered in the light of the definition of the word 'food' in section 2(v) of the Act, namely,-

'FOOD'means 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, and (b) any flavouring matter or condiments.'

(24) The article of food referred to in clause (a) of sub-section of section 10 thus includes any article which ordinarily enters into or is used in the composition or preparation of human food. Bura is certainly such an article of food and the Food Inspector has the power to take samples of such article from any person selling such article. It may be that the petitioner in this case may not be selling the article of food, namely, bura, as such. But the powers of the Food Inspector under section 10(1)(a)(i) of the Act are not restricted to the taking of a sample of an article of food from a person selling the said article as such. The words 'such article' appearing in sub-clause (i) of clause (a) of sub-section (1) of section 10 would only mean an article of food appearing in clause (a) of the said section. If we were to accept the construction put by the learned counsel for the petitioner on sub-clause (i), we will have to add the words 'as such' after the word 'article' in sub-clause (i). It is no doubt true that what the petitioner sells in his shop is lassi, but in selling lassi for a particular price, he takes into consideration the price of the bura which he has used in the preparation of the lassi. The price of the lassi sold by the petitioner is, of course, not the price of the bura used in the preparation of the lassi but includes the price of the other ingredients of the lassi and also the value of the services rendered by the petitioner in preparing the lassi. But in selling the lassi, the petitioner id also selling the ingredients that go to make the lassi as well as his services. The decision of the Full Bench of this Court is Municipal Corporation of Delhi v. Laxmi Narain Tandon and another (supra) will not help the

petitioner. In that case, one of the questions for consideration before the Full Bench was-

'WHETHER for purposes of the Act there is no sale of food which is provided by a hotelier to a guest when a consolidated charge is made for room and the other amenities, including food, and when no rebate is allowed for any meal which may not be taken by the guest?'

(25) The Full Bench answered this question by holding that there was no sale of food. But, while so doing, their Lordships also made the following observations: -

'IT may, however, be added that if a residential hotel permits non-residents to have meals against payment or undertakes catering for outsiders, it would not be possible to say which particular portion of any article of food is meant for the use of residents and which is meant for outsiders. In that case the articles of food kept in the hotel may be regarded for sale,'

(26) These observations, in our view, would imply that if there was no consolidated charge by the hotelier for the room and other amenities including food and there is a separate charge for the food served to a guest, then, that would amount to a sale of food. Their Lordships in that case had, however, no occasion to consider the question whether the taking of a sample by the Food Inspector from an article of food which is used as an ingredient in the preparation of the food supplied to the guest would amount to a sale. But the observations which we have quoted above do support the view that if a separate charge was made for the food supplied to the guest, then. the taking of a sample of an article of food which is used in the preparation of the food supplied to the guest, would amount to a sale.

(27) The learned counsel for the petitioner contends that section 10(1) of the Act cannot be considered as giving an unlimited power to the Food Inspector to take a sample of any article of food from any person found in possession of such article of food. We are in entire agreement with this contention. For instance, the Food Inspector cannot take a sample of an article of food from a person who neither sells it as such nor keeps it for the preparation of any article of food which he sells. For instance, if a dealer in rice keeps in his shops a certain quantity of sugar which

he requires for his domestic consumption, the Food Inspector has no power to take a sample from the sugar for the purposes of analysis. The power of the Food Inspector to take a sample under section 10(1) of the Act is restricted to taking such samples from a person who sells such article of food in the sense that he either sells it as such or uses it in the preparation of another article of food which he sells.

(28) The legal position, thereforee, appears to be as under: If a person is a dealer in an article of food as such and he sells it to a Food Inspector for the purposes of analysis and the sample is found to be adulterated, he is guilty of an offence under the Act. If a person who is a dealer in an article of food as such. refuses to sell it to a Food Inspector, the latter has the power under section 10(1) of the Act to take a sample of the article of food for the purposes of analysis and the dealer cannot prevent him from taking such a sample. His unwillingness to accept the price of the sample will thus be wholly immaterial. He would still be guilty of an offence under the Act. If a person, who is not a dealer of an article of food as such and who keeps it only for the preparation of another article of food meant for sale, sells such an article to the Food Inspector for the purposes of analysis' and if the sample is found to be adulterated, he is again guilty of an offence under the Act. Even if he does not sell such an article of food to the Food Inspector and even if he does not accept the price tendered by the Food Inspector, section 10(1) of the Act empowers the Food Inspector to take a sample of such an article of food and that all that the Food Inspector is required to do in such circumstances is to tender payment of the price of the sample. It does not matter whether the person from whom the sample is taken accepts such payment or not. If such article of food is found to be adulterated, even then the person from whom such sample was taken will be guilty of an offence under the Act. thereforee, the position of the petitioner in the criminal revision is in no way different from that of the respondents in the two criminal appeals. All of them are guilty of an offence under section 16(1)(a)(i) read with section 7 of the Act.

(29) Such a position would be in conformity with the object for which the Act has been enacted, namely, to prevent adulteration of food and to protect the health of the citizens. If we were to accept the plea that it is only the voluntary sale of an

article of food as such that comes within the mischief of the Act, it would, in our view, defeat the very purpose of the Act. The Legislature did not think it necessary to prescribe standards of purity for the finished product, because it has prescribed the standards of purity for the ingredients which went in the preparation of the finished products. Perhaps, it would be impossible to prescribe standards for the innumerable varieties of the finished products that are sold to the public for consumption. The purity in such products is ensured by the prescription of standards of purity for the ingredients which go to make these products. We have, thereforee, to consider the various provisions of the Act in the light of the scheme of the Act and the object for which the Act was enacted. The construction that we have placed on the several provisions of the Act is, in our view, in conformity with the scheme of the Act as well as the object for which it was enacted.

(30) In the result, the conviction of the petitioner in the final revision is confirmed. The acquittal of the respondents in the two criminal appeals is set aside and they are convicted under section 16(1)(a)(i) read with section 7 of the Act. As regards the sentences, the learned counsel appearing for the Municipal Corporation Delhi, has been very fair in conceding that he was concerned only with the principles involved in these cases and that he did not insist upon the award of deterrent sentences against the convicted persons. Each of the convicted persons, i.e., the petitioner in the criminal revision and the respondents in the criminal appeals, will, thereforee, pay a fine of Rs. 100 and in default of payment of fine, will undergo simple imprisonment for seven days. Criminal Revision No. 305/67 is dismissed and the Criminal Appeals Nos. 76 and 77 of 1968 are allowed.

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