

Behari Lal Vs. State

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Court : Delhi

Decided On : Dec-26-1971

Reported in : ILR1972Delhi497

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

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 2

Appeal No. : Criminal Revision Appeal No. 130 of 1969

Appellant : Behari Lal

Respondent : State

Advocate for Pet/Ap. : D.R. Sethi and; R.N. Dixit, Advs

Judgement :

M.R.A. Ansari, J.

(1) The Municipal Corporation of Delhi filed a complaint against the petitioner Behari Lal and the firm of M/s. Budh Ram Behari Lal under section 7/16 of the [Prevention of Food Adulteration Act, 1954](#) (hereinafter referred to as the Act) with the allegations that on 28-11-1967, at about 4.00 P.M., the petitioner was keeping ghee for sale at shop No. 1225, Maliwara, Delhi, out of which the Food Inspector of the Corporation purchased a sample from the petitioner which, on analysis by the Public Analyst, was found to be adulterated. The prosecution examined the

Food Inspector who had purchased the sample of ghee from the petitioner as P.W. I and also examined two witnesses who are said to have been present at the time Public Witness I purchased the sample from the petitioner. They are Public Witness s. 4 and 5. One of these witnesses, namely, Public Witness 5, supported the prosecution case in its entirety, but the other witness, namely, Public Witness 4, did not support the prosecution case fully and was treated as hostile by the prosecution. The petitioner, in his statement under section 342 Criminal Procedure Code ., admitted that the sample of ghee was taken from his shop by Public Witness I, but denied that he was keeping the said ghee for sale. According to him, the ghee belonged to one Ram sarup. He examined two defense witnesses, one of whom was Ram Sarup, D.W. 2. He stated that he was the owner of the ghee from which the sample had been taken. The other defense witness, D.W. 1, was examined as an expert. He stated that the presence of a small quantity of sesame oil in the ghee might be due to the feeding of the animal on sesame cake and that this would not amount to an adulteration. At the instance of the petitioner, a sample of the ghee was also sent to the Director of Central Food Laboratory, Calcutta and the latter sent his report to the effect that the ghee was adulterated due to the presence of sesame oil. The learned Magistrate, on a consideration of this evidence, held that the petitioner was in fact keeping the ghee for sale and also that the ghee was adulterated inasmuch as it was found to contain sesame oil. Since the petitioner had claimed to be the sole proprietor of the firm, the petitioner was convicted under section 7/16 of the Act and sentenced to undergo rigorous imprisonment for six months and also to pay a fine of Rs. 1,000.00 and in default, to undergo rigorous imprisonment for a further period of three months. The firm of M/s. Budh Ram Behari Lal was acquitted. The petitioner filed an appeal before the Additional Sessions Judge, Delhi, against his conviction and sentence, but the same was dismissed and the conviction and sentence passed against the petitioner were confirmed. The petitioner has filed the present revision petition against his conviction and the sentence passed against him.

(2) The evidence of Public Witness s. 1 and 5 having been accepted and the evidence of D.W. 2 having been rejected by the trial Court as well as the appellate Court, it is not open to this Court, sitting in revision, to reappraise that evidence on the question whether the ghee, a sample from which was taken by the Food

Inspector, belonged to the petitioner or belonged to D.W. 2. As a matter of fact this question was not re-agitated(r)before us by the learned counsel for the petitioner. We would, therefore, proceed on the basis that the petitioner was found to be keeping for sale the ghee a sample from which was purchased by the Food Inspector. The only question for consideration is whether this ghee was adulterated within the meaning of section 2(i) of the Act.

(3) The relevant clause of section 2(i) of the Act is clause (1), Section 2(i)(1) is in the following terms :-

'2. In this Act unless the context otherwise requires,-

(i) 'adulterated'-an article of food shall be deemed to be adulterated,-

(1)if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities which are in excess of the prescribed limits of variability.'

The standard prescribed for ghee is found in Appendix B to the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as the Rules). The relevant standard is A. 11.14 which is in the following terms :-

'GHEE means the pure clarified fat derived solely from milk or from curd or from deshi (cooking) butter or from cream to which no coloring matter or preservative has been added. The standard of quality of ghee produced in a State or Union territory specified in Column 2 of the table below shall be as specified against the said State or Union Territory in the corresponding Columns 3, 4, 5 and 6 of the said table.'

Seriall No. 4 of this table relates to the Union Territory of Delhi and the standards required are-

'1. Bilyro re-fractionate reading at 40 C. 40 .0 to 43 .0 2. Minimum Reichery Value. 28 3. Percentage of Free fatly acid a', oleic acid (maximum limit). 3.0 4. Percentage of moisture (maximum limit) O.3'

Below Seriall No. 18 appear the following words :-

'BAUDOUIIN test shall be negative.'

(4) The following was the result of the test carried out by the Public Analyst on the sample of ghee taken from the petitioner :- 1. Butyro refractometer reading at 40 C. 49.8 2. Reich it Value 9.02 3. Free fatty acids as oleic acid 0.56% 4. Moisture. 0.16% 5. Baudouin Test Positive 6. Nelplien Test. Negative.

7. Colour. No artificial colour present.

The Public Analyst expressed his opinion as follows :-

'THE sample is adulterated due to 6.8 excess in Butyro refractometer reading at 40C, 18.98 deficiency in richest Value and Baudouin Test being positive.'

The test carried out by the Director of Central Food Laboratory yielded the following results :-

1. Moisture. 0.3% 2. Butyro refractometer reading at 40 C. 42.0 3. richest Value. 28.9 4. Free fatty acid as Oleic acid. 1.5 % 5. Baudouin test for sesame oil. Positive (Sesame oil present) 6. Added coloring matter Absent.

The Director expressed his opinion that the sample of ghee was adulterated, but gave no reasons for his opinion.

(5) It would, thus, appear that there is a slight difference between the report of the Public Analyst and the certificate of the Director with regard to the result of the tests carried out by them on the sample of ghee taken from the petitioner. But under section 13(5) of the Act, the certificate of the Director has to be preferred to that of the report of the Public Analyst and the certificate shall be final and conclusive evidence of the facts stated therein. Comparing the certificate of the Director with the standard prescribed under the Rules, it would appear that except for the presence of sesame oil, the sample of ghee taken from the petitioner conformed to the standards prescribed under the Rules. The Butyro refractometer reading at 40C showed 42.0 as against the reading of 40.0 to 43.0 as prescribed in the standard. The minimum richest Value in the sample was found 28.9 as against the minimum of 28 prescribed in the standard. The free fatty acid as oleic

acid in the' sample was found at 1.5% as against the maximum of 3.0 prescribed in the standard and the maximum moisture in the sample, namely, 0.3%, did not exceed the maximum of 0.3% prescribed in the standard. There is also no coloring matter found in the sample. The sample did not conform to the standard prescribed under the Rules only in one respect, namely, that whereas the standard prescribes that the Baudouin test shall be negative, the sample discloses that the Baudouin test was positive. The result of the Baudouin test indicated that sesame oil was present in the sample whereas, according to the standard, sesame oil should not be present.

(6) The learned counsel for the petitioner contends that the presence of a small quantity of sesame oil in the sample of the ghee may be due to natural causes, i.e., as a result of feeding the animal on sesame cake. In support of this contention, he seeks to rely upon the evidence of D.W. I and also on certain textbooks. D.W. I has been examined as an expert in view of his experience and qualifications. He is the holder of a degree in M.Sc. (Tech.) and has experience of testing ghee for over 29 years. He has worked in the Military Ghee Centre, Agra, as a Chemist-in-Charge for about 10 years and thereafter, he has set up his own private laboratory for testing ghee. According to this witness, presence of sesame oil in small quantities may be due to the feeding of the animal on the sesame cake. He has expressed his opinion that in such a case, the ghee cannot be said to be adulterated. The evidence of this witness to the extent that the presence of a small quantity of sesame oil in ghee may be due to the feeding of the animal on sesame cake derives support from certain recognised textbooks. Morris B. Jacobs, in his book 'The Chemical Analysis of Foods and Food Products' Third Edition, has observed thus at page 401 :-

'THE same precautions must be observed in interpretation of results obtained with this test as that with the Halphen test, for cows and hogs fed on sesame cakes yield butter and lard giving a positive Villavechia or Baudouin reaction.'

Again at page 402,. this is what the learned author has observed :-

'THE committee has found that as little as 0.25 per cent of sesame oil can be detected, but is of the opinion that this limit should be accepted with reservations.

It is the considered judgment of the committee that there is every assurance that at least 0.5 per cent of sesame oil is detectable and that the lower limit with respect to the fully hydrogenated oil is 1 per cent.'

A.G. Woodman in his book 'Food Analysis Typical Methods and the Interpretation of Results' 4th Edition, has expressed the following opinion at page 210 :-

'ALSO it has been noted, as in the case of the Halphen reaction for cottonseed oil, that lard oil or butter prepared from animals fed on sesame cake will give a positive, though faint, test for sesame oil.'

Again, this is what the learned author has observed at page 240 :-

'THE detection of foreign fats in butter should be classed among the most difficult problems of food analysis, and requires thorough physical and Chemical examination in order to show the adulteration with certainty in all cases. The problem is in some ways a more difficult one than the examination of olive oil for adulterants because of the great natural variation that occurs in butter fat with manner of feeding, time of year, and period of location.'

David Pearson in his book 'The Chemical Analysis of Foods' 5th Edition has observed as follows at page 425 :-

'BUTTER or lard produced from animals fed on sesame cake may give a faint pink. There is always the possibility that dyes may be present, in butter for instance, which give a pink colour with the acid, but this can be checked by carrying out the test without the sucrose.'

(7) From the above textbooks, it would appear that a small percentage of sesame oil may be present in the ghee on account of the animal being fed on sesame cake. In the present, case, neither the Public Analyst nor the Director, Central Food Laboratory, has indicated the quantity of the sesame oil present in the sample of ghee examined by them. It is no doubt not necessary for the Public Analyst or the Director to mention in their reports the exact quantity of the sesame oil inasmuch as there is a total prohibition under the standards for ghee against the presence of sesame oil in the ghee. In cases where there is a total prohibition

against presence of any foreign matter, it is not necessary for the Public Analyst or the Director to mention the exact quantity of the foreign matter which was found present in the article of food, because its presence in any quantity would amount to adulteration. But if the Public Analyst or the Director had mentioned the exact quantity of sesame oil present in the sample of ghee, then, it would have been possible for us to come to a conclusion whether the presence of sesame oil was due to its being added by human agency or whether it was due to natural causes, like feeding of the animal on sesame cake. In the absence of the quantity of sesame oil being mentioned, it is open to the petitioner to contend that the quantity of sesame oil present in the sample was very small and that the presence of this small quantity was due to the feeding of the animal on sesame cake. This contention derives further support from the fact that in all other respects the sample conformed to the standards prescribed under the Rules which would not have been the case if sesame oil was present in any appreciable quantity. The question will, however, arise whether the presence of the sesame oil as a result of the feeding of the animal on sesame cake will still amount to adulteration.

(8) It is contended by the learned counsel for the petitioner that an article of food can be said to be adulterated only if it is adulterated by human agency and not when it is adulterated due to natural causes. It is argued that in such cases there is no means read in the vendor, because he is not aware of the presence of sesame oil in the ghee as a result of natural causes. In support of this contention, he seeks to rely upon a decision of the Allahabad High Court in *Municipal Board, Bareilly v. Ram Gopal* : AIR1940 All517 (1) and the decision of the Supreme Court in *Mangaldas Raghavji Ruparel v. Maharashtra State* : 1966 CriLJ106 . In the Allahabad case one Ram Gopal was the owner of the shop in which one Darshan Singh was permitted to sell his ghee, the consideration for such license being a commission fixed by reference to a percentage of the sale price. There was no evidence that Ram Gopal exercised any control over Darshan Singh and still less that he had any property or other interest in the ghee sold by Darshan Singh. On these facts, it was held that if a commission agent of this sort, who had a shop at a particular place, allowed another person to offer ghee for sale at his shop and in his presence and with profit to himself, the only reasonable view to take on the facts was that the owner of the shop was exposing the ghee for sale equally and

jointly with the owner of the ghee who was the vendor. But it was further held that there was nothing in section 6 of the U.P. Prevention of Adulteration Act, 1912 to preclude a person who was not the vendor, but who was exposing the' goods for sale, from pleading what he himself was ignorant of the quality etc., of the ghee which the vendor was offering for sale. The opinion was expressed that in order to justify the conviction of a person who was not himself the actual vendor, it was necessary to prove the existence of the circumstances from which it could reasonably be inferred that he was aware of the adulteration. This decision, in our view, does not help the petitioner, because, according to the concurrent findings of the two Courts below which have accepted, the petitioner himself was the vendor of the ghee and under section 19 of the Act, it is not open to the vendor to plead that he was ignorant of the nature, substance or quality of the food sold by him.

(9) In the case of Mangaldas before the Supreme Court, Mangaldas was a wholesale dealer, commission agent, exporter, supplier and manufacturer of various kinds of spices doing business at Bombay. Daryanomal, who was engaged in grocery business at Nasik, had purchased a bag of haldi (turmeric powder) from Mangaldas which was dispatched by the latter through a public carrier. This bag was received by Daryanomal's servant, Kodumal, and from the latter, the Food Inspector purchased 12 oz. of turmeric powder contained in the bag sent by Mangaldas. This was found to be adulterated. All the three, namely, Mangaldas, Daryanomal and Kodumal, were prosecuted for offences under section 16(1)(a) read with section 7(v) of the Act. One of the contentions advanced on behalf of Mangaldas was that it was necessary for the prosecution to prove that Mangaldas had the means read to commit the offence. It was argued that section 19(1) of the Act deprived only the vendor of the right to contend that he was ignorant of the nature, substance or quality of the food sold by him and that Mangaldas himself was not a vendor. This contention was not accepted by the Supreme Court and it was held that Mangaldas was also the vendor within the meaning of section 19(1) of the Act inasmuch as he had sold the bag of turmeric powder in the first instance to Daryanomal. The case of the Municipal Board, Bareilly,(1) referred to above, was also cited, but the Supreme Court held that the case was not applicable in view of the fact that Mangaldas was a vendor of the turmeric powder which was found to be adulterated. The case of Hariprasada Rao

v. The State : 1951 CriLJ768 was also cited in which it was held that unless a statute either clearly or by necessary implication ruled out means read as a constituent part of the crime, a person should not be found guilty of an offence against the criminal law unless he had got a guilty mind. Commenting upon the above proposition laid down in Hariprasada Rao's(s) case, the Supreme Court observed as follows :-

'THE proposition there stated is well established. Here S. 19(1) of the Act clearly deprives the vendor of the defense of merely alleging that he was ignorant of the nature, substance or quality of the article of food sold by him and this places upon him the burden of showing that he had no means read to commit an offence under section 7/16 of the Act.'

therefore, the Supreme Court rejected the contention that it was the duty of the prosecution to prove means read for an offence under section 7/16 of the Act.

(10) The learned counsel for the petitioner, however, argues that even if the duty is not cast upon the prosecution to prove means rea, it is always open to the accused to prove that he had no means rea. According to the learned counsel, it is open to the petitioner in this case to prove that he was not aware of the presence of sesame oil in the ghee sold by him. But this plea is not open to the petitioner in view of the clear language of sub-section (1) of section 19 of the Act. The position is placed beyond doubt by the judgment of the Supreme Court in Sarjoo Prasad v. The State of Uttar Pradesh : 1961 CriLJ747 wherein it was observed as follows :-

'EVERY person, be he an employer or an agent is prohibited from selling adulterated food and infringement of the prohibition is by S. 16, penalised. By S. 19(1) in a prosecution for an offence pertaining to the sale of any adulterated article of food it is no defense merely to allege that the vendor was ignorant of the nature of the substance or quality of the food sold by him. Prohibition of sale of adulterated food is evidently imposed in the larger interest of maintenance of public health. If the owner of a shop in which adulterated food is sold is without proof of means read liable to be punished for sale of adulterated food, there is no reason when an agent or a servant of the owner is not liable to be punished for contravention of the same provision unless he is shown to have guilty knowledge.'

By virtue of section 2(i)(1) of the Act, an article of food shall be deemed to be adulterated if the quality or purity of the article falls below the prescribed standard. Section 7 of the Act prohibits persons either themselves or by any person on their behalf from selling any adulterated article of food and section 16 of the Act makes it an offence for a person either by himself or by any other person on his behalf to sell any article of food which is adulterated. The Act, therefore, imposes a total prohibition on the sale of any adulterated article of food. The Act does not make any distinction between cases of an article of food which is adulterated due to human agency and an article of food which is adulterated due to natural causes. Where the Legislature totally imposes a ban on the sale of an adulterated article of food it is not open to the Courts to make any distinction on the basis of adulteration due to human agency and adulteration due to natural causes. This position was clarified by the Supreme Court in the case of *M. v. Joshi v. M. U. Shimpi and another* : [1961]3SCR986 .The following observations of the Supreme Court clarify the position :-

'THEREFORE, if the quality or purity of butter falls below the standard prescribed by the said rule or its constituents are in excess of the prescribed limits of variability, it shall be deemed to be adulterated within the meaning of S. 2 of the Act. If the prescribed standard is not attained, the statute treats such butter, by fiction, as an adulterated food, though in fact it is not adulterated. To put it in other words, by reason of the fiction, it is not permissible for an accused to prove that, though the standard prescribed is not attained the article of food is in fact not adulterated. The non-conformity with the standard prescribed makes such butter an adulterated food.'

The Supreme Court also point out the difference between the Indian law and the English law on this subject. Referring to the case of *Hunt v. Richardson* (1961) 2 K. B. 446 the Supreme Court noted that in that case the deficiency in the milk fat was not due to any abstraction from the milk or the addition thereto, but because of the herbage on which the cows were fed. The Supreme Court observed that though this was not an offence under the English Act, 'in the Indian Act selling butter below the prescribed standard is deemed to be adulteration. If the standard is not maintained, the butter, by a fiction, becomes an adulterated food. A dealer in

such butter cannot adduce evidence to prove that notwithstanding the deficiency in the standard, it is not adulterated.'

(11) In the case of ghee, however, there is sufficient material to come to a conclusion that the Legislature had in fact taken into consideration the possibility of the presence of a foreign substance in ghee due to natural causes. In the table appended to standard A.11.14, a lower minimum richest value has been prescribed in respect of certain States than the minimum prescribed in respect of the other States. For instance, in certain parts of Gujarat State and in cotton tract areas of Madhya Pradesh State, the minimum richest value prescribed is 21 as against the minimum richest value of 28 prescribed for Delhi and some other States. There is also an Explanation to the table to the effect that 'by cotton tract is meant the areas in the States where cotton seed is extensively fed to the cattle and so notified by the State Government concerned.' This would indicate that the Legislature took into account the possibility of the presence of a foreign substance in ghee in certain areas due to natural causes. Having taken this factor into consideration, the Legislature, however, did not consider it necessary to make an exception in respect of cases which would yield a positive result to the Baudouin test by reason of the feeding of the cattle on sesame cake. It is not for the Courts to question the wisdom of the Legislature in making a distinction between the case of cattle fed on cotton seed and the cattle fed on sesame cake. It is within the province of the Legislature alone to consider the desirability of modifying the standards so as to give relief to persons like the petitioner, who, for no fault of theirs, come under the mischief of the penal provisions of the Act.

(12) We have, therefore, to hold that even if the presence of sesame oil in the sample of ghee taken from the petitioner was not due to adulteration by human agency but was due entirely to natural causes, like the feeding of the cattle on sesame cake, the petitioner is guilty of the offence of selling adulterated ghee. As already discussed, the report of the Director of Central Food Laboratory does not show the percentage of sesame oil found present and so its presence due to natural causes only cannot be ruled out. The facts of this case, however, do not call for the award of the minimum sentence provided under section 16(1) of the Act. This is a case to which the proviso to section 16(1) is applicable, because the

adulteration is under sub-clause (1) of section 2(i) of the Act. The offence committed by the petitioner is only a technical offence and the ends of justice will be sufficiently met by the imposition of a nominal sentence. thereforee, while confirming the conviction of the petitioner under section 7/16 of the Act, the sentence is modified into one of fine of Rs. 100.00. In default of payment of fine, the petitioner will suffer simple imprisonment for one month. Subject to this modification in the sentence, the petition is dismissed.

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