

Chand and ors. Vs. State

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Court : Delhi

Decided On : May-24-1985

Reported in : 28(1985)DLT360; 1986(11)DRJ247

Judge : J.D. Jain, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 7

Appeal No. : Criminal Revision Appeal Nos. 209 and 210 of 1984

Appellant : Chand and ors.

Respondent : State

Advocate for Pet/Ap. : S.N. Chaudhary and; Nemo., Advs

Judgement :

J.D. Jain, J.

(1) The facts giving rise to the above-mentioned revision petition in brief are that on 17th April 1979, Food Inspector Arun Kumar accompanied by another Food Inspector Baljit Singh visited the premises bearing No. 4634, Gali Abdul Building, Roshanara Road, where a factory called Amrit Soda Water Factory was being run and carbonated aerated water was being manufactured Sri Chand-appellant was present there. He was looking after the business of the said factory and was conducting manufacture and sale of carbonated aerated wafer After disclosing

their identity Arun Kumar lifted a sample of carbonated aerated water which comprised nine bottles of carbonated aerated water duly sealed with identical crown corks. They bore the label that the carbonated water had been made with sugar and saccharine and had no coloring matter. A little while afterwards i.e. at about 4 p.m.

(2) Baljit Singh, Food Inspector, too lifted another sample of carbonated aerated water having similar crown corks and labels. Both the samples were purchased by the Food Inspectors in accordance with the provisions of the Prevention of Food Adulteration Act (for short 'the Act') and the Rules made there under. One counterpart each of both the samples was sent to the Public Analyst for analysis and the Public Analyst found that the same were mis-branded on account of their having prepared with saccharine only although the declaration mentioned on the bottles was that they contained both sugar and saccharine. Thus, according to the Public Analyst, there was excess of saccharine by 50 P. p.m. beyond the prescribed limit. Thereupon, both Sri Chand and his father Shivan Dass were prosecuted under Section 7 read with Section 16 of the Act for storing for sale and selling adulterated carbonated water. Shivan Dass was said to be proprietor of the aforesaid firm while his son Shri Chand was said to be storing and selling the adulterated carbonated water on behalf of Shivan Dass.

(3) Both the petitioners were convicted of the aforesaid offence by the trial Court vide judgment dated 27th April 1983. Feeling aggrieved, they went in appeal to the Court of Session but met with no success. However, their sentence was reduced to rigorous imprisonment for six months and a fine of Rs 1,000.00 each; in default of payment of fine they were awarded further simple imprisonment for two months. Since both the samples had been lifted almost simultaneously the sentence awarded in both the cases were directed to run concurrently.

(4) Have heard counsel for the petitioners and gone through the evidence on record. There was, however, no appearance on behalf of the State.

(5) It may be stated at the outset that the revision petitions so far they related to Sri Chand were dismissed by me earlier in liming vide order dated 9th January 1985 the revision petitions with regard to Shivan Dass only were admitted.

(6) The principal submission made by the learned counsel for the petitioner-Shivan Dass is that there is no iota of evidence on record to establish that Shivan Dass was owner of the factory mentioned above and further that his son Sri Chand was conducting the business on behalf of Shivan Dass. It is pointed out that the license obtained by Shivan Dass for carrying on the business of carbonated aerated water was valid up to 31st March 1979 only and he never got it renewed. Hence, the act of Sri Chand in manufacturing, storing for sale or selling the carbonated water was absolutely unauthorised and at any rate no vicarious liability can be fastened on Shivan Dass on that account. However, on going through the evidence on record I am not persuaded to accept this contention. It is for the reason that Food Inspector Arun Kumar has deposed in unequivocal terms that the proprietor of the factory was Shivan Dass. This statement of his was allowed to go unchallenged and no question was put to him with regard to the same during the course of cross-examination by the defense counsel. Thus, there is no reason to disbelieve Food Inspector-Arun Kumar on this aspect of the matter. The law is well settled that where the evidence of a witness is allowed to go unchallenged with regard to any particular point it may safely be accepted as true. So, the contention of counsel for the petitioner-Shivan Dass that mere ipse dixit of Food Inspector Arun Kumar cannot be accepted as gospel truth is absolutely devoid of any merit. It was certainly open to the defense to elicit information from Arun Kumar with regard to the source of his knowledge on the basis of which he had made the above statement but unfortunately for the petitioner no such attempt was ever made. That besides, there is also the evidence of Shri S.P. Tripathi, Licensing Clerk, Municipal Corporation of Delhi, (Public Witness 4) to the effect that that Shivan Dass was given license vide receipt dated 27th June 1978 for carrying on the business of carbonated water. He had also brought the relevant record which showed that the license was with respect to premises No. 4634, Roshanara Road, Sabzi Mandi. It was valid up to 31st March 1979. Certainly this piece of evidence, which too was allowed to go unchallenged, lends support to the deposition of Arun Kumar that the petitioner-Shivan Dass was the proprietor of the aforesaid concern. Significantly in his examination under Section 313, Code of Criminal Procedure, the only answer which Shivan Dass gave was that he had been mentioned as a proprietor but he had left the entire business ten years ago as he was suffering

from melancholia. This Explanation fails to carry conviction for the simple reason that he had obtained the license even as late as 1978 and the same expired on 31st March 1979. So, the more fact that he did not apply for renewal of the license beyond March 1979 until 17th April 1979 when the sample in question was lifted would not warrant an inference that he had ceased to be owner of the factory. Hence, the finding of the trial Court as also of the appellate court that he was owner of the aforesaid factory is perfectly in order.

(7) The next submission of the learned counsel for the petitioner is that even if the petitioner were held to be proprietor of the factory he could not be held criminally liable for the act done by his son in his business, it being the admitted case of the prosecution itself that the petitioner was not present at the time of the sample taking. His line of argument is that the prosecution must prove that the petitioner-Shivan Dass was in charge of and responsible for the conduct of the business of the firm. In other words, he seeks to invoke the principle embodied in Section 17 of the Act (in relation to the 'commission of offences by companies' which term, inter alia, includes partnership firms. However, this argument is totally misconceived, for the firm M/s. Amrit Soda Water Factory is not a partnership concern and is a sole proprietary concern of the petitioner. So, the provisions contained in Section 17 would not be applicable to the instant case. That is why the firm has not been prosecuted as such and only the petitioner and his son in his capacity as agent of the petitioner have been prosecuted. Section 7 of the Act prohibits every person, be he an employer or agent from manufacturing for sale, storing, selling or distributing any adulterated food. An infringement of the prohibition is penalised by Section 16. The expression 'himself or by any person on his behalf' appearing in Section 7 creates a vicarious liability of the proprietor of the business. It applies to the master who either sells by himself or by another (say a servant) on his behalf. In other words, the person contemplated in this expression is the master or the principal. Therefore, the master or the principal would be liable for the acts of his servant committed by him in the course of his ordinary duties and when a servant sells any commodity or any article of food stocked for sale by the master of the establishment, the master will be deemed to have authorised the sale of such article by the servant and if it turns out that the article is adulterated within the meaning of Section 2(i) of the Act, the master will also be liable under Section

16 although he was. not present at the time of the actual sale by the servant. (See in this connection *Budhmal v. State*, : AIR1959 Bom497 and *Ramanlal Chimanlal Shah and another v. The State of Gujarat and another.* (1967) 2nd G 189 The principle under-lying the vicarious liability of the master is that at a servant in charge of the business or in charge of the establishment of his employer at the relevant time sells an article and if the facts establish that the selling of the article was included in one of his normal duties as an employee, then the sale by him would be on behalf of his employer. In such a situation the implied authority of the master for the sale would be well warranted. Reference in this context be also made to *Ibrahim Haji Moidee v. Food Inspector, Nileshtar and another*, : (1969)3SCC901 , in which a lenient view of the matter of sentence was taken on account of the fact that the master/owner was not present at the shop at the time of sample taking. Hegde, J., as His Lordship then was, speaking for the Court observed:

'It is true as provided in the proviso to that section, the court may for adequate and special reasons to be mentioned in the judgment impose a sentence of imprisonment for less than six months or a fine of less than Rs. 1.000.00 . The Trial Court has imposed the minimum sentence prescribed under Section 16(1). The only reason given by the learned Sessions Judge for reducing that sentence is that the 1st accused was not present when the sale was effected. This is not a relevant consideration under Section 16(1). At any rate it cannot be considered as an 'adequate or special reason'.

(8) It is thus manifest that the petitioner cannot escape liability for the sale of adulterated article of food merely because he had not got his license renewed or that he was not present at the time of the sample taking.

(9) Yet another submission made by the learned counsel for the petitioner is that there is no evidence on the record to show that the sample article contained any substance which may be injurious or deleterious to health. However, this argument has to be stated to be simply rejected. The petitioner has been convicted of offence of mis-branding and, therefore, the consideration whether the food article had any substance which may be injurious or deleterious to health is not at all

relevant. Under Section 2(ix)(e) an article of food shall be deemed to be misbranded if false claims are made for it upon the label or otherwise. Likewise under clause (g) thereof, an article of food shall be deemed to be misbranded if the package containing it, or the label on the package bears any statement regarding the ingredients or the substances contained therein, which is false or misleading in any material particular. In the instant case, a claim was made on the cork of the bottle that the aerated water contained a mixture of sugar and saccharine whereas, in fact, it did not contain any sugar. Thus, the case would clearly fall under Sub-clauses (e) & (g) of Clause (ix) of Section 2. Hence, this contention too is devoid of any.

(10) To sum up, therefore, the conviction and sentence of the petitioner for the aforesaid offence being well founded calls for no interference. This petition is accordingly dismissed.

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