The State Vs. Badri

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SooperKanoon Citation : sooperkanoon.com/753126

Court : Rajasthan

Decided On : Dec-18-1964

Reported in : AIR1965Raj152; 1965CriLJ246

Judge : D.M. Bhandari and; V.P. Tyagi, JJ.

Acts : Prevention of Food Adulteration Act, 1954 - Sections 2(1), 7, 16 and 16(1)

Appeal No. : Criminal Reference No. 279 of 196(sic) and Criminal Revn. No. 428 of 1963

Appellant : The State

Respondent : Badri

Advocate for Def. : Rana Mal, Adv.

Advocate for Pet/Ap. : S.N. Gurtu, Deputy Govt. Adv.

Disposition : Revision partly allowed

Judgement :

Tyagi, J.

1. These are two connected cases which may well be disposed of by one single Judgment. S. B. Criminal Revision No. 428 of 1963 is a revision application filed by the petitioner Badri against his conviction and sentence passed under Section

7/16 of the Prevention of Food Adulteration Act by the Municipal Magistrate, Jodhpur, on 4th June, 1963, and upheld by the appellate Court whereby he is to undergo rigorous imprisonment for one year and to pay a fine of Rs. 2,000/- and in default or payment of fine to further undergo rigorous imprisonment for ten months. Learned Additional Sessions Judge, while disposing of the appeal of the petitioner, recorded his conclusion that under the circumstances of the case, the offence committed by the petitioner was the third one and therefore his sentence of imprisonment in accordance with the provisions of the law should be enhanced from one year's rigorous imprisonment to two years' rigorous imprisonment and the fine be increased from Rs. 2,000/- to Rs, 3,000/-. A reference (D.B. Criminal Reference No. 279 of 1963) is therefore made by the learned Additional Sessions Judge for the enhancement of the punishment of the petitioner.

2. The facts of the prosecution case are that on 14th July, 1959 the Food Inspector, while he was on his usual round, found the petitioner selling milk from one iron container at the crossing of the Residency and Pali roads at Jodhpur. That container at that time had about 10 to 12 seers of milk in it. The Inspector gave a notice to the petitioner in the prescribed form No. 6 and purchased 3/4th seer of milk and paid to the petitioner annas -/8/- as its price. The samples were sealed in three bottles in the presence of the petitioner and the motbirs and they were sent to the public analyst for examination. The report of the public analyst Ex. P. 4 revealed that the sample of the milk did not conform to the prescribed standard of purity. Therefore, after obtaining necessary sanction from the local authority, the petitioner was challaned in the Court of the Municipal Magistrate, Jodhpur, to stand his trial under Section 7/16 of the Prevention of Food Adulteration Act, 1954.

Learned trial Magistrate, after the trial, came to the conclusion that the milk was adulterated and it was found to contain the following percentage of fat and solid non-fat:

Fat Contents . . 3.8%

Solid non-fat . . 5.8%

It was the goat milk in this case and therefore, according to the prescribed standard, it would have contained not less than 3% of milk fat and not less than 9% of milk solids other than: milk fat. The milk was found to be deficient in its solid non-fats and the petitioner was, therefore, found guilty under Section 7, read with Section 16 of the Prevention of Food Adulteration Act. While passing the sentence, the learned Magistrate also observed that the petitioner was convicted twice before. In the first case, he was sentenced to pay a fine of Rs. 125/- for selling the adulterated milk and for the second time his sentence was reduced by the High Court to pay a fine of Rs. 500/- and in default of payment of fine to undergo six months' rigorous imprisonment.

The, contention of the petitioner is that in spite of the two previous convictions to his credit, he cannot be deemed to have committed the third offence because learned single Judge of this very Court, while reducing his second sentence to a fine of Rs. 500/- observed that the offence shall be regarded as first offence committed by the petitioner and it was on that basis that his sentence was reduced by the High Court. While considering the said observations of the High Court in S. B. Criminal Revision No. 38 of 1962, the learned Magistrate took the view that the present offence of the petitioner shall be treated as second offence and, therefore, under Section 16(1)(g)(ii), read with the proviso, he passed the minimum sentence prescribed for the second offence, that is, imprisonment for one year and a fine of not less than Rs. 2,000.

The learned Additional Sessions, Judge, while dealing with the question of sentence, took a different view of the matter and he came to the conclusion that the petitioner was convicted on two previous occasions, and therefore, this offence should be treated as the third offence and hence he proposed by making a reference to enhance the punishment as prescribed by the proviso to Clause (iii) of Section 16(1)(g) of the Act. It is in these circumstances that the learned Additional Sessions Judge has made the reference to enhance the punishment.

3. It will be useful to give certain relevant dates in this connection. The first offence for which the petitioner was convicted and sentenced to pay a fine of Rs. 125 was committed by him on 2nd June, 1959 and he was punished by the Magistrate on

9th June, 1960. The second sample for which he was convicted by the Court on 19th November, 1960, was taken on 15th June, 1959. For that offence the petitioner was sentenced by the trial court to undergo one year's rigorous imprisonment and a fine of Rs. 2,000 as it was considered to be the second offence. The conviction and sentence was upheld by the appellate court but the High Court in revision filed by the petitioner reduced the sentence on 12th February, 1962 to a sentence of imprisonment already undergone and fine of Rs. 500, and in default of payment of fine to undergo six months' rigorous imprisonment.

The offence to which this case relates is said to have been committed on 14th July, 1959 when the Food Inspector took the sample from the petitioner's container. Somehow, the case for this offence could not proceed in the court and the petitioner was served with a summons for the first time to attend the court on 23rd February, 1961. The learned Magistrate completed the trial on 4th June, 1963 and convicted the petitioner for the said offence on that day and sentencing him for one year's rigorous imprisonment and Rs. 2,000 fine treating it to be a second offence.

4. The contention of the learned counsel for the petitioner is that all the three offences committed on 2nd June, 1959, 15th June, 1959 and 14th July, 1959 had been completed before the first conviction under Section 7/16 of the Prevention of Food Adulteration, Act was procured on 9th June, 1960 and therefore, according to his submission, none of the three offences could be treated in the eye of law as second or third offence. He contended that under the scheme of Section 16, only that offence can be treated as a second offence which has been committed by a person after he was convicted by the Court and the third offence can be treated only when he has been convicted twice and not before that. In this connection, he has referred to The King v. The Licensing Justices for the County Borough of South Shields, 1911-2 KB 1 and Chuttan v. State, AIR 1960 All 629. Learned Deputy Government Advocate on the other hand, has cited Allahabad authority in Daya Ram v. State, 1959 All L J 751, and on the basis of the reasoning given therein he has contended that the interpretation of the words 'the first offence' or 'the second offence' used in Clauses (i) and (ii) of Section 16(1)(a) of the Act does

not depend upon the consideration of dates of conviction of an offender but it depends upon the dates of actual commission of the offence. In 1959 All L J 751, the observations of the learned Judge are as follows :

'The words used in the two Clauses (i) and (ii) are 'for the first offence' and for a second offence Clause (ii) does not take into consideration the date of conviction for the first offence. The offence for which the applicant has been convicted was unquestionably a second offence; it was certainly not the first offence and it was certainly not a third or any subsequent offence. He had previously committed one offence (for which he was convicted on 29-7-1957) and then he committed the present offence. The present offence did not cease to be a second offence merely because it was committed before conviction for the first offence. The date of commission of an offence does, not depend upon the date on which the conviction is recorded for it. An offence committed on a certain date is an offence committed on that date regardless, of the date on which the offender is convicted for it. It may be essential for the accused to have been convicted for the previous offence and the conviction, may be the only proof of its commission, but no other purpose is to be served by conviction and the date of it is wholly irrelevant. The relative order of offences depends upon the dates on which they are committed'.

5. While arriving at this conclusion, the learned Judge also took into consideration the language of Section 16(2) where the date of conviction is taken into account and not the date of commission of the offence. The argument of his Lordship is :

'When the Legislature used one kind of language in Sub-section (1) and a different kind of language in Sub-section (2), the same meaning cannot be given to the two and the words 'for a second offence' used in. Sub-section (1) must not be interpreted to mean for an offence committed after conviction for a previous offence.'

6. After considering the case of (1911) 2 K B 1, His Lordship further observed :

'The English Licensing Act did not contain any provision similar to that of Section 16(2) of the Prevention, of Food Adulteration Act. When the Indian Legislature itself used 'a second offence' at one place and 'any person convicted of an offence

under this Act commits a like offence afterwards at another place, it cannot be said that both mean the same thing, if it had intended that Section 16(i)(ii) should apply to an offence committed after conviction for an offence it would have used language similar to that used in Section 16(2). The interpretation that the second offence must follow conviction for a previous offence was expressly limited to the particular case and is not accepted universally.'

7. In Chuttan's case, AIR 1960 All 629, the same learned Judge was considering the provisions of Section 16 in a different context. In that case, the petitioner was convicted twice under Section 42 of the U. P. Pure Food Act and for the third time he was prosecuted under the provisions of the Prevention of Food Adulteration Act for contravention of Section 7(i) of the Act. It was in that connection that the provisions of Section 16 came for the scrutiny of the learned Judge where he observed :

'The context in which the words 'a second offence' and 'a third and subsequent offences,' are used shows that the second offence referred to in Clause (ii) must be subsequent to the first offence referred to in Clause (i) and that the third and subsequent offences referred to in Clause (iii) must be subsequent to the second offence referred to in Clause (ii). Clause (ii) would not be applicable unless Clause (i) had been applied once, i.e., there had been a previous conviction under this very Act.'

8. We think that read in the context these observations of the learned Judge in this case are of no avail to the petitioner as it has not been laid down in this decision that in order to treat a particular offence as a second offence the order of conviction for the first offence must have been passed by a competent Court before the second offence was committed by the offender. The observations in 1911-2 K B 1, however, lend support to the contention of the petitioner. In that case, the question arose out of the following circumstances :

9. On 9th November 1910, two informations were preferred against the applicant and two summonses were issued thereon, one charging him with having unlawfully sold on November 4, at the parishes of Weelslade and Pontiland, in the county of Northumberland, as the keeper of the licensed premises above-

mentioned, certain intoxicating liquors, to wit, beer and stout, at certain places where he was not authorised by his licence to sell the same, contrary to Section 3 of the Licensing Act, 1872, and the other charging him with having on the same day and at the same places unlawfully exposed for sale the said intoxicating liquors contrary to Section 3 of the said Act. The summonses came on for hearing on November 16, 1910, before the Justices for the Castle Ward division of the county of Northumberland and both of them were heard together. It was contended in the affidavit filed on behalf of the applicant that the offences charged related to the same occurrence.

The Justices convicted the applicant upon each information and fined him s. 51, and costs in respect of each of the offences charged. The applicant did not appeal against these convictions but he continued to carry on business on the premises even thereafter. He applied for renewal of licence to the licensing justices, it was held that the licenses had, by virtue of the provisions of Section 3 of the Licensing Act, 1872, became forfeited upon the second conviction and therefore there was no existing licence for which the applicant had applied for renewal and under those circumstances it was proper that the applicant should have applied for a new licence. They accordingly refused the renewal.

Under Section 3 of the Licensing Act, 1872, any person selling or exposing for sale any intoxicating liquor at a place where he is not licensed to sell the same shall be liable for a first offence to a penalty not exceeding s. 50, or to imprisonment for a term not exceeding one month; for the second offence, to penalty not exceeding s. 100, or to imprisonment for a term not exceeding three months; and for the third and any subsequent offence to a penalty not exceeding s. 100, or to imprisonment for a term not exceeding six months. In addition to any other penalty imposed by this section any person convicted of a second or any subsequent offence under this section shall, if he be the holder of a licence, forfeits such, a licence.

10. The question that came up for consideration in that case was whether under the circumstances the licensing justice should refuse to renew the licence of the petitioner and it was in that context that the following observations were made:

'No doubt the fact that there were two convictions is almost conclusive to show that one of those convictions must have been a second conviction, but that is not what the section says.....we have to consider what is the true meaning of the words 'any person convicted of a second or any subsequent offence under this section shall, if he is the holder of a licence, forfeit such licence.....It seems to me that it is quite impossible to give a reasonable construction to the various clauses of the section unless the words 'second offence' and 'third and any subsequent offence' are read as meaning an offence after a previous conviction or convictions, as the case may be, for an offence under the section. The enactment aims at a persistent breach of the law after a previous conviction, and though the section does not in terms say that the offence to be punished with the heavier penalty must be one committed after a previous conviction for a similar offence, it is not reasonable to say that where a person commits three offences under the section on the same day a different penalty attaches to each of these offences'.

11. We carefully perused all these cases cited before us. The view taken by the learned Judge of the Allahabad High Court in 1959 All L J 751 is based on the literal interpretation of the phraseology used in Clauses (i) and (ii) of Sub-section (1) of Section 16 and he has tried to reinforce his views on this subject by taking the language of Sub-section (2) into consideration, but looking to the entire scheme of this section which provides for the enhanced punishment for subsequent offence, we have to see whether such a strict construction would be appropriate and would be in consonance with the object for which the provision has been laid down in this enactment. If this literal construction is to be taken on the phraseology used in Clauses (ii) and (iii) of Sub-section (1) of Section 16, then the law courts can be faced with incongruities in the implementation of the law.

If a person who sells from the same container adulterated milk to three persons, then each sale being a distinct sale in itself, the second and the third sale shall entail enhanced punishment as was the position before the Court in 1911-2 K B 1. Was it intended by the Legislature to deal with the offenders in this manner? Another anomalous situation can arise in this way. Suppose a person has committed three offences within a short interval say three days, and he is tried for all those offences in the court of law. It is possible that he is convicted for the third

offence before his trial for other two offences were completed. In such circumstances, could he be awarded the enhanced punishment for the third offence without being convicted by the court for the first and the second offences

Another anomaly may arise under these very circumstances in this matter. Can the prosecution demand that enhanced punishment for the third offence be inflicted on the accused without even prosecuting the offender for the first two offences, and in the trial of the alleged third offence can the prosecution attempt to prove that the offenders had already committed two offences under the Act To find solution to such anomalies we may refer to the analogous provision of Section 75 of the Indian Penal Code which provides for the enhanced punishment for certain offences. The principle underlying therein is apparent from the very language that has been used by the Legislature to enact Section 75 in the Indian Penal Code. There the enhanced punishment is provided only when the offender has been convicted previously for the offence. The principle for awarding enhanced punishment is also discussed in Wharton's Criminal Law and Procedure Volume V. There it has been laid down :

'The general rule, embodied in specific terms in some statutes and implied from the phraseology of others referring in more general terms to previous convictions or subsequent offences, is that it is a prerequisite that the prior conviction or convictions precede the commission of the principal offence in order to enhance the punishment under habitual criminal statutes.....'

'Applying the rule that a second offence, carrying with it a severer penalty, is not in legal contemplation committed until there has been a conviction for a first offence, it has been held that under a statute enhancing the penalty for subsequent offences, two or more convictions on the same day on two or more indictments or two or more counts of the same indictment will count only as one conviction under the statute.'

12. From this, we come to the conclusion that the principle underlying this provision of the law of awarding enhanced punishment is that if the offender does not reform himself even after his conviction, he is exposed to the enhanced penalties under the law.

13. Craies in his treatise on statute law (sixth edition) at page 83 has very aptly said :

'It is not the words .of the law said Plowden, p. 465 but the internal sense of it that makes the law and our law (like all other) consists of two parts viz. of body and soul the letter of the law is the body of the law and the sense and reason of the Jaw is the soul of the law-quia ratio legis est anima legis. Therefore, as Pollock C. B. pointed out in Waugh v. Middleton, (1853) 8 Ex. 352) it is by no means clear that, 'if it were laid down as a general rule that the grammatical construction of a clause shall prevail over its legal construction, a more certain rule would be arrived at than if it were laid down that its legal meaning shall prevail over its grammatical construction.

14. Keeping this in view, we have now to see as to what was the intention of the Legislature in providing Clauses (ii) and (iii) in Sub-section (1) of Section 16.

15. In the Allahabad case, the learned Judge, as observed above, has put a plain grammatical construction to the phraseology used in these two clauses and for doing so he took the assistance of the language used in Sub-section (2). There is no doubt that the language used in Sub-section (2) of Section 16 is different from the language used in Clauses (ii) and (iii) of Sub-section (1) of Section 16, but the context and the purpose for which the different language is used in Sub-section (2) provides no clue for interpreting the phraseology of Clauses (ii) and(iii) of Sub-section (1). We are of the opinion that in interpreting the law which provides the enhanced penalty the legal meaning of the phrases used therein should prevail over the grammatical construction thereof. We are of the opinion that the phrase 'the second Offence' should be construed as that offence which has been committed after the offender had been convicted for the first offence, and similar meaning should be given to 'the third and subsequent offences'. This meaning, in our opinion, shall be in consonance with the object for which this provision has been enacted in the law.

16. In this view of the matter, we are of opinion that the offence committed by the petitioner can neither be treated as a third offence nor even a second offence because it was committed by the petitioner on 14th July, 1959 whereas the

conviction for the first offence was pronounced on 9th June 1960.

17. Learned counsel, next contended that the offence in this case is merely a technical one as the milk fat contents was found to be higher than the prescribed standard and it is only in the solids other than the milk fats that the sample was found to be deficient. His argument is that though the contents of the sample did not conform to the required standard as prescribed under the Act, the milk cannot be said to be adulterated, and it is the selling of the adulterated milk which is an offence under the Act. We regret, we cannot agree with the argument of the learned Counsel. If the sample of the milk taken from the petitioner does not conform to the requirements of the prescribed standard even in one of the contents the milk shall be treated as adulterated and even though the sample contained better percentage of milk fat contents the petitioner shall be deemed to be an offender under the law if it is found deficient in other contents. This fact that the milk had better fat contents can, however, be considered while awarding sentence to the offender.

18. As discussed above, we cannot treat the offence of the petitioner as a third offence or even a second offence and, therefore, the reference made by the learned Judge is liable to be rejected and we, therefore, reject it.

19. The revision application of the petitioner is partly allowed. While maintaining his conviction under Section 7/16 of the Prevention of Food Adulteration Act, the sentence of imprisonment awarded by the learned Magistrate is reduced to one already undergone and the sentence of fine is reduced to Rs. 500/-; and we direct that in default of payment of fine, the petitioner shall undergo further imprisonment for three months.