

In Re: S. Moses and anr.

In Re: S. Moses and anr.

SooperKanoon Citation : sooperkanoon.com/788678

Court : Chennai

Decided On : Nov-13-1958

Reported in : AIR1959Mad185; 1959CriLJ608

Judge : Panchapakesa Ayyar and ;Basheer Ahmed Sayeed, JJ.

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

Appeal No. : Criminal Revn. Case Nos. 191 and 192 of 1958 and Crl. Revn. Petn. Nos. 180 and 181 of 1958

Appellant : In Re: S. Moses and anr.

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : S. Mohankumaramangalam and ;M. Srinivasagopalan, Adv.

Judgement :

Panchapakesa Ayyar, J.

1. These two cases have been directed to be posted before this Bench by the Honourable the Chief Justice on a reference by Somasundaram J., as to whether a servant selling goods on behalf of his master will fall primarily and directly within the scope of the penal provisions of Sections 7 and 16 of Act 37 of 1954, the Prevention of FoodAdulteration Act, as Somasundaram J., who had been prima

facie, of the view that the servant will also be absolutely liable primarily and directly for the sale of adulterated food on behalf of the master in two cases decided by him, sitting singly, (Criminal Appeal Nos. 84 and 138 of 1957), both ex parte felt some doubt about the correctness of his view regarding the law, and wanted it to be clarified and settled by a Bench.

2. The facts in these two cases are briefly these: There is a Society called the Government Servants' Co-operative Society, Mettur Township, Salem District. The first accused, Moses, was the manager of the Co-operative Society, while the second accused Rangaswami, was the sales clerk in charge of the grocery section. P. W. 1 was a member of the Society, and was also the Food Inspector of Mettur township.

He got information that the Bengal gram powder sold by the Society, though considered by the public to be the best Bengal gram powder available in the market, was adulterated with a brand of coal tar dye, not permitted under the Act. So, on 18-6-1957, P. W. 1 purchased 1 1/2 pounds of Bengal gram powder from the second accused, the sales clerk in charge of the grocery section for 29 n. p.

He observed the usual formalities prescribed when purchasing a food stuff for the purpose of testing. The Bengal gram powder was sent to the public analyst. The public analyst found that the Bengal gram powder contained an artificial water soluble yellow colouring matter derived from coal tar and gave it as his opinion that the sample was adulterated.

3. There was no contention before the court (the Sub-Divisional Magistrate, Sankari, who tried the case) that the Bengal gram powder in question was not adulterated. The only defence, on the facts was that the adulteration was not prejudicial to health and would not injure anybody, but only added colour to the substance and made it attractive to the buyer. That, of course, was an untenable plea. It is well settled that under the Prevention of Food Adulteration Act, the adulterated substance need not be poisonous or injurious. Indeed, it may even be conducive to health.

The object of the Act is to see that the sub-stance sold is not mixed with any other thing not permitted by law. Thus, if ghee is adulterated with lard of pig or with beef suet, it may be that from the purely physical health point of view the mixture may be more nutritious. But the offence is complete, because a substance not recognised by law has been used for mixing. So the plea will fail like a plea that the adulterer is a healthier man than the husband, in a charge for adultery.

4. Both the accused raised the plea in law that they were not liable for the primary offence under Section 7 of the Act. The first accused contended that he was on casual leave on the day when the Bengal gram powder was sold by the second accused to P. W. 1, and that at no time was he in charge of the sales, or responsible to the company for the sale, and that he was not therefore a seller at all. The second accused contended that he never sold the Bengal gram powder himself, that is, for his own benefit, but only on behalf of the Co-operative Society, and so will not be liable directly under Section 7.

5. Both the accused were convicted by the Sub-Divisional First Class Magistrate, Sankari, Salem, under Sections 7 and 16(1) read with Section 2(1)(b)(j) and Rule 29, and were sentenced to pay a fine of Rs. 50 each. They appealed to the Sessions Judge, Salem, who confirmed the convictions and sentences. Then they filed Criminal R. C. Nos. 191 and 192 of 1958 in this court. Soma-sundaram J., acquitted the first accused, Moses, on the ground that he was not as a matter of fact in charge of the sales of the Co-operative Society, and was not a seller, and had not sold the Bengal gram powder himself, or got it sold by the second accused. He, therefore, set aside the sentence of fine and directed the fine, if paid, to be refunded to the first accused.

Therefore, Criminal R. C. No. 191 of 1958 relating to the first accused, is unnecessary, as the question of law referred to us is not necessary to be decided for disposing of the case as against the first accused. The question of fact decided in his favour, namely, that he was not the seller of the Bengal gram powder, and had not got it sold on his behalf by the second accused, is conclusive. We are, therefore, not called upon to deal any more with Criminal R. C. No. 191 of 1958, as rightly contended by Mr. Mohan Kumaramangalam, appearing for the first

accused, and conceded by the learned Public Prosecutor. That petition has been disposed of by Somasundaram J., himself and accused I has been acquitted.

6. Now we come to Crl. R. C. No. 192 of 1958, relating to the second accused. The question here is whether the second accused is right in his plea that he will not come directly within the purview of Section 7 and the absolute liability thereunder, as he did not sell the Bengal gram powder himself or cause any person to sell it on his behalf. Mr. Srinivasagopalan, the learned counsel for the second accused, urges vigorously that absolute liability is a terrible thing, as it does away with mens rea, or guilty knowledge, required under the law for most offences, and that it should not be imposed on any one unless the wording of the charging section clearly applies.

According to him, the legislature intended only the primary seller, selling the goods himself or by any person on his behalf, to have absolute liability, fastened on him, regardless of guilty knowledge express or implied, and that the servant selling the goods not for himself but for the master would only be liable, under the ordinary law, for aiding and abetting the offence of selling the adulterated food, and that, for abetment, where the general law would apply, guilty knowledge, express or implied, should be proved by the prosecution.

He did not deny that if the servant adulterated the food himself, or if the servant knew that the food he was selling was adulterated or had reason to believe, by exercise of due diligence, that the food he was selling was adulterated, he would be liable for abetment of the offence. Thus if a servant waters the milk himself, or knows that the milk he sells is watered milk, or has reason to believe that it is watered, he will be guilty of abetment.

Mr. Srinivasagopalan does not dispute that. What he disputes is the absolute liability of the servant who is perfectly innocent and has no guilty knowledge, express or implied, and merely sells the adulterated food on behalf of the master, and not for his own benefit. According to him, the phrase in Section 7, 'any person either by himself or any person on his behalf', means that the sale should be by a person for himself or through another for his benefit.

The learned Public Prosecutor joined issue on this point and quoted several English decisions for the position that absolute liability will fasten itself on the servant as well as on the master selling the goods. The leading English case he relied on is the House of Lords' ruling in *Pharmaceutical Society v. London and Provincial Supply Association*, 1880 5 AC 857, where it was held, at page 865, as follows :

'The act of selling, the act of compounding, and every other definite and particular act mentioned in the first section (of the Food and Drugs Act of England), and in the sections by which penalties are imposed, are struck at, whether the person who does them is a principal to whom the business belongs, or any one whom he employs to carry on the business.'

It was expressly held that the seller, whether the master or servant, will be liable under the penal provisions of the English Act. Coleridge C. J.'s observations in *Hotchin v. Hindmarsh*, 1891 2 QB 181

'A person who takes the article in his hand and performs the physical act of transferring the adulterated thing to the purchaser is a person who sells within the Section'.

and similar observations in several other English rulings to the same effect were relied on by the learned Public Prosecutor.

Mr. Srinivasagopalan relied on the ruling in *Williamson v. Norris*, 1899 1 QB 1, where Lord Russell held that, under the Licensing Act, a servant selling liquor in unlicensed premises without guilty knowledge, express or implied, would not be guilty under the Act, and that some kind of aid or abetment should be proved. But that was not under the Food and Drugs Act of England, which is mere draconian in its scope. We may take it that under the English Food and Drugs Act, absolute liability will fasten not only on the primary seller, the master, but also on the secondary seller, the servant who actually sells on behalf of the master and delivers the goods.

7. It is not disputed by Mr. Srinivasagopalan, and cannot be disputed, that the servant who sells and delivers goods to a customer will also be a seller within the meaning of the definition in the English Act as well as in the Indian Act. A Full Bench ruling of this court, in *Radhakrishna Rao v. Province of Madras*, : AIR1952 Mad718, has held categorically that a servant can also be a seller in spite of the sale being in the presence of the master, the primary seller. That ruling was under the Sales-tax Act.

But it may apply here too. The servant will be a seller within the definition under the Prevention of Food Adulteration Act also. But Mr. Srinivasagopalan, while conceding this, and also conceding that it is enough if the servant, though not the owner, sells the goods for his own benefit, urges that a servant who does not sell the goods for himself that is for his own benefit, will not be caught by the provisions of Section 7, as he sells them on behalf of the master. We agree.

The terms of the English Food and Drugs Act are far wider and will certainly include the liability of the servant, the secondary seller, even when he sells only on behalf of the master, and, indeed, even the persons who are merely in possession of the adulterated food stuffs, whereas under the Prevention of Food Adulteration Act a mere possession of adulterated food for the purpose of sale is not made an offence except in the case of manufacture of the food stuff under Section 10(1)(b) of the Act.

In other words, neither the master the primary seller, nor the servant, secondary seller, can be convicted and punished under the Prevention of Food Adulteration Act for mere possession of adulterated food or materials employed for adulteration unless he is the manufacturer of the food. Thus, if he manufactures baby food he will be liable for possession, but not for mere possession under the Act, when he is only the seller whether as master or servant. The learned Public Prosecutor has to concede this.

8. That shows that the English Act is far wider in its scope in fixing absolute liability than the Indian Act. This is possibly because England is a rightly educated country, where there is 100 per cent., literacy and the population is accustomed to enlightened public health rules for more than two centuries, whereas India is a

very backward country, with 15 per cent, literacy and 85 per cent., illiteracy, and people plunged in dark ignorance regarding scientific matters and public health rules and even elementary things like the consequences of food adulteration.

When it is a bit complex, as in this case of a coloured coal tar dye being used, no ordinary servant who sells can be expected to be aware of the adulteration unless he is aiding and abetting the offence. It is obvious that laws of a country are enacted by an enlightened legislature to suit the conditions of that country. Therefore, in our opinion, the Prevention of Food Adulteration Act of 1954 has deliberately refrained from enacting the wide provisions of the Food and Drugs Act of England, and has restricted the fixation of absolute liability to persons like master, the primary sellers, who are expected to be more educated than the servants or secondary sellers and to know the consequences of the sale of adulterated food stuffs better.

9. This is also seen to be so because, under Section 16 of the Act, minimum punishments of a draconian character have been prescribed for the sale of adulterated food for the second or third time. It is well known that in all enlightened systems of jurisprudence a minimum punishment is never prescribed except where it will be justified by public interests and where the subject also warrants it. It is also to be noticed that these draconian minimum punishments are prescribed not merely for the second and third convictions but for the second and third offences.

A servant may be selling adulterated food 100 times per day, and, even before he is convicted for one offence, he will render himself liable for the minimum punishments prescribed for the second and third and subsequent offences. The English law prescribed for less drastic punishments right through. Our Legislature was, in our opinion, well aware of these dire consequences, and has therefore satisfied itself with restricting the absolute liability to the educated master, the primary seller.

If the master is caught hold of and punished drastically, there is no need to catch hold of the servant also & fasten the absolute liability on him even without any guilty knowledge, express or implied. It is something like the ancient Hindu adage

that it is enough to catch a cobra by its head, and then its belly & tail will be controlled or like the Nyaya saying that when the trunk is cut the branches will fall by themselves.

10. So, the ground to extend the absolute liability to the servant selling on behalf of the master urged by the learned Public Prosecutor, does not commend to us. It is enough if the servant selling goods for his own benefit (though not the owner) is saddled with absolute liability and if the servant having guilty knowledge, express or implied, and selling on behalf of the master, is punished for abetment of the offence under Section 7. No absolute liability need to be fastened on him in public interests when he sells only on behalf of the master.

11. The learned Public Prosecutor concedes that measurers, weighers, packers etc., of the adulterated food stuffs sold will not come within the purview of Section 7. But he says that the servants who sell the goods, deliver them and receive the money will be liable under Section 7. The distinction he makes cannot stand. Often, in a big shop a clerk sells the goods, the clerk at the counter receives the money and the porter at the gate delivers the goods. Which of the three is to be booked under Section 7?

The learned Public Prosecutor may say 'all the three.' Then the jails will be unnecessarily filled with a large number of innocent people, as urged by Mr. Srinivasagopalan. As already observed, if there is guilty knowledge, express or implied, servants can be booked for aiding or abetting the offence. They can also be booked directly under Section 7 if they sell the goods themselves, that is, for their own benefit.

12. The learned Public Prosecutor says that, whatever may be the reason, the legislature has enacted Section 7, in terms which make the servant also absolutely liable unless this court declares Section 7 ultra vires of the Constitution. We cannot agree. The effect of the section is not what the learned Public Prosecutor considers it to be. Section 7, in our opinion, does not fasten any absolute liability on the servant or the secondary seller, unless he sells the goods for his own benefit. The phrase used in Section 7 means, in our opinion, that the sale should be by a person for himself or by any person on his behalf.

It is significant that Section 7 does not say that a person selling on behalf of another will also be liable. The word 'himself' must be given its natural meaning in the context, and the natural meaning, in the context in our opinion, is what we have stated above. So the sections and rulings under the English Act have no application to India, as the English Act does not have the word 'himself or any person on his behalf'. It has simply the word 'sells.'

13. The learned Public Prosecutor then relied on a finding of a Bench of the Calcutta High Court in *Pyarimohan Saha v. Harendranath Ray* : AIR1930 Cal295 , where the Bench held that absolute liability would fasten on the servant, or the secondary seller also, even when selling goods on behalf of the master, when construing the provisions of the Bengal Food Adulteration Act.

Though the wording in that was much the same as in the Prevention of Food Adulteration Act, we are unable to agree with the interpretation put by the Bench which went largely on the English rulings referred to above without considering the fact that the English rulings related to the English Food and Drugs Act which is far wider in its scope in fixing absolute liability than the Indian Act, and much more lenient in the punishment for the first and subsequent offences. With respect, we are unable to follow the interpretation put by the Bench of the Calcutta High Court with regard to a similar wording like the one used in the [Prevention of Food Adulteration Act, 1954](#).

14. In the end, therefore, we hold that Sections 7 and 16 of the Prevention of Food Adulteration Act, 1954, will not primarily apply to the servant, the secondary seller of adulterated food, unless he sold it for his own benefit, and that the servant selling the food on behalf of his master can only be made liable for aid or abetment of the offence on proof of guilty knowledge, express or implied. As no such guilty knowledge, express or implied, has been brought home to the second accused, Rangaswami, it follows that his conviction and sentence must be set aside, and he acquitted. We do so accordingly, and direct that the fine, if paid, be refunded to him.

Basheer Ahmed Sayeed, J.

15. I agree with my learned brother in the conclusions he has arrived at. I only wish to add a few words to the judgment just now pronounced by my learned brother.

16. The question that has been raised in this criminal revision case is as to whether the servant of a master who sells adulterated food stuffs such as the one in the present case is also liable under Section 7 and Section 16 of the Prevention of Food Adulteration Act, XXXVII of 1954. It is beyond question that under Section 7 of the Prevention of Food Adulteration Act, XXXVII of 1954, the master is liable for selling goods either by himself or through his servant or any agent, for the matter of that. The language of that section warrants this interpretation.

It is also beyond question that when the servant sells the goods on behalf of his master or any company, limited or otherwise, he does sell the goods. The act of selling is done by him. He delivers the goods and receives the price. But it has to be seen whether the fact that the servant sells goods on behalf of the master would make him liable for any offence, in case the food-stuffs sold happen to be adulterated on analysis and examination. The question is whether the language of Section 7 warrants such an interpretation.

17. The learned Public Prosecutor has relied on a series of English decisions commencing from 1880 onwards for his proposition that there is an unqualified liability on the part of the servant also for the sale of adulterated stuff, even as the master or the company under whom the servant serves is liable for such a sale. In 1880 5 AC 857, the term 'person' is declared to include a servant as well.

There can be no exception to this for the term 'person' will include master, servant and agent etc. It is also laid down there that he who sells, whether master or servant, commits an offence. In 18912 QB 181, it has been held that the servant is responsible, for the sale of adulterated food. The man who takes the price and gives the goods is described to be the seller.

In *Derbyshire v. Houliston*, 1897 1 QB 772, also liability of the master as well as his servant has been declared, if the master or the servant sells adulterated stuff. It is immaterial whether the master is alone the owner of the goods entitled to the

proceeds of the sale and the servant is not such an owner but only a paid man. The mere act of selling either by the master or by the servant has been held to be an offence, if the food-stuffs sold happen to be adulterated. In *Brown v. Foot*, (1892) 66 LT 649, also it was held that the servant was the seller, though for civil purposes the servant must be established to be cognizant of the adulteration. The decision held that for a criminal conviction a master and the servant stand on the same footing.

The relevant English statute, according to all these decisions, imposes an absolute liability both on the master as well as the servant in regard to the offence of sale of adulterated food-stuffs under the Food and Drugs Act. The servant who delivers the goods for the price to be paid is certainly the seller, according to these decisions, and whether it be on his own behalf or on behalf of the master it does not matter, and the servant will nevertheless be a seller, and such a seller under the English Food and Drugs Act is liable to the penalty imposed by the law.

The learned Public Prosecutor explained that under the English Act, as even under the Indian Act with which we are now concerned, it is the interest of the purchaser that is kept paramount and that is why, whether the seller be the master or whether he be the servant, no sale should take place to the prejudice of the purchaser and such an object could be ensured only by making both the master and the servant, whoever may be the seller, absolutely liable for the offence of selling, adulterated food-stuffs under the said Act. The question then is whether the English and the Indian Statutes stand on the same footing without there being distinction in the scope and application of the relevant sections of the two statutes.

18. So far as the English cases relied on by the learned Public Prosecutor and elaborately discussed by our learned brother Somasundaram J., in the reference are concerned, the propositions laid down in those decisions seem to be unexceptionable, if the terms of the charging and penal sections of the English Food and Drugs Act are to be kept in view.

Under the English Food and Drugs Act, the underlying scheme, no doubt, seems to be that there should be an absolute liability cast upon the master as well as the servant for the sale of adulterated stuff and no person should be allowed to

escape by pleading that he had no knowledge of the adulteration of the food stuffs or that he was merely a servant under the master who had employed him for the purpose of selling.

It is true, that the words 'knowingly' or 'with knowledge' have not been used in the English Food and Drugs Act, nor do they occur in the Indian statute. In the Indian Prevention of Food Adulteration Act, nowhere are the words 'knowingly' or 'with knowledge' to be found in the relevant sections. But it will be seen, on a careful analysis of the language and the terms used in the English Act as compared with those used in the Indian Act, the scheme underlying the sections in the Indian Act seems to be rather different.

While the English Act is too wide in its scope and application to offences under the Food and Drugs Act, the same does not appear to be the case with the Indian Prevention of Food Adulteration Act. A reading of Section 1 (2) of the English Food and Drugs Act of 1938 and a comparison of the language used in that Act with the language used in Section 7 of the Indian Act brings out the difference in more than one respect. In Section 1 (2) of the English Act, the language is:

'No person shall sell or have in his possession for the purpose of sale any food or drug to which any substance has been so added.'

But Section 7 of the Indian Prevention of Food Adulteration Act would say

'No person shall himself, or by any person on his behalf, manufacture for sale, or store, sell or distribute any adulterated food, any misbranded food, any article of food for the sale of which a licence is prescribed

The language of Section 7 in its scope and application seems to restrict itself in the first instance to that person who shall himself sell, and in the second instance to that person who causes it to be sold by any other person on his behalf.

But it does not seem to extend to or comprehend within its scope the person who sells on behalf of another. If that were the intention, the legislature should have inserted the words 'or on behalf of any other person' after the words 'No person shall himself sell or by any person on his behalf'. Even otherwise, if the intention of

the legislature was that there should be an absolute liability imposed upon a servant or an agent for the sale of adulterated food-stuffs, the legislature would have adopted the same language as has been used in Section 1 (2) of the English Act.

This Act must be presumed to have been before the legislature at the time the law was enacted. Neither of these things having been done, it is difficult to hold that the decisions of the English Courts, which interpreted the English Act, the language of which happens to be quite different from the language employed in the Prevention of Food Adulteration Act, would be of any assistance to the learned Public Prosecutor.

19. That the scheme of the English Act seems to be different from the scheme of the Indian Act also appears to be clear from a comparison of the penal sections in the two Acts. If you take Section 16 of the Prevention of the Food Adulteration Act, for the first offence, the offender is to be punished with imprisonment for a term which may extend to one year or a fine which may extend to Rs. 2000, and for the second offence, with imprisonment for a term which may extend to two years and with fine. But this does not happen to be the case in the English Act. In the English Act, the first offence is to be punished only with a fine and it is only for the second offence that the punishment is made a little more severe, subject to certain conditions, and obviously imprisonment is imposed only for the second offence.

20. Further, if the defences available under the English Act are to be compared with the defences that are made available under the Indian Prevention of Food Adulteration Act, there also the scheme seems to be quite different. In the English Act, for instance, the offender can put up the defence that the adulteration has not been injurious to health, but such a defence is not available to the offender under the Indian Prevention of Food Adulteration Act. There is difference also in the other defences available under the two Acts. So that when the scheme of the English Act differs in so many respects from that of the Indian Act, it will not be proper to rely upon the English decisions for the interpretation of the sections of the Indian Prevention of Food Adulteration Act.

The interpretation of the Prevention of Food Adulteration Act is to be on the actual terms and the language used by the statute and the intention with which the legislature would have employed the language and the terms used in the sections of this Act. It is plain that under the Indian statute, the servant or the agent has been left out and the principal alone is made liable absolutely for the offence. Section 7, as it stands, does not warrant the inference that the servant or agent is also liable along with the master or irrespective of or independently of the master or employer.

21. The learned Public Prosecutor also relied upon two Indian decisions. The first one was ILR (1930) Cal 1084 : AIR 1930 Cal 295, wherein a Bench of the Calcutta High Court held that there was absolute liability imposed upon the servant also if he sells goods on behalf of his master. But a reading of that decision clearly shows that the learned Judges followed only the English decisions as the basis of that judgment and the Bengal Act is not exactly the same as the Indian statute. (1892) 66 LT 649 and 1891 2 QB 181, have been referred to in that decision. The other decision relied upon by the learned Public Prosecutor is : AIR 1952 Mad 718 (FB). But this decision was cited more by way of analogy in support of the proposition that the learned Public Prosecutor was sponsoring, viz., that the word 'sale' as defined in the Prevention of Food Adulteration Act was of much wider scope than the word 'sale' as defined in the Sales-tax Act.

There can be no controversy with regard to this. It is also quite true that a servant can be a seller without being the owner of the goods himself. But the question here in the instant case is whether he will come under the penal sections of the Prevention of Food Adulteration Act if he does not sell the goods himself but sells them only for and on behalf of his master. Curiously enough, it will be noticed that in English Act the word 'sell' is not defined anywhere, but in the Indian Act, the word 'sell' is defined very elaborately.

If it were the intention that sales by all persons, whether with knowledge or without knowledge, were to be brought within the scope of the penal sections of the Indian Prevention of Food Adulteration Act, then certainly, nothing could have prevented the Legislature from adopting the very language and the terms of the various sec-

lions that were already found in existence in the English Act, viz., the Food and Dings Act. But the Indian Legislature seems to have departed very considerably from the scheme of that Act in using the language both in the charging as well as the penal sections of the Act. There must be good reason for this departure and it must be presumed to be deliberate.

22. No doubt, a person, who knowingly or with knowledge of adulteration sells foodstuffs, should not be allowed to escape. But the real question here is whether the language used in Section 7 warrants the inclusion of the person who sells without knowledge of the adulteration. I am of opinion that obviously such a person cannot be so included, because the intention and the meaning of the language does not lend scope to the inclusion of a person who seeks to sell or offers to sell or exposes for sale adulterated goods on behalf of his master or employer.

The clear language of Section 7 is to the effect that a person should himself sell or sell through any other person on his behalf, in order to be brought within the mischief of that section, and the provision cannot be extended to include what has not been actually, intended by the Legislature, viz., that a person who sells on behalf of another should also be made liable to the penalties prescribed. Some meaning or significance has to be attached to the word 'himself' and to the words 'by any other person on his behalf' occurring in the Indian statute. They cannot by any means be ignored when the true intention of the legislature is to be found out.

23. In this view, neither the English decisions cited before us nor the Calcutta decision would be of any avail to the learned Public Prosecutor. On the other hand, as my learned brother has pointed out, if the servant has knowledge of the adulteration and he still sells the foodstuffs, he will certainly come within the mischief of the ordinary penal law and could be charged for abetting or aiding the offence under the Food Adulteration Act committed by his master.

But, in so far as the scope of the sections, which we are called upon to interpret is concerned, it is difficult to hold that the servant could also be held liable in an absolute manner, without attributing to him and proving any knowledge on his part, for the mere act of selling adulterated stuffs on behalf of his master. If such were the case, then the consequences would be indeed very serious, as has been

pointed out by my learned brother. I do not wish to expatiate on that aspect.

A servant might be transacting a hundred sales of the same adulterated food stuff in a day and if the interpretation which is sought to be put upon the language of Section 7 by the learned Public Prosecutor is to be accepted, he will be committing a hundred offences and will be liable for a hundred prosecutions.

One could even go to the extent of saying that he has been continuously committing the offence all the time he has been selling the adulterated stuff and it may be a continuous chain of offences, all for the benefit of his master. It is really unthinkable that the legislature could have intended such a consequence when it deliberately omitted to include in any express or implied language any servant who is authorised to sell goods on behalf of his master, whether it be an individual or a company.

24. I am, therefore, inclined to state that the answer to this reference should be no other than that the servant, who is selling adulterated foodstuff, without knowledge of the same, or without having any part or lot in the adulteration, would not be liable under Section 7 of the Prevention of Food Adulteration Act, XXXVII of 1954. The answer is in the negative to the reference and in consequence, Cr. R. C. No. 192 of 1937 will be allowed, and the fine, if any, which has been imposed, will have to be refunded.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com