In Re: Muthiah and ors.

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Court : Chennai

Decided On : Sep-27-1965

Reported in : (1966)2MLJ42

Appellant : In Re: Muthiah and ors.

Judgement :
ORDER

R. Sadasivam, J.

1. The petitioners in these cases have been convicted under Section 16(1) read with Section 7(v) of the Prevention of Food Adulteration Act (hereinafter referred to as the Act) read along with Rule 44-A of the Rules framed under the Act and sentenced to pay a fine of Rs. 100 each, in default to R. I. for two months. Rule 44-A provides that no person in any State shall, with effect from such date as the State Government concerned may by notification in the Official Gazette specify in this behalf, sell or offer or expose for sale, or have in his possession for the purpose of sale, under any description or for use as an ingredient in the preparation of any article of food intended for sale, kesari gram, kesari dal, etc.

2. The reason for the rule is that kesari dal has been found to be a poisonous food grain as would appear from the following passage at page 698 of Medical Jurisprudence and Toxicology by Modi, Twelfth Edition;

Lathyrus Sativus (Kesari Dal, Teora or Buttorah ki dal):This is a variety of pulse, belonging to M.O. Leguminosae, and is used as an article of diet by the common people in Sind, Bihar, Uttar Pradesh, and some parts of Madhya Bharat and Madhya Pradesh. Its continued use gives rise to a disease characterised by spastic paraplegia, known as lathyrism or vetch-poisoning.

3. Though the above rule was framed as early as 1955, the Madras Government issuedG.O. Ms. No. 1755, Health, dated 9th July, 1963, specifying the date of the publication of the notification in the Fort St. George Gazette as the date from which no person shall sell or offer or expose for sale, or have in his possession for the purpose of sale, under any description or for use as an ingredient in the preparation of any article of food intended for sale, kesari gram, kesari dal etc. Though almost all the States in India have brought Rule 44-A into force by notifications, the rule has still not been extended in Madhya Pradesh as would appear from the penultimate paragraph of the judgment of the lower appellate Court which set aside the confiscation of the goods kept by the petitioners and permitted the same to be transported to Madhya Pradesh.

4. P.W. 1, Janardhanan Pillai, Food Inspector, Nagerocoil Municipality, got the Gazette notification mentioned above on 17th August, 1963, and went and purchased kesari dal from the shops of the petitioners on the morning of 19th August, 1963 and prosecuted them after getting the grains analysed by the Public Analyst. The facts of the case as found by the Courts below were not disputed except as regards the purpose for which the article was sold. The petitioners issued cash bills to the Food Inspector stating that the articles were sold as cattle feed. The contention of P.W. 1 was that the cash bills had been tampered with subsequently by the addition of the words ' that they were for cattle feed.' It is no doubt difficult to accept this contention. But the lower appellate Court has found that it is not possible to accept the case of the petitioners that the articles Were sold by the petitioners for being used as cattle fodder. I shall however proceed to deal with the case on the footing that the petitioners sold kesari dal as an article of food for cattle.

5. The main contention urged by the learned Advocate for the petitioners, on the strength of the decision of the Supreme Court in Nathulal v. State of Madhya Pradesh : 1966 CriLJ71 is that in the case of a sale of a prohibited article of food, as in this case unlike in the cases of an adulterated or misbranded food, there cannot be a conviction in the absence of mens rea or guilty knowledge.

6. The maxim actus non facit reum nisi mens sit rea, so often invoked in English Common Law, is not of great importance where, as in India, the law is codified and the offences are carefully defined so as to include the mens rea in the definition itself. The definitions in the India Penal Code along with the general exceptions are perhaps sufficient to exclude all cases to which mens rea cannot be attributed and where neither the definition nor the general exceptions exclude a case of this kind, the general doctrine would be of no help. But in In re Venkayya (1929) 58 M.L.J. 111: I.L.R. 53 Mad. 444 a Bench of this Court held that in order to constitute the offence of personation under Section 171-D of the Indian Penal Code, it is necessary to prove that the accused in doing the act with which he is charged was actuated by a corrupt motive, though the section did not refer to any such mens rea, and in so holding the Court relied mainly on the fact that Section 24 of the Ballot Act (35 and 36, Vic, Chapter XXXIII) which corresponded to Section 171-D of the Indian Penal Code in all respects, was held in Stepney case Reported in 4 O' Malley and Hardcastle, 34 as requiring a corrupt motive.

7. The following passage occurs at page 11 of Halsbury's Laws of England, Second Edition, Volume 9:

Mens rea, or a blameworthy condition of the mind, may consist of a traitorous or malicious or fraudulent intent or of guilty knowledge or negligence; knowledge that an act is morally wrong,. although the special circumstances which render it criminal are not known to the doer, is in some cases sufficient, and mens rea may consist simply of an intent to do an act which is forbidden by law. In a limited class of offences, mens rea is not an essential element. This class consists, for the most part, of statutory offences of a minor and only quasi-criminal character and, in order to determine whether mens rea is an essential element of an offence, it is necessary to look at the object and terms of the statute which creates it.

8. In an instructive article by former Professor Sayre, Public Welfare Offences (1933) 33 Col. L. Rev. 55 the cases which have construed statutes as creating such offences are classified in the following manner:

1. Illegal sales of intoxicating liquor, including sales of liquor not known to be intoxicating, sales to minors believed to be of full age, and sales to habitual drunkards and Indians not known to be such.

2. Sales of impure or adulterated food believed to be pure and not adulterated.

3. Sales of misbranded articles in violation of the Federal Food and Drugs Act and Insecticide Act.

4. Violations of State and Federal Narcotic Acts.

5. Criminal nuisances, including business not known to be injurious to the public health, repose or comfort, and unknown obstructions of highways.

6. Violations of minor traffic regulations.

7. Violations of motor vehicle laws, including dangerous driving, operating an automobile without a proper registration, failure to carry proper lights, and possession of automobiles from which the manufacturer's original serial numbers have been removed.

8. Violations of general Police Regulations, including health regulations, factory and labour laws building laws, game laws, railway regulations and other similar minor Police Regulations.

9. In the valuable monogram, 'Mens rea in Statutory Offences' by Dr. Edwards, Chapter XI, there is a comprehensive and critical examination of the various judicial interpretations of statutory offences and the various theories of liability. It is pointed out by the learned author that sometimes, it has been seen the Court adopts the full-blooded theory of absolute prohibition, under which liability is said to be incurred by the mere intentional doing of the forbidden act and no reference is made to the doctrine of mens rea. The reasons sometimes put forward for abrogating the doctrine of mens rea when interpreting a statutory offence is the

difficulty of procuring adequate proof of guilty knowledge. The learned author also points out that according to many Judges it is of paramount importance to take into account the social purpose behind the statutes which, it is said, should be interpreted in the way which is most likely to give effect to the intention of Parliament and that this line of reasoning, perhaps by coincidence, is almost invariably resorted to when it is proposed to exclude the doctrine of mens rea. Thus in Parker v. Alder L.R. (1899) 1 Q.B. 20 an innocent milk vendor was convicted under the Food and Drugs Act for selling milk adulterated in the course of transit by an unknown person. Lord Russell of Killowen, C.J., posed the question;

Now, assuming that the respondent was entirely innocerit morally and had no means of protecting himself from the adulteration of this milk in the course of transit; has he committed an offence against the Act

It is pointed out at page 83 of 'Mens rea in Statutory Offences' by Edwards that having given an affirmative answer to this question the learned Chief Justice justified his conclusion by saying;

When the scope and object of these Acts (the Food and Drugs Acts) are considered it will appear that if he were to be relieved from responsibility a wide door would be opened for evading the beneficial provisions of this legislation.

In the same case, Wills, J. expressed the opinion that

the legislation on the subject was intended to be drastic, and the offence was created quite independently of the moral character of the act.

10. The fact that Section 16 of the Food Adulteration Act is absolute in its character has been recognised by several decisions of this Court and the Supreme Court. Thus in Sarjoo Prasad v. State of U.P. (1961) 1 S.C.J. 484 : (1961) M.L.J. 284 : (1961) 1 M.L.J. 133 : (1961) 1 A. W.R. (S.C.) 133 it was held that the Legislature has, in the interest of public health, enacted the Act and has provided that all persons are prohibited from selling adulterated food and in the absence of any provision, express or necessarily implied from the context, the

Courts will not be justified in holding that the prohibition was only to apply to the owner of the shop and not to the agent of the owner who sells adulterated food. It was observed in that decision that if the owner of a shop in which adulterated food is sold is without proof of mens rea liable to be punished for sale of adulterated food, there is no reason why 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. The decision of the Supreme Court in Nathulal v. State of Madhya Pradesh : 1966 CriLJ71 referred to earlier, related to the Madhya Pradesh Foodgrains Dealers Licensing Order dealing with wholesome foodgrains and having regard to the object of the said Act, namely, to control in general public interest, among others, trade in certain commodities, it was held that it could not be said that the object of the Act would be defeated if mens rea is read as an ingredient of the offence. It is a sound basic rule of interpretation which ordains that each individual offence must be looked at by itself and that it is either unjustificable or irrelevant to consider the construction adopted in other cases involving analogous offences. It is therefore not possible to construe Section 16 of the Food Adulteration Act as requiring mens rea on the strength of the decision in Nathulal v. State of Madhya Pradesh : 1966 CriLJ71 on the file of the Supreme Court of India.

11. The learned Advocate for the petitioners relied on the decision in Sherras v. De Rutzen L.R. (1895) 1 Q..B. 918 where it was held that Section 16, Sub-section (2) of the Licensing Act,. 1872, which prohibits a licensed victualler from supplying liquor to a Police Constable while on duty, does not apply where the licensed victualler bona fide believes that the Police Constable is off duty. But it is clear from the judgment of Wright, J. that there is a presumption that mens rea, an evil intention, or a knowledge of the wrongfulness of the act, is an essential ingredient in every offence; but that presumption is liable to be displaced either by the words of the statute creating the offence or by the subject-matter with which it deals and both must be considered. The judgment refers to the several classes of cases to which the said doctrine would not apply and one of the classes mentioned in the judgment relates to cases under Adulteration Acts. It is sometimes difficult to reconcile several decisions which adopt divergent attitude as to the requirement of mens rea in statutory offences, defined almost on identical terms. The following

passage occurs in Kenny's Outlines of Criminal Law, Seventeenth Edition, at page 50;

Another instance of contrast is between Sherras v. De Rutzen L.R. (1895) 1 Q.B. 918 and Chundy v. Iecocq. L.R. (1844) 13 Q.B.D. 207. In the former it was held, in effect, that a publican who served drink to a Policeman who was on duty should be excused if he could prove that he believed the officer not to be on duty from the fact hat he was not wearing his armlet; whereas in the latter case it was held that, on a charge of supplying drink to a man who was drunk, it was no defence to prove a belief that the customer was sober. Perhaps an adequate justification for the difference in the interpretation of the statutory provisions in these two cases may be suggeste d. In the former the publican had no reasonable means of discovering whether the Policeman was on duty except by looking to see if he was wearing the armlet. The Police authorities alone had certain means of information on this point, namely, the record of the appropriate officer at the Police Station. But in the latter case the customer's drunkenness could be ascertained just as well by the publican (or his representative) as it could be by any Police witness who observed the man's condition at the material time in the public house.

12. I have already referred to the passage in Dr. Edwards 'Mens rea in Statutory-Offences ' that the reasons sometimes put forward for abrogating the doctrine of mens rea when interpreting a statutory offence is the difficulty of procuring adequate proof of guilty knowledge. The learned author observes at page 245 of his book that there is considerable force in this argument, which is recognised by the Legislature itself and that it is becoming quite common to find a proviso inserted in an offence of seemingly absolute liability to the effect that it is a defence if the accused can prove that the offence was committed without his knowledge or connivance. Such is the provision contained in Section 19 of the Prevention of Food Adulteration Act which states the defences which may or may not be allowed in prosecutions under the Act.

13. The learned Advocates for the petitioners contended that Section 19 deals only with adulterated or misbranded articles of food described as items 1 and 2 of Section 7 of the Act and they do not refer to items 3, 4 and 5 of Section 7, which

are also governed by the punishing Section 16 of the Act. The reason for the distinction is obvious as a dealer in adulterated or misbranded food who can plead and prove the defences open to him under Section 19 of the Act would be an innocent person who was not aware of the fact that the article of food was adulterated or misbranded.. But there could obviously be no such defence in the case of a person who sells articles-of food described as items 3 to 5 in Section 7 of the Act as the vendor would know the nature of the said articles. Hence the possession, sale and distribution of such articles are aboslutely prohibited under Section 16 of the Act and no defences are allowed in such cases of adulterated or misbranded articles of food.

14. The learned Advocate for the petitioners relied on the fact that under Rule 44-A of the Rules framed under the Act, the rule could come into force in any State only from such date as the State Government concerned may by notification in the Official Gazette specify in this behalf and contended that as a rule normally comes into force on the date of its publication even in the absence of any such provision, it is proper to hold that the State Government should fix some future date for the coming into force of Rule 44-A of the Rules framed under the Act so that the dealers may have due notice that an act which was lawful till the date fixed in the notification would become unlawful. But there is no such requirement in Rule 44-A of the Rules framed under the Act that the date fixed by the State Government should be some date later than the date of the publication of the notice in the Gazette. It is true that it is desirable that in the absence of any emergency to give sufficient notice to the public or the dealers that Rule 44-A of the Rules framed under the Act would be introduced into the State by fixing a date after the lapse of a reasonable time, namely, three months or six months from the date of the publication in the Gazette. In Rex v. Bailey (Grown Case Reserved, 1800 Russell & Ryan, 1) the prisoner was tried before Lord Elden, at the Admiralty Sessions, December, 1799, on an indictment for wilfully and maliciously shooting at Henry Truscott and it was insisted that the prisoner could not be found guilty of the offence with which he was charged because the Act of the 39 Geo. III c. 37, upon which the prisoner was indicted received the Royal assent on the 10th May, 1799, and the fact charged in the indicment happened on the 27th of June, in the same year when the prisoner could not know that any such Act existed (his ship, the '

Langley,' being at that time upon the coast of Africa). Lord Eldon told the jury that he was of opinion that the accused was, in strict law, guilty within the statutes, taken together, if the facts laid down were proved, though he could not then know that the Act of the 39 Geo. III c. 37 had passed, and that his ignorance of that fact could in no wise affect the case than that it might be the means of recommending him to a merciful consideration elsewhere should he be found guilty. The decision in Harla v. The State of Rajasthan (1951) S.C.J. 735 relied on by the learned Advocate for the petitioners can have no application to the facts of the present case as it only held that a mere resolution of a Council of Ministers in the Jaipur State without further publication or promulgation will not be sufficient to make a law operative. In the present case there was publication in the Gazette and there is therefore no scope to rely on the principle of the above decision. In the Full Bench decision in Govinda Pillai v. Padmanabha Pillai (1965) M.L.J. 23 the validity of the notification of the Kerala Government published in the Gazette of 7th July, 1961, fixing the date of the coming into-force of Rule 44-A of the Rules framed under the Act, as 1st July, 1961, was considered on the objection of the accused that it offended Article 20(1) of the Constitution as creating an offence with retrospective effect. It was held in that decision that with regard to acts of possession of kesari dal between 1st and 7th July it can be said that, in view of Article 20(1) of the Constitution, the prohibition was of no avail to create an offence. But it was held that the acts of possession in the cases considered in the decision were all after the 7th July and hence there was no reason why the notification as a whole must go merely because the prohibition it imposes cannot make offences of acts committed between the 1st and 7th July. But in the present case, the Madras Government has fixed the date of the coming into force of Rule 44-A of the Rules framed under the Act in this State only from the date of the Gazette notification and it cannot be held to be invalid.

15. The learned Advocates for the petitioners relied on the decision in Nagar Mahapalika Varnasi v. Panna Lal : AIR1965 All231 . where it has been pointed out that kesari dal is not ordinarily used for human consumption and hence it is not included within the definition of ' food ' in Section 2 (v) of the Act, that it is used as cattle fodder and that where a shop-keeper sells kesari dal to a Food Inspector for purpose of analysis and not for human consumption, no offence is committed

under Section 16 of the Act. But a contrary view has been taken in the Full Bench decision in Govinda Pillai v. Padmanabha Pillai (1965) M.L.J. 23 In my opinion, the Full Bench decision represents the correct position of law and I shall proceed to give my own reasons for the same. In the decision in Nagar Mahapalika, Varnasi v. Panna Lal : AIR1965 All231 it is stated that none of the witnesses examined on behalf of the prosecution has stated that kesari dal is used for human consumption. On the other hand, in the Full Bench decision of the Kerala High Court, it is stated that it is common knowledge that kesari dal is used as an article of human diet in many parts of the country and that no evidence is required to prove that it is an article of food any more than evidence would be required to prove that rice or milk is an article of food. I have already referred to the passage in Modi's Medical Jurisprudence and Toxicology where it has been stated that kesari dal is an article of food in some parts of the country. But for kesari dal being an article of food, there would have been no necessity for the Legislature to frame Rule 44-A of the Rules framed under the Act prohibiting sale etc. of kesari dal etc. Further, there is the evidence of P.W. 1 that kesari dal is an article of food and the Courts below have found as a question of fact that kesari dal is an article of food.

16. It is true that kesari dal is also used as fodder for cattle and I have also referred to the bills issued by the petitioners describing the article sold as cattle fodder. It is also true that sale as defined in Section 2(xiii) of the Act contains the qualification that the sale must be of an article of food and that it must be for human consumption or use. But as pointed out in the Full Bench decision of the Kerala High Court the words ' for human consumption or use ' qualify the word ' sale ' and not the words ' article of food' and that in the sale as defined in the Act, it is not necessary that the sale should be for human consumption or use. In Public Prosecutor v. Palanisami : AIR1965 Mad98 Ramakrishnan, J., has pointed out that the definition of sale in Section 2(xiii) of the Act is very wide and covers not merely a sale for human consumption, but a sale for analysis as in this case, exposing for sale, or having in possession for sale, will all be brought within the scope of the definition of sale. It is pointed out in that decision that the crux of the offence is in the sale of food as defined in the Act and it is irrelevant to consider whether there was any separate understanding between the buyer and the seller at the time of sale that the article sold should be used for some purpose other than food and that

the fact that it was agreed between the seller and the customer that an adulterated article sold was to be used for a purpose other than human consumption will not at all enter into the consideration whether an offence, as defined in the Act, has been made out or not. The plea of the accused in that case was that he used to represent to his buyers that the particular asafetida which he had in stock, should be used only for feeding cattle and not as human food and hence he would be exempt from prosecution. In rejecting the plea, Ramakrishnan, J., pointed out that it would be as if a vendor of adulterated milk could aver that he sold adulterated milk to a customer on the distinct understanding that the customer should not give to his baby, but should give it only to his cat and therefore urge that he had not sold adulterated milk and had not committed any offence. In Public Prosecutor v. Kachi Mohideen : AIR1948 Mad218 and in In re Bhimaraju : (1949)1MLJ198 the accused pleaded that he kept the mixture of gingelly oil and groundnut oil not for sale as food, but for sale as lamp oil. The prosecution of the accused in those cases was under Rules 27-A and 29 of the Rules framed under the Madras Prevention of Food Adulteration Act, corresponding to similar rules under the present Act. It was pointed out in those decisions that the prohibition under the Prevention of Food Adulteration Act is absolute for whatever purpose the consumer may take it or the seller may sell it and that no person shall sell or have in his possession for purpose of sale a mixture of gingelly oil with groundnut oil. For the foregoing reasons, I am unable to accept the contention of the learned Advocate for the petitioners that the sale of kesari dal to P.W. 1 in this case was not an offence as it was sold under a bill describing the article as cattle fodder.

17. The learned Advocates for the petitioners contended that a complete prohibition of trade in kesari dal which can be used as cattle fodder is void as it offends the fundamental right of the petitioners under Article 19(1)(g) of the Constitution. But I am unable to accept this contention as the prohibition of sale of kesari dal etc., would clearly come within the saving Clause (6) of Article 19 of the. Constitution. Even at the commencement of the judgment, I have pointed out the reason for framing Rule 44-A of the Rules framed under the Act, namely, that kesari dhal is found to be a poisonous foodgrain, the consumption of which would seriously affect the health of the consumers.

18. For the foregoing reasons, the Courts below were justified in finding the petitioners guilty of the offence charged against them and I see no ground to interfere with the conviction of the petitioners. But having regard to the facts and circumstances of the case, I think this is a fit case in which the petitioners who are first offenders should be dealt with under the provisions of the Probation of Offenders Act. I, therefore, set aside the sentence of fine imposed on the petitioners and let off the petitioners with admonition, through their Advocates. The fine amounts, if collected, are ordered to be refunded to the petitioners.