

Chottey Lal Vs. the State

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Court : Kolkata

Decided On : Aug-28-1957

Reported in : AIR1959Cal32

Judge : K.C. Das Gupta and ;Debabrata Mookerjee, JJ.

Acts : [Constitution of India](#) - Article 14; ;[Indian Penal Code \(IPC\), 1860](#) - Sections 484, 487 and 488; ;Agricultural Produce (Grading and Marking) Act, 1937 - Section 4; ;[Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 190, 190(1) and 196(1)

Appeal No. : Criminal Appeal Nos. 165 and 173 of 1955

Appellant : Chottey Lal

Respondent : The State

Advocate for Def. : Sukumar Sen, Adv.

Advocate for Pet/Ap. : Ajit Kumar Dutta and ;Nirmal Ch. Choudhury, Advs.

Judgement :

K.C. Das Gupta, J.

1. The Agricultural Produce (Grading and Marking) Act, 1937 provides in Section 3 that the Central Government may, after previous publication by notification the

official Gazette, make rules fixing grade designations to indicate the quality of any scheduled article, defining the quality indicated by every grade designation, specifying grade designation marks to represent particular grade designations, authorising a person or body of persons subject to any prescribed conditions, to mark with a grade designation mark any article in respect of which such mark has been prescribed or any covering containing or label attached to any such article and specifying the conditions. The Schedule contains among other things 'Dairy produce'. Under the above provision, the Central Government made, in 1938 certain Rules which were called the Ghee Grading and Marking Rules, 1938. By these Rules which were applied to Ghee produced in India, they fixed the grade designation to indicate the quality of Ghee as set out in Column 1 of Schedule I of the Rules and also prescribed the colour design as set out in Schedule II thereof as the grade designation mark. In 1950 the grade designation mark was altered. The mark, as now prescribed and set out in the Schedule substituted by the Rule made in 1950 shows a design with the words 'Ag-mark' in English, with an outline Map of India, and the words 'Agmark' and certain other words in Deb Nagri. One design is prescribed for special grade of Ghee and another for the general Grade of Ghee, In Schedule I which prescribes grade designation and defines the quality, two qualities are shown, one for the special grade, another for the general grade. Both these qualities require a minimum which is admittedly above the ordinary quality of Ghee available in the market and certainly above the quality of adulterated Ghee. The necessary result on the market is that inferior quality Ghee, if marked with the prescribed 'Agmark' design, would fetch a much better price than otherwise.

2. The prosecution case is that the two appellants before us agreed on a scheme to use labels showing the design as prescribed by the 1950 Rules referred to above on tins containing inferior quality adulterated Ghee and that for this purpose they actually got hold of number of labels very similar in design to the prescribed mark, used them on some tins of Ghee and stored them for sale in their shops. It is said that on the 6th May, 1954, the shop of appellant Santlal was searched, a number of tins of Ghee with such labels was found in his shop, and a bundle of 296 such labels was also found inside a box. The shop of the appellant Chottey Lal, was searched on the same date and six tins with similar labels affixed were

found. Prior to the search, it is said, a Police Officer, Ardhendu Sekhar Sarkar, had gone to Santlal's shop and offered to purchase three mds. of Ghee, posing as an Order Supplier outside Calcutta and was shown 2 or 3 tins with label affixed which appeared to him to be counterfeit Agmark labels. As Santlal had not the necessary quantity in his own shop, Santlal, it is said, took him to Mahalakhi Bhandar at 11 Burtolla Street where he had talk with the other appellant Chottey Lal and thereafter Santlal agreed to supply the quantity demanded by the Officer, There also, the officer was shown some tins of Ghee with labels which appeared to the Officer to be counterfeit Agmarks.

3. The prosecution case is that the appellants committed offence Under Section 484 and also Under Section 488/487 I. P. C. by using such labels on tins containing Ghee and that this was done by them in pursuance of a previous conspiracy. The learned Magistrate has convicted both the appellants for an offence Under Section 484, 1939 Cal. D.F./3 I. P. C., for 488/487 I. P. C. and also for on offence of conspiracy Under Section 120-B/484/488/487 I. P. C., For each of the offences Under Section 484 and 488/487 I. P. C. the learned Magistrate sentenced them to R. I. for two years but directed the two sentences to run concurrently. He did not pass any separate sentence on the conspiracy charge.

4. The defence was that there was no such conspiracy, that even if the labels found on tins seized from the shops be in fact counterfeit, the accused persons did not know that, having honestly obtained them from bigger merchants for the purpose of carrying on their retail business. The story that the 296 labels were found in Santlal's shop was also denied.

5. Before we come to a consideration of the evidence to decide whether it justifies the conclusions of the learned Magistrate, a question of law raised by Mr. Dutta on behalf of the appellants deserves consideration. Section 4 of the Agricultural Produce (Grading and Marking) Act 1937, under Section 3 of which the Rules fixing grade designations and specifying grade designation marks and authorising some person to mark are made, provides that whoever marks any Scheduled article with a grade designation mark, not being authorised to do so by rule made under Section 3, shall be punishable with fine which may extend to Rs. 500/-.

Thus, any person who affixes a tin of Ghee with the designation mark as prescribed under the 1950 Rules mentioned above, without being one of the persons authorised under the Rules framed under Section 3, would commit an offence Under Section 4 of that Act and be punishable with fine which may extend to Rs. 500/-. The prosecution case is, and there can be little doubt about its correctness, that any person who marks a tin of Ghee with the designation mark which is false -- whether by reason of its not being prepared exactly in accordance with the Rules or by reason of its not being affixed by an authorised person, -- commits an offence Under Sections 488/487, I. P. C. where the marking is done in a manner reasonably calculated to cause any person to believe that it is of a quality different from the real nature or quality thereof. Mr. Dutt contends that in many cases therefore, it will happen that the very act which is punishable Under Section 4 of the Agricultural Produce (Grading and Marking) Act, 1937, with fine which may extend to Rs. 500/- will also be punishable under the provisions of Section 488/487 I. P. C. with imprisonment of either description for a term which may extend to 3 years or with fine or with both. According to Mr. Dutt, the necessary consequence of this is that while one person prosecuted for the same act Under Section 4 of the Agricultural Produce (Grading and Marking) Act, 1937, will be liable to the maximum punishment of Rs. 500/-, another person having committed the same act, may be prosecuted and punished for an offence Under Section 488/487 I. P. C. and thus become liable to punishment and be actually punished with imprisonment, rigorous or simple, for a term extending to 3 years or with fine without any limitation or with both. This, according to him, contravenes the provisions of Article 14 of the [Constitution of India](#) and therefore, the provision of Section 488 of the Indian Penal Code as also the provision of Section 4 of the Agricultural Produce Act are void in law.

6. I agree with Mr. Dutta that the act of fixing a grade designation mark in a manner calculated to cause a person to believe that the goods contained in the receptacle are of a nature or quality different from the real nature or quality thereof, will constitute an offence Under Section 488/487 I. P. C. and thus become punishable with imprisonment extending to 3 years or with fine or with both and will, in many cases also constitute an offence Under Section 4 of the Agricultural Produce (Grading and Marking) Act 1937 punishable with fine which may extend

to Rs. 500/-. I can find no basis, however, for the contention that the fact that the same act is thus punishable under two different statutes, results in any contravention of the provisions of Article 14 of the Constitution, Article 14 guarantees to every person equality before the law and the equal protection of laws; so that, if any law results in discrimination as between different persons similarly circumstanced, that law will be void. The result of the same act being made punishable by two statutes, is, however, not that one person guilty of that act is liable to punishment under one statute and another person committing the same act is liable under the other statute. The position in law is that every person committing the act is liable to punishment under both the statutes. There is, therefore, no scope for saying that there is discrimination. The law is the same for all persons and any one guilty of the act punishable under two statutes is liable to punishment under both the statutes.

7. But, says Mr. Dutta, it is open to the prosecuting authority to institute in case against one person under the Agricultural Produce (Grading and Marking) Act, 1937 and in respect of the same act institute a case against another person under the Indian Penal Code under Section 488/487, and that if that is done, that will be discrimination. This argument overlooks the position in law that when any complaint is made to a Magistrate, the complainant has to mention the acts which are said to constitute the offence. It is usual to mention the offence which, according to the complainant, has been committed, but the omission to mention the name of the statute or the particular section of the statute under which the act is punishable is of little consequence. What is necessary is that the acts alleged constitute an offence in law. As soon as a complaint alleging the commission of such acts is before the Magistrate, he has to take in law the cognizance of the same. If, ex hypothesis the acts complained of constitute an offence punishable under two different statutes, it seems to me clear that when the Magistrate takes cognizance of an offence under the provisions of Section 190(1) (a), (b) or (c) he is bound in law to take cognizance not of one offence under one of the statutes but of both the offences under the two statutes. It is therefore of little consequence that a prosecuting authority may mention in the petition of complaint or report in one case a contravention of Section 4 of the Agricultural Produce (Grading and Marking) Act and in another case the contravention of Section 488 I. P. C. In each

of these cases the Magistrate who takes cognizance of the offence on receipt of a complaint, is not only free, but in my opinion, bound to take cognizance of both these offences which these acts constitute. It is helpful to remember in this connection the actual words of Clause (a) or (b) of Section 190 (1) Cr. P. C. which empowers a Magistrate to take cognizance of an offence. Clause (a) is in these words ; 'Upon receiving a complaint of facts which constitute such offence'. Clause (b) similarly is in these words : 'upon a police-report of such facts, made by any police officer. The position clearly is that facts have to be stated and where the facts constitute an offence under two or more statutes, the Magistrate will take cognizance of all such offences. There is, therefore, in my opinion, no scope for thinking that there is any discrimination in law.

8. In this connection Mr. Dutt has drawn our attention to a decision of a Special Bench of this Court in *Ram Kiseen v. State of West Bengal*, : AIR1952 Cal639 (A). In that case the Special Bench had to consider whether Section 12 (1) of the West Bengal Black Marketing Act was ultra vires the Constitution, being in violation of Article 14 thereof. Section 12 (1) of the West Bengal Black Marketing Act provides that the

'Provincial Government may, from time to time, by notification in the Official Gazette, allot cases for trial to each Special Tribunal, and may also from time to time by like notification transfer any case from one Special Tribunal or make such modifications in the description of a case (whether in the names of the accused or in the charges preferred or in any other manner) as may be considered necessary.'

9. The argument mainly turned on the meaning to be attached to the word 'may'. The Special Bench held that 'may' cannot here mean 'must' and as under the provisions it was open to the Provincial Government to allot some cases of offences under the Act to the Special Tribunal and not to allot some other cases under the same Act, there was discrimination for which there was no justification and therefore the Section was ultra vires the Constitution, The 2nd contention raised in support of the argument that the Section was ultra vires was that most, if not all black marketing offences were clearly offences also against the Essential

Supplies Act, 1946, and Orders made thereunder; and there was nothing which compelled Government to prosecute a person under the Black Marketing Act on facts which constitute an offence also under the Essential Supplies Act, but as different punishments were prescribed for the offences under the present Act a higher punishment could be imposed on one person than upon another guilty of having committed the same acts. So, it was urged the Section was discriminatory. This contention was also accepted as sound by the learned Judges constituting the Special Bench.

10. It is important to notice that whereas in the present case and ordinarily, in all cases before the courts of criminal law, a case is instituted as soon as cognizance is taken by the Magistrate in the manner prescribed Under Section 190 (1) (a), (b) or (c), the institution of cases under Section 12 (1) of the Black Marketing Act is by the allotment of the case by the Government. The power and the duty of the Magistrate to take cognizance of all the offences which the facts alleged constitute, are not possessed by the Special Tribunal to whom a prosecution case under the Black Marketing Act is allotted by the Government. This distinction may very well justify the decision of the Special Bench on the second contention raised before them that because the same acts constituted in most cases an offence under the Black Marketing Act and also under the Essential Supplies Act, 1946, and different punishments were prescribed for the two offences and the Government was not compelled to prosecute a person under the Black Marketing Act on facts which were committed also under the Essential Supplies Act, there was discrimination. That case, can, however, in my opinion, be no authority for the proposition that even in cases which are instituted before a Magistrate in the ordinary criminal courts, the fact that the same acts constituted offences under two different statutes, amounts to discrimination.

11. I have, therefore, come to the conclusion that Mr. Dutt's contention that Sec. 488 I. P. C., or Section 4 of the Agricultural Produce (Grading and Marking) Act is void on the ground of violation of Article 14 of the Constitution, must be rejected.

12. Coming now to the facts of the present case, we find that there is no reasonable ground to doubt the prosecution case that the 296 labels were actually

found inside a box in the shop of Santlal Agarwala, as stated by the Police Officer who searched the shop and search witnesses. In prescribing the grade designation mark for ghee in Schedule II of the Rules framed Under Section 3 of the Agricultural Produce (Grading and Marking) Act, 1907, the Central Government not only prescribed the design that was to be printed but further prescribed that these labels shall be printed on the water mark paper of the Government of India and shall have a micro-tint background bearing the words 'Government of India' in olive green colour. The 296 labels that were seized from Santlal's shop show the design and other features almost correctly, but we find that they have not been printed on water mark paper of the Government of India. I am satisfied on an examination of these labels that they are not in full accordance with the prescribed mark, & that they are false labels. When it is remembered that in Santlal's shop were found 11 tins of Ghee which contained marked labels exactly similar to these, it is reasonable in my opinion, to conclude that it was Santlal who had affixed the labels that we now find on the tins, & that those labels on the tins are also false marks. It may be mentioned in this connection that the contents of the tins were chemically examined and found to contain highly adulterated Ghee. I have no doubt in my mind on a consideration of all these circumstances that Santlal used the false mark on the tins of Ghee in a manner reasonably calculated to make any person to believe that the goods contained in the receptacles were of superior quality -- a circumstance different from the real circumstance. His possession of the 296 labels shows that he had clearly acted with intent to defraud. It must therefore be held that he has failed to prove that he acted without intent to defraud and has also made use of a false mark in a manner prohibited by Section 487, J. P. O. He has therefore been rightly convicted of an offence Under Section 488/487 I.P.C.

13. According to the prosecution, by affixing the label, Santlal also committed an offence Under Section 484 I. P. C. Section 484 provides inter alia that whoever uses as genuine a counterfeit of a mark used by a public servant to denote that a property is of a particular quality, shall be punishable. The prosecution case which the learned Magistrate has apparently accepted is that the Agmark label is a mark which has been used by a public servant to denote that the property is of a particular quality. Mr. Dutt has contended that the label which is said to have been

counterfeited is really a label prescribed by the Central Government and cannot be said to be a mark used by a public servant. In my judgment, this contention is correct, and that by using a counterfeit Agmark label a person cannot be held to have committed an offence Under Section 484 I. P. C.

14. On the charge under Section 120B against both these appellants, the only circumstance relied on by the prosecution is that Santlal took the Police Officer who had gone to his shop and demanded three maunds of Ghee, to Chottey Lal's shop at 11 Burtola Street and talked with him there, and thereafter Chottey Lal produced before him two or three tins which he thought, contained forged labels. The tins that were seized from Chottey Lal's shop also appeared to contain labels not in full accordance with the prescribed mark. The contents of this were examined and also found to be adulterated. I have no hesitation, therefore, in holding that the prosecution case that the tins found in Chottey Lal's shop were also marked with false labels is true. That fact or the fact that Santlal took the officer to Chottey Lal's shop is, however, wholly insufficient to justify a conclusion that there was an agreement between the two. For, it may very well be that while Santlal who appears to have got hold of a number of false labels, used the labels on tins of Ghee procured by him, Chottey Lal had nothing to do with it and may have obtained the tins of Ghee with the labels already affixed without his being aware that they were false labels. I must confess that I was surprised and indeed rudely shocked to find that the genuine Agmark label prescribed by the Department is of so flimsy a character as to make it easy for almost any one with command of a printing machine to produce a label very similar in design and appearance. The guarantee of quality supposed to be given by the prescribed mark, is worth little therefore in practice. I think it will be very difficult for most people to distinguish without any careful examination between a genuine Agmark label and a counterfeit Agmark label. This is so even before the label is affixed. But once a false label has been affixed, it is next, to impossible for most people to say that this is not genuine label. We have to remember this when considering Chottey Lal's defence that he had no idea that the labels on the tins found in his shop were not genuine labels. When we remember further that he does business in Ghee in a very small way, his story that he obtained, these tins of Ghee with the labels already affixed and stored them in his shop without having any suspicion

that the labels were not genuine, seems reasonably probable. On consideration of all these circumstances I am of opinion that the prosecution has failed to prove that there was any conspiracy between Santlal and Chottey Lal for commission of the alleged offence.

15. The order of conviction of Chottey Lal and Santlal under Section 12-B, 487/488/484, I. P. C., must therefore be set aside.

16. As regards Chottey Lal's conviction Under Section 488 I. P. C., the position is that by keeping the goods in his shop, Chottey Lal may be said to have used the false marks on the tins. Unless therefore, he can satisfy the Court that he acted without intent to defraud, he must be held to have committed an offence Under Section 483 I. P. C., Chottey Lal has not produced any evidence himself to discharge this burden. But the evidence produced for the prosecution, in my opinion, justifies the conclusion that his defence that he obtained those tins with the labels already affixed and had no suspicion that they were false, is reasonably correct. In view of this, he should, in my opinion, be held to have succeeded in proving that he acted without intent to defraud. The consequence is that his conviction Under Section 488 I. P. C. is not maintainable in law. His conviction Under Section 484 I. P. C. must be set aside for the simple reason that it has not been shown that he knew the label to be counterfeit. Apart from this, however, as I have already pointed out, when discussing the case of Santlal, the user of a counterfeit Agmark label would not amount to an offence under Sec. 484.

17. I would, therefore, allow the appeal of Chottey Lal and set aside the order of conviction and sentence passed against him.

18. I would also allow the appeal of Santlal Agarwala in part and set aside the order of conviction passed against him Under Sections 120B/484/488/487, I. P.C., as also the conviction and sentence under Section 484 I. P. C., but dismiss his appeal so far as it relates to his conviction and sentence under Sections 488/487, I. P. C.

19. Appellant Chottey Lal is acquitted but appellant Santlal must surrender to his bail.

Debabrata Mookerjee, J.

20. I agree.

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