

Nishikanta Saha Vs. Emperor

Nishikanta Saha Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/869544

Court : Kolkata

Decided On : Apr-01-1943

Reported in : AIR1943Cal468

Appellant : Nishikanta Saha

Respondent : Emperor

Judgement :

Lodge, J.

1. This rule was issued upon the Deputy Commissioner, Sylhet, to show cause why a conviction and sentence under Section 18 read with Section 6(1), Assam Pure Food Act, (Assam Act, 4 of 1982) should not be set aside. The material facts are not in dispute and are briefly as follows : There is in the town of Kharimganj a shop belonging to Messrs. Krishna Mohan and Brojo Mohan Saha in which the petitioner Nishi Kanta Saha was an employee. On nth December 1941 the Health Officer attached to the Municipality went to that shop and purchased a quantity of oil described as fuel oil (jalani thel). The Health Officer divided the oil purchased into three parts as required by the Act and sent one part to the Public Analyst, Shillong, for analysis. The Public Analyst reported as follows:

I am of opinion that the same is a sample of the oil which contains a large proportion of mustard oil and also certain portion of oil from Argemona Mexicana. This is a sample of adulterated mustard oil.

2. On being requested to supply further details the Public Analyst submitted a further report which reads as follows:

As regards the other sample from Krishna Mohan Brojo Mohan Saha (Sample No. 16 (c)) the detailed report is attached herewith. The sample is not genuine by reason of its low Iodine value and B.R. reading and high saponification value that of a mustard oil, neither it is a pure fuel oil. The nitric acid test also shows it to be a contaminated mustard oil.

3. On receipt of this report the present petitioner Nishi Kanta Saha and two other persons were placed on their trial under Section 18 read with Section 6(1), Assam Pure Food Act. The present petitioner was convicted under that section and sentenced to pay a fine of Rs. 40 only and in default to suffer simple imprisonment for one month. The two co-accused were given the benefit of the doubt and were acquitted. In giving evidence in the case the Health Officer was rather vague in his description of the transaction. He merely stated in his examination-in chief that he obtained samples in three phials according to the procedure. In cross-examination the witness stated:

The firm never said that it was mustard oil. They said and advertised it as fuel oil (jalani thel). I do not remember if they stated that they stooked pure mustard oil for human consumption separately. They never sold the oil in question as mustard oil to anybody within my knowledge.

4. The only other witness examined was the Conservancy Inspector who was present at the time of the transaction. In his cross-examination this witness stated:

The firm stocks pure mustard oil of different varieties for human consumption. They showed us the varieties. We did not take sample of those varieties. U.H.O., wanted to purchase sample of fuel oil from the shop of eastern bazar. Nishi Kanta took the tin to the main gadi from where we took the sample.

5. The evidence on record, therefore, shows that the oil was not purchased as mustard oil. There was no representation by the vendor at any time that the oil was mustard oil or was anything but fuel oil. There was no representation that it

was sold as a food. There is nothing in the evidence to suggest that it was stocked as food or sold as a food. The learned Magistrate in his judgment has not suggested anywhere that the oil was purchased as mustard oil or as a food or that there was any representation that it was a food or that it was mustard oil. The question therefore is whether under these circumstances an offence was committed under Section 6(1), Assam Pure Food Act. The Assam Pure Food Act is described as 'an Act to make provision for the prevention of adulteration of food in Assam,' and the preamble recites as follows:

Whereas it is expedient to make better provision in the province of Assam to prevent the adulteration of food and the sale of adulterated or unwholesome food.

6. In the definition of the word 'adulterated' it is made clear that food is regarded as adulterated

if in any one or more of the following respects namely nature, substance and quality it is not the same as it purports or is represented to be or if any ingredient or material has been added fraudulently to increase the bulk, weight or measure or to conceal the inferior quality of the food or if any part of it has been abstracted so as to affect injuriously its nature, substance or quality or if it does not comply with any conditions prescribed by or under this Act.

7. It is clear from this that the Act is intended to apply to food which is either adulterated in the manner described or is of inferior or unwholesome quality. There is no suggestion in the present case that the article purchased was an adulterated food or indeed that it was a food at all. There, fore, prima facie, there is nothing to show that the Act applies to the present case. The material portion of Section 6 of the Act, however, reads as follows:

6. (1) No person shall sell, expose for sale, or manufacture or store for sale any of the following articles namely...(e) mustard oil...unless the following conditions are fulfilled, namely,...(v) in the case of mustard oil, it shall be derived exclusively from mustard or rape seed.

8. It has been contended that under the provisions of this section it is an offence to sell anything containing mustard oil unless the article sold is derived exclusively from mustard or rape seed. For the defence it was contended that no offence was committed inasmuch as the article was not sold as a food and was not sold or represented to be or intended to be used as mustard oil. The learned Magistrate disposes of this argument in these words:

It is abundantly clear, from a fair reading of the Act that the intention of the Legislature is that in no circumstances these specific articles of food should be sold or stored for sale, etc., with adulteration of any kind, no matter for what purpose or intention they are sold or stored for sale. This extreme preventive measure seems to have been adopted to remove all possibility of adulteration from these articles of food.

and, in that view of the law, the learned Magistrate held that an offence had been committed. In coming to this conclusion the learned Magistrate relied upon two reported decisions of this Court. Those decisions are decisions under the Bengal Food Adulteration Act of 1919, but the provisions of that Act are almost the same as the provisions of the Assam Pure Food Act. The differences between the two Acts are not material for our present purposes. In *Rakhal Chandra v. Purna Chandra* : AIR1930 Cal273 it was stated by the learned Judge that it was no defence to the accused that the adulterated oil was stored in his shop for some purpose other than for consumption as an article of human food. In that particular case, however, the observation was obiter inasmuch as that defence does not seem to have been taken and the definite finding in that case was that the adulterated mustard oil which was the subject matter of the case was kept in the shop of the accused for being sold to persons for consumption as an article of food. That finding of fact differentiates that particular case from the facts of the present case. In a later case namely, *Chairman District Board Midnapore v. Atul Chandra Pal* : AIR1933 Cal619 , the headnote reads as follows:

Section 6, Sub-section (1), Clause (i), Bengal Food Adulteration Act, makes it penal to sell, or store or expose or manufacture for Bale, an article compounded of mustard oil in a major proportion and some other oil in a minor proportion,

although the article may be kept in canister labelled 'fuel oil.' The person dealing in such an article must be deemed to be dealing in mustard oil and the oil not conforming to the standard laid down in proviso (v), the section is attracted.

It is not an essential part of an offence under Section 6, Bengal Food Adulteration Act, that the article should be sold, stored etc., for the purpose of human consumption.

9. That case seems to be on all fours with the present case. An examination of the judgment, however, will show that it is not quite so applicable as the head-note would seem to indicate. On a reading of the judgment, it appears that the finding of fact was that the article sold was mainly mustard oil with a slight admixture of linseed oil. The learned Judge in his judgment observed that it was not a sufficient defence for the accused merely to say that it was never intended by him that the things should be used for human consumption. But in that very case the learned Judge refused to consider the question which the learned Magistrate in the present case seems to have taken as decided. The learned Judge observed:

It seems to me that in the present case it is not necessary to go into the question which is the real question raised in the reference, namely, as to whether it will be an offence merely to expose for sale or even to sell an article which, amongst other things, contains mustard oil. It is quite certain from the report of the Public Analyst to the Government of Bengal that the bulk of the commodity, which was taken by the Sanitary Inspector was in fact mustard oil.

10. It is clear therefore that this ruling too is not an authority for the interpretation which the learned Magistrate sought to place on the section. The learned Magistrate has not found that the present samples were samples of mustard oil, and there is no material to show what proportion of the sample was mustard oil. All we have from the report of the Analyst is that a large proportion of the samples was mustard oil. The question in the present case therefore is the very question which Costello J. declined to answer in the case reported in *Chairman District Board Midnapore v. Atul Chandra Pal* : AIR1933 Cal619 .

11. As pointed out above, the Act is an Act to make provision for the prevention of adulteration of food in Assam. Prima facie it ought not to apply to the sale or exposure for sale or manufacture or storage for sale of article which are not or are not represented to be articles of food. If the interpretation which the learned Magistrate placed upon the section is correct, it would mean that no article containing mustard oil could be legally sold unless it was 100 per cent, mustard oil. In other words no liniment or embrocation containing mustard oil could be sold. No lubricant containing mustard oil, no fuel oil containing mustard oil could be sold. Looking at the other provisions of the same section it would also follow that articles such as self-raising flour containing wheat flour could not legally be sold. Articles of food containing milk and other flavouring matters also could not be sold without committing an offence under this section. Such an interpretation seems to me unreasonable and I find it impossible to believe that such was the intention of the Legislature. In my opinion Section 6 in so far as it refers to mustard oil must mean that no article shall be sold, exposed for sale, or manufactured or stored for sale as mustard oil or in such a manner as to indicate that it was intended to be sold, etc., as mustard oil, unless it be derived exclusively from mustard or rape seed; but there is nothing in the section, in my opinion, to render illegal the sale of articles containing mustard oil under circumstances in which there is no representation that the article sold is mustard oil or is to be regarded as mustard oil. The facts proved in the present case do not indicate that the article sold was described as mustard oil or regarded as mustard oil or was represented in any way to be mustard oil or to be a substance which could be regarded as mustard oil. In these circumstances, in my opinion, the conviction cannot be sustained. In the result the rule is made absolute. The conviction and the sentence are set aside and the accused is acquitted. The fine, if paid, will be refunded.

Edgley, J.

12. I agree.