

Ashok Kumar Vs. State of Himachal Pradesh

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Court : Himachal Pradesh

Decided On : Jun-29-1984

Reported in : 1985CriLJ105

Judge : H.S. Thakur, J.

Appellant : Ashok Kumar

Respondent : State of Himachal Pradesh

Advocate for Pet/Ap. : Shri. K.D. Sud

Judgement :

ORDER

H.S. Thakur, J.

1. The petitioner was found guilty by the learned Chief Judicial Magistrate, Solan of the offence under Section 16(l)(a)(i) of the Food Adulteration Act (the Act in short) and was sentenced to undergo imprisonment for six months and to pay a fine of Rs. 1,000/-. In default of payment of fine, he was to suffer simple imprisonment for two months. The petitioner preferred an appeal. The learned Additional Sessions Judge, however, dismissed the appeal and upheld the conviction and sentence.

2. A few facts relevant to the case may be stated. On Dec. 20, 1979, a Food Inspector visited the shop of Chhajoo Ram and Mohar Singh at Solan and found the petitioner conducting the business of the shop. The Food Inspector purchased 600 grams of gur on payment of Rs. 1.20 P. as its price. A sample was sent for analysis and the Public Analyst found the gur to be adulterated. The total sugars (inverted sugars) were found deficient by 7.5% of the minimum prescribed standard. The petitioner was prosecuted, convicted and sentenced as stated above.

3. The only contention which was raised on behalf of the petitioner before the trial court, the lower appellate Court and also before this Court is that the gur was 'raskat' and was only meant for animals and not for human consumption. As such, it is asserted that the same cannot be termed as food, meant for human consumption.

4. It is contended by Shri K.D. Sud, learned Counsel for the petitioner, that the courts below have not correctly interpreted the relevant provisions of law. He has referred to a decision in State v. GulabChand 1981 (1) FAC263(Raj). This is a Division Bench judgment of Rajasthan High Court. It has been observed in this judgment that 'raskat' gur was meant or used as food for animals and not for human consumption and that even though the gur was found adulterated upon analysis no offence under Section 7 read with Section 16 of the Act was made out. Mr. K.D. Sud, has also referred to a decision in Ram Kishan v. State of U.P. 1981 (1) FAC 324 (All). This is a judgment of Allahabad High Court. In this judgment, after considering the evidence it is specifically observed that from the evidence which has been led by the prosecution, it has not at all been established that the rape-seed oil which was being sold, was meant for human consumption. On that basis, the accused was acquitted. Mr. Sud has also drawn my attention to a decision in Shah Ashu Jaiwant v. State of Maharashtra : 1975 CriLJ1868 . He has referred to paragraph 11 of the judgment. It is desirable to extract the same for a ready reference :

It is submitted that it is a matter of common knowledge that black til seeds are not used as food. Even if this be true, it is not so widely known a fact that we could

take judicial notice of it. It is also urged that, when the case of the appellant, supported by his cash memo, is that the particular black 'til' seeds were meant to be sold only for pooja for being burnt like incense or thrown into fire in the course of pooja, it cannot be said that this case had been repelled by the mere statement of the Food Inspector that they can be used as food also. Such a statement amounted at least to a partial admission that they are used for pooja. Therefore, it is urged, they could have been kept for the purpose of being sold only as a substance used for pooja and not as human food. It is pointed out that there is nothing in evidence on this question, to dislodge the statement of the accused. We find no evidence on record to show the actual manner in which such seeds are used in the course of pooja. Therefore, the view of the High Court that they could be consumed by people after the performance of pooja rests on bare conjecture. There had to be credible evidence to show that black til seeds are ordinarily used as food. If that were so, the burden would have shifted on to the shoulders of the accused to prove that what he had stored was not really food meant for human consumption but an article kept for a special use. We are left in doubt on this question on the evidence in this case. We think that the appellant must get the benefit of that doubt.

5. Mr. M.R. Chaudhary, learned Assistant Advocate General, has on the contrary controverted the contention raised by Mr. K.D. Sud. His main contention is that gur is ordinarily used for human consumption and that even if it is 'raskat' gur, which may be used as a food for animals, cannot be excluded from the definition of 'food'. He has referred to a decision in the State of Tamil Nadu v. R. Krishnamurthy : 1980 CriLJ402 . My attention has been particularly drawn to paragraph 5 of the said judgment. It is useful to extract the same for a ready reference :

According to the definition of 'food' which we have extracted above, for the purposes of the Act, any article used as food or drink for human consumption and any article which ordinarily enters into or is used in the composition or preparation of human food is 'food'. It is not necessary that it is intended for human consumption or for preparation of human food. It is also irrelevant that it is described or exhibited as intended for some other use. It is enough if the article is

generally or commonly used for human consumption or in the preparation of human food. It is notorious that there are, unfortunately, in our vast country, large segments of population, who, living as they do, far beneath ordinary subsistence level, are ready to consume that which may otherwise be thought as not fit for human consumption. In order to keep body and soul together, they are often tempted to buy and use as food, articles which are adulterated and even unfit for human consumption but which are sold at inviting prices, under the pretence or without pretence that they are intended to be used for purposes other than human consumption. It is to prevent the exploitation and self-destruction of these poor, ignorant and illiterate persons that the definition of 'food' is couched in such terms as not to take into account whether an article is intended for human consumption or not. In order to be 'food' for the purposes of the Act, an article need not be 'fit' for human consumption ; it need not be described or exhibited as intended for human consumption, it may even be otherwise described or exhibited ; it need not even be necessarily intended for human consumption ; it is enough if it is generally or commonly used for human consumption or in the preparation of human food. Where an article is generally or commonly not used for human consumption or in the preparation of human food but for some other purpose, notwithstanding that it may be capable of being used, on rare occasions, for human consumption or in the preparation of human food, it may be said, depending on the facts and circumstances of the case, that it is not 'food'. In such a case the question whether it is intended for human consumption or in the preparation of human food may become material. But where the article is one which is generally or commonly used for human consumption or in the preparation of human food, there can be no question but that the article is 'food'. Gingelly oil, mixed or not with groundnut oil or some other oil, whether described or exhibited as an article of food for human consumption or as an article for external use only is 'food' within the meaning of the definition contained in Section 2(v) of the Act.

6. Mr. Chaudhary has also referred to the decision in *Mohammed Yamin v. State of Uttar Pradesh* : 1972 CriLJ1198 . In this case, the Analyst had found that the 'shakkar' had not conformed with the standard of quality prescribed for Jaggery and, therefore, food was adulterated. The accused was convicted and the High Court confirmed the conviction. On appeal to the Supreme Court, their Lordships

observed that assuming that the accused had kept the 'shakkar' not for sale, but for manufacturing Rab inspissated juice of the sugar-cane out of it, the commodity being an article of food, it does not matter whether the accused kept it for sale or for manufacturing Rab out of it, provided the accused had sold it. It is further observed that if any articles of food are sold by any person whether he be a dealer in them or not and if the food is adulterated he is liable to be convicted under Section 16 read with Section 7 of the Act. It is also observed that sale to a Food Inspector is a sale for the purpose of Section 16 of the Act. Mr. Chaudhary has also referred to a decision in *Dhirajlal Valji Kotak v. Ramchandra Janglaji Gujar* 1977 (1) FAC 36 (Bom). It is a judgment by a Division Bench of Bombay High Court. It is a case in which the sale of the same was banned. In the course of judgment, it was observed that intention or mens rea is totally irrelevant to the applicability of Rule 44-A. It was further observed that the defence of the accused that he sold the 'Kesari dal' not for the purpose of human consumption but sold it only for the purpose of being used as cattle fodder was not tenable as the definition of 'sale' contained in Section 2(xiii) of the Act is not confined to the sale of articles of food for human consumption but extended to the sale of an article of food regardless of the use to which it is put.

7. Mr. Sud has endeavoured to distinguish the decision referred by Mr. Chaudhary. It is pointed out by him that some confusion was created on account of certain observations made by the Supreme Court in the decisions in : 1971 CriLJ1556 and : 1975 CriLJ1868 . While referring to the decision in the State of Tamil Nadu case (supra) : 1980 CriLJ402 , he has drawn my attention to paragraph 9 of the said judgment in which the aforesaid confusion has been clarified. The same may also be extracted for a ready reference :

The seeming confusion created by the observations in the two cases will disappear if they are properly understood in the context in which they were made. In the first case the Court was considering the argument based upon the supposition that there might be articles which were 'food' somewhere and not 'food' elsewhere. The Court first remarked that there were no articles which were used as food only in one part, and were not at all used as food in another part of the country. In such an unlikely event, the person selling the article could inform

the purchaser that the article sold was not meant to be used as an article of food. If prosecuted he could establish that in that area what he sold was not an article of food at all. That was all that was observed. If the expression 'food' is understood as we have explained earlier, there would be no occasion for any confusion.

The learned Counsel for the petitioner has also referred to a decision in *Luxmi Chand Rastogi v. Corporation of Calcutta* 1980 Cri LJ 22 (Cal). The relevant observations may be extracted from the said judgment. It is desirable to extract paras 10 ; 11 and 12 of the said judgment :

10. Here, we can refer to the Supreme Court decisions as to what the duty of the prosecution is and how much the accused is bound to prove. In the case of *Onkarnath Singh v. State of UP* reported in : 1974 CriLJ1015 Sarkaria, J., has stated that it is the duty of the prosecution to stand on its own legs and it cannot take advantage of the weakness of the defence. We can also refer to the decision of Mr. Justice Vivian Bose in *Sambhu Nath v. State of Ajmer* reported in : 1956 CriLJ794 at p. 796 to show that in a criminal case the burden of proving the case never shifts from the prosecution to the accused.

11. Here, we can see that at the inception the accused took the plea that the sample taken from the tin was not meant for human consumption and it was perfumed non-edible oil. In the case of *Harbhajan Singh v. State of Punjab* reported in : 1966 CriLJ82 Gajendragadkar, C.J. has observed that the accused need not prove his plea beyond reasonable doubt and the onus on him cannot be equated with the degree and character of proof expected from the prosecution. It is sufficient if he succeeds in proving a preponderance of probability in his favour. The same view has been taken in the case of *Mahesh Prasad v. State of Rajasthan* reported in AIR 1974 SC 773 : 1974 Cri LJ 509.

12. It has already been pointed out that when on the prayer of the accused the tin in question kept in the Malkhana of the court was brought, it was found printed on the label that it was non-edible and perfumed coconut oil. So such oil was not kept and stored for human consumption, as alleged on behalf of the prosecution. We do not accept the contention put forward on behalf of the respondent. We hold that the charge under Section 7 read with Section 16(l)(a)(i) of the Prevention of Food

Adulteration Act has not been established against the accused appellants.

8. In order to consider the impact of the aforesaid decisions, it is desirable to examine the relevant evidence on record. The petitioner in his statement under Section 313 Cr.PC has stated in unequivocal terms that gur was meant for animals and not for human consumption. P.W. 1 Shri Ranjit Singh in his cross-examination has specifically admitted that 'it is correct that the accused was telling the Inspector that it was 'Raskat'. It is correct that the accused had charged for the sample according to the 'Raskat' rates.' P.W. 2 is a formal witness, who has admitted the receipt of the report of the public analyst. The last witness is P.W. 3, the Food Inspector. In his cross-examination, he has refuted the suggestion that the accused had told him that the gur from which the sample was being taken was 'Raskat' and meant for the consumption of animals. He has also denied that a bill No. 3702, dt. 20th Dec. 1979 was prepared on the spot and he refused to receive the same in original. He has further denied the suggestion that Ex. D.1 which is the original bill was not taken in possession by him as the word 'Raskat' had been mentioned therein. He has even shown his ignorance if the rate charged for the sample was 'Raskat' or ordinary gur. The petitioner in his defence has produced two witnesses, S/Shri Mela Ram and Lachhmi Nand. Both of them have stated that the accused had told the Food Inspector that the gur was 'Raskat' and that the price was received as that of 'Raskat' gur. DW. 1 has further stated that the accused had told that the same was meant for cattle and that it may be mentioned that it was 'Raskat' gur. He has also stated that Ex. D. 1 was given to the Food Inspector but the Food Inspector said that it was not needed. A perusal of Ex. D. 1 shows that the sale of 600 grams of 'Raskat' for the consumption of cattle, was made to the Food Inspector and the price thereof, including the sales tax, is mentioned as Rs. 1.20 P.

9. The trial court in its judgment has pointed out that 'The only question urged before me and which requires determination is whether the gur was meant for animals, if so, its effect. It is true that PW. 1 Ranjeet Singh admits in his cross-examination that accused had told the Inspector that gur was 'raskat'. Two defence witnesses DW. 1 Mela Ram and DW. 2 Laxmi Nand have also stated that the accused at the time of the sale of the sample for the purposes of analysis had

informed the Food Inspector that gur was 'raskat' gur. Though the Inspector denies this but assuming the stand of the accused to be correct, it will have to be seen whether the 'food' which is also used by the animals does not fall within the purview of the definition of 'food'.' The lower appellate court has confirmed the view of the trial Court.

10. The inevitable conclusion that can be drawn from the evidence on record is that the petitioner sold the gur to the Food Inspector as 'raskat' meant for animals' consumption at a comparatively lower rate than the rate of gur meant for human consumption. There is no material on record to show that 'raskat' gur is ordinarily used for human consumption.

11. In Shah Ashu Jaiwant case (supra) 1975. Cri LJ 1868 (SC), the decision is given by three Hon'ble Judges of the Supreme Court, including the then Chief Justice, whereas the State of Tamil Nadu case (supra) 1980 Cri LJ 402 (SC) has been decided by two Hon'ble Judges of the Supreme Court. In the said decision in para 10, their Lordships have observed as under :

The observation in the second case are in accord with what we have said. The Court merely observed that if there was any doubt in a particular case whether an article was ordinarily used for human consumption in order to fall within the definition of 'food' the prosecution would have to prove the same.

12. As such, even if there is any difference or confusion I am inclined to follow the decision in Shah Ashu Jaiwant case : 1975 CriLJ1868 . It is proper to extract paras 9, 10 and 11 of this judgment :

9. It was contended on behalf of the appellant that the whole object of the Act was to prevent, adulteration of 'food' meant for human consumption. Our attention was invited to a passage from Pyare Lal v. New Delhi Municipal Committee : [1967]3SCR747 , where this Court said :

The object of this Act was to ensure that food which the public could buy was inter alia prepared, packed, and stored under sanitary conditions so as not to be injurious to the health of the people consuming it.

10. Section 2, Sub-section (v) of the Act lays down :

(v) 'food' means any article used as food or drink for human consumption other than drugs and water and includes-

(a) any article which ordinarily enters into, or is used in the composition or preparation of human food, and

(b) any flavouring matter or condiments ;

Hence, where Section 7 prohibits manufacture, sale or storage or distribution of certain types of 'food', it necessarily denotes articles intended for human consumption as food. It becomes the duty of the prosecution to prove that the article which is the subject-matter of an offence is ordinarily used for human consumption as food whenever reasonable doubts arise on this question. It is self-evident that certain articles, such as milk, or bread or butter, or foodgrains are meant for human consumption as food. These are matters of common knowledge. Other articles may be presumed to be meant for human consumption from representations made about them or from circumstances in which they are offered for sale. What is the position in this respect about black til seeds with which we are concerned here?

11. It is submitted that it is a matter of common knowledge that black til seeds are not used as food. Even if this be true, it is not so widely known a fact that we could take judicial notice of it. It is also urged that, when the case of the appellant, supported by his cash memo, is that the particular black 'til' seeds were meant to be sold only for pooja for being burnt like incense or thrown into fire in the course of pooja, it cannot be said that this case had been repelled by the mere statement of the Food Inspector that they can be used as food also. Such a statement amounted at least to a partial admission that they are used for pooja. Therefore, it is urged, they could have been kept for the purpose of being sold only as a substance used for pooja and not as human food. It is pointed out that there is nothing in evidence on this question, to dislodge the statement of the accused. We find no evidence on record to show the actual manner in which such seeds are used in the course of pooja. Therefore, the view of the High Court that they could

be consumed by people after the performance of pooja rests on bare conjecture. There had to be credible evidence to show that black til seeds are ordinarily used as food. If that were so, the burden would have shifted on to the shoulders of the accused to prove that what he had stored was not really food meant for human consumption but an article kept for a special use. We are left in doubt on this question on the evidence in this case. We think that the appellant must get the benefit of that doubt.

13. The inevitable conclusion that follows from the above discussion is that besides other facts, it is also not established that 'raskat' gur is ordinarily used for human consumption as food. Applying the principles and dictum as reflected in Shah Ashu Jaiwant case 1975 Cri LJ 1868 (SC) (supra), there is no alternative but to allow the revision petition. As such, the revision petition is allowed and the conviction and sentence passed against the petitioner is set aside. The petitioner, if on bail, need not surrender. His bail bonds are discharged. The fine, if realised, shall be refunded to him.

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