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

State Vs. Vikas Mahajan and ors.

State Vs. Vikas Mahajan and ors.

SooperKanoon Citation : sooperkanoon.com/900347

Court : Jammu and Kashmir

Decided On : Feb-10-2003

Reported in : 2003CriLJ2237,2003(3)JKJ268

Judge : T.S. Doabia, J.

Acts : Jammu and Kashmir Ranbir Penal Code (IPC) - Sections 272, 273 and 420

Appeal No. : Cr. Reference 37/99

Appellant : State

Respondent : Vikas Mahajan and ors.

Advocate for Pet/Ap. : Shaista Hakeem, GA

Disposition : Reference accepted

Judgement :

T.S. Doabia, J.

1. Respondent Vikas Mahajan is owner of a factory located at Gangyal Jammu. It manufactures Basin. It was brought to the notice of the police authorities that this basin which is a product obtained from grinding black gram was being mixed with wheat flour and was being sold as such. It was further noticed that a truck bearing registration No. JKR-1237 was parked in the factory premises. The contained

basin adulterated with wheat flour. This was seized. This led to proceedings being taken under Section 3/7 of the Essential Commodities Act. Samples were sent to the Public Analyst. It is found that the samples of basin were adulterated. Charge was framed under Sections 220, 272, 273 of the Ranbir Panel Code. The trial court came to the conclusion that a case under Sections 272, 273 of the Ranbir Panel Code was not made out. The view expressed was that the basin mixed with wheat flour may be adulterated but it is not noxious and it was also observed that it is not unfit for human consumption. This opinion expressed by the trial Magistrate on 12.7.1997 was challenged before the court of revision. The court of revision expressed an opinion that, if wheat flour was being mixed with basin then this would also bring the case within the mischief of Sections 272, 273 of the Ranbir Panel Code.

2. The court of revision has expressed an opinion that once wheat flour was found to be mixed with basin then the substance would become noxious and the provisions of Sections 272, 273 of the Ranbir Panel Code would be attracted. A reference has been made to this Court for setting aside the order of the learned trial court so that further trial may commence.

3. The sample in question was analysed by the Public Analyst. He found that there was fungal growth. The presence of rodents hair and their excreta was also noticed. Further opinion was expressed that the samples of basin had plenty of admixture of foreign starch. Opinion was also expressed that the samples were adulterated.

4. The court of revision which has made the reference has also taken note of the statements of the witnesses which were to the effect that wheat flour was being mixed with basin. At this stage Sections 272, 273 of the Ranbir Penal Code be taken note of:

'272. Adulteration of food or drink intended for sale-whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to one

thousand rupees or with both.

273. Sale of noxious food or drink-whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.'

5. The view expressed by the trial Magistrate is that unless and until the adulteration leads to an article being rendered as noxious, the provisions of Section 272 of the Ranbir Penal Code would not be attracted. This has been questioned.

6. These sections are not the only provision penalising the sale and exposure for sale of adulterated articles of food or drink. Various Municipal Acts contain several provisions for seizure and destruction of noxious articles. The two sections cover not only food and drink intended only for human consumption but the purveyor of noxious food for animal is equally punishable under these sections. Section 272 is directed against the adulteration of articles food or drink which renders it noxious for consumption. The word 'noxious as food' means unwholesome as food or injurious to health. Mere adulteration with harmless ingredients for getting more profit is not punishable under these sections. It is an indictable misdemeanour knowingly to sell food unfit for human consumption or to mix unwholesome ingredients in anything made or supplied for food for human being. In order to convict a person under the two sections, it is essential to prove that an article of food or drink has been adulterated and it was intended to sell such article or that it was known would be likely to be sold as food or drink.

Howkins, J. observed; 'The mere sale of an article not itself an article of food, even though it be sold with the knowledge of the vendor that it is the buyer's intention to mix it with the ingredients of which an article of food e.g. bread, is to be composed, is no offence under Section 3 and it makes no difference in an legal point of view that when sold, it is mixed with other ingredients, not in themselves hurtful, some or one of which might, in an unmixed state, be used as articles or an article of

food, if the injurious and harmless ingredients are so inseparably mixed and in such quantities as that the mixture, as a whole, forms an injurious compound, which nobody would dream of using as food' James v. Jones (1894) 1 Q B 304 at p. 304.

7. The sale of unwholesome food is reprobated not because it may be an imposition on the purchaser, if it is punishable otherwise as cheating, but because the sale of noxious food is injurious to the public health. If, therefore, the vendor sells noxious food to the purchaser and apprises him of the fact, he is nonetheless guilty because the law would not permit a man to poison himself by noxious food and to this extent, it helps him against himself. But the question of notice is material, as it may, then, be urged that the purchaser with notice could not have purchased it as food or drink. So, where the accused sold a quantity of old and gritty flour, unfit for human consumption at the reduced rate of 18 seers per rupee, which was 3 seers more than the prevailing market-rate and the seller told the purchaser that the flour was bad and was, therefore, sold cheap, he was held to have committed no offence under this section. Ganesha (1873) P.R No. 15. In such a case the accused might well have believed that the purchaser was not likely to use the four as food on account of its inferior quality.

8. The knowledge or belief may be inferred from the condition of the food, the probability of the its having become noxious, the foul smell it has begun to emit or its altered appearance. In order to be punishable, it is not necessary to show that the article had become unfit owing to anything done by the vendor, for it may have become so by natural deterioration. So a vendor was convicted for selling toddy in which worms had germinated owing to its having been kept too long. Ediga Narasappa (1804) 1 Weir 228. But where the accused had sold some ghee which, on chemical analysis, was pronounced to be 'somewhat rancid', the accused's conviction was quashed on the ground that there was no evidence that the accused knew it to be noxious at the time. The principle deducible from this case, then, is this that merely expert evidence is not sufficient to bring the offence home to the accused. There must be evidence from which the Court would be justified in inferring that the accused knew it to be noxious at the time of sale. Sheo Lal, I.L.R 26 All. 387.

9. Thus what is required to be seen with a view to attract the provisions of Section 272 of the Penal Code is that by the adulteration food or drink has been rendered noxious. This offence is thus different from that which is covered by the provisions of food Adulteration Act. Thus mixing of water with milk for sale may not be an offence under Section 272 of the Penal Code. In such cases, it has to be demonstrated that by doing so the milk was rendered noxious as food and drink. Such was the opinion expressed by the Lahore High Court in case reported as Amir Chand Mahesh Das v. Bhag Singh and Ors. AIR 1929 Lahore 49. In latter decision reported as Veer Pal Singh v. Smt. Tilka Devi and Anr., 1999 Cr. L.J 310, it has been observed that the provisions of Section 272 of the Penal Code are different as compared with the provisions of Prevention of Food Adulteration Act. If the offence falls under the provisions of two different Acts then it is open to invoke any of the provisions of the Act.

10. So far as Section 272 of the Penal Code is concerned this applies to a situation where food or drink is rendered noxious. The expression 'noxious' as food' would mean unwholesome as a food or injurious to health. It does not mean repugnant to one's feelings. Thus mixing of pig's fat with ghee and selling the mixture would not render the article 'noxious as food' though it may be noxious to the religious feeling of some sections of the public. Such was the view expressed by Allahabad High Court in the case reported as Ram Dayal and Ors. v. King Emperor, AIR 1924 Allahabad 214.

11. Therefore, what was required to be seen was as to whether by the process of adulteration the food was rendered noxious. The public Analyst has expressed an opinion that the samples basin contained fungus and had rodent hairs and excreta also. The exposure of such food article would definitely fall under Section 272 of the Penal Code. Therefore, the matter required further consideration and the proceedings could not be quashed.

12. There is another aspect of the matter. The proceedings were taken under Section 420 of the Penal Code also. So far as this aspect of the matter is concerned, this was also not dealt with by the trial court. In the decision of the Allahabad High Court reported as Ram Dayal and Ors. v. King Emperor, AIR 1924

Allahabad 214, after observing that mixing of pig's fat with ghee and selling the mixture may injure the religious feelings of the people but it is not noxious as food, it was observed that where there is an attempt to sell it on the pretext that it was pure ghee then the accused would be guilty of cheating. What is said by the Allahabad High Court is being reproduced below:

'It is true that the mixing of pig's fat with ghee and selling the mixture would be noxious to the religious and social feelings of both Hindus and Mohammedans but I am of opinion that such an act would not come within the meaning of the expression 'noxious as food' which occurs in Section 272, Indian Penal Code. That expression obviously means unwholesome as food or injurious to health and not repugnant to one's feelings. The word 'noxious' and it stood by itself might have had a wider meaning but what I have to consider is the expression noxious as food and not merely nocious.

I, therefore, think that the conviction under Section 272 of the Indian Penal Code was not justified. Of course, if the accused had sold the mixture or attempted to sell it on the pretence that it was pure ghee they would have been guilty of quite a different offence that is to say of cheating or attempt to cheat.'

13. In the present case proceedings have been initiated under Section 420 of the Penal Code also. This section has not been taken note of. In view of the above the reference is accepted. The matter would go to the trial court who would proceed further in accordance with law.

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