

(1962) 08 CAL CK 0005**Calcutta High Court****Case No:** None

Food Inspector, Kozhikode
Municipality

APPELLANT**Vs**

Calicut Co-operative Milk Supply
Union Ltd.

RESPONDENT**Date of Decision:** Aug. 24, 1962**Acts Referred:**

- COMPANIES ACT, 1956 - Section 621, 70
- Penal Code, 1860 (IPC) - Section 11
- Prevention of Food Adulteration Act, 1954 - Section 16, 17, 7

Hon'ble Judges: P. Govinda Menon, J**Bench:** Single Bench**Judgement**

P. Govinda Menon, J.

This is an appeal filed by the Food Inspector of the Kozhikode Municipality against the order passed by the District Magistrate of Kozhikode acquitting the respondent. The respondent, the Calicut Co-operative Milk Supply Union, was the second accused in the case. The first accused was a servant employed under the Union and the other accused were the Directors and office bearers of the Union. They were all prosecuted for sale of adulterated milk, offence punishable u/s 16(1) read with Section 7 of the Prevention of Food Adulteration Act -- Act 37 of 1954 (hereinafter referred to as the Act).

2. On 19-2-1960 P.W. 1 one of the Food Inspectors of the Municipality purchased one bottle of cow's milk from the first accused at the Union's milk depot at Kooriyal lane, Kozhikode, the price was paid and the milk was duly sampled and one sample bottle was sent for analysis to the Public Analyst. The report of the Analyst Ext. P-3, showed that the milk was adulterated as it contained not less than five per cent of added water. At the request of the defence the sample was sent to the Central Food Laboratory, Calcutta and their report Ext. P. 4 confirmed that the milk was

adulterated. The first accused admitted the sale of the milk and he was convicted by the District Magistrate, but the respondent and others Directors and office bearers -- were acquitted. The Municipality has filed this appeal against the order acquitting the respondent, the Milk Supply Union.

3. The learned Counsel appearing for the Municipality contends that the view taken by the learned Magistrate that the Co-operative Milk Supply Union cannot be "roped in" for an offence u/s 16 HJ of the Act for the act of the Union's servant, the first accused, is incorrect and unsustainable in law and that if milk belonging to the society has been sold, the Union could legitimately be convicted of the offence. On the other hand, the learned Counsel for the respondent argues that a company can only be held to be responsible in respect of the intention or knowledge of its agents, the officers and directors of the company and if they are to be exonerated as the Magistrate has done and against which no appeal has been filed the company as such cannot be found guilty of the offence of adulteration.

4. Section 7 of the Act provides:

No person shall himself or by any person on his behalf sell.

(i) any adulterated food....

The material part of Section 16(1) provides: "If any person,

(a) Whether by himself or by any person on his behalf sells any articles of food in contravention of the provisions of this Act or he shall be punishable

So "any person" who by himself or by any person on his behalf sells adulterated food becomes liable for the offence.

5. The word "person" is not defined in the Act, but it may be taken that the definition of the word "person" is as in the General Clauses Act, namely, as one that includes any company or association or body of individuals whether corporate or not. That this is a familiar legal concept even for purposes of penal provisions is clear from Section 11 of the Indian Penal Code, according to which the word "person" includes any company or association or body of persons whether incorporated or not. A reference to Section 70 of the Companies Act -- Act I of 1956 would also show that if a company acts in contravention of Subsection (1) or (2), the company and every director of the company who willfully authorises or permits the contravention shall be punishable with fine. Similarly Section 621 also shows that the company as distinct from the officers of the company could be prosecuted. Section 20 of the Madras Co-operative Societies Act -- Act 6 of 1932 enacts that the registration of a society shall render it a body corporate by the name under which it is registered with perpetual succession and a common seal. So as a body corporate it has got a separate existence apart from its individual members and when any adulterated food belonging to this body corporate is sold the society makes itself liable to the penalties provided in Section 7 of the Act because the prohibition is clear that "no

person" shall him, self or by any person on his behalf "sell".

6. That a co-operative society as a body corporate has a separate existence apart from its individual members or office-bearers and any transfer of adulterated food by the Society would amount to sale and would be amenable to the penal provisions has been held in the case in [The Public Prosecutor Vs. Y. Ramachandrayya and Another,](#)

In the case in [Doddi Dorayya Vs. Bathula Adinarayana](#), Somasundaran, J. took the same view and held that,

A co-operative society and its secretary can be separately convicted for an offence u/s 16(1) of the Act.

Similarly in the case In State of Mysore v. Udupi Cooperative Milk Society Ltd. AIR 1960 Mys 80 the Udupi Co-operative Milk Supply Society Limited and their servant were prosecuted for sale of adulterated milk. Both were convicted by the First Class Magistrate, but acquitted In appeal. On appeal against the order of acquittal it was held that where a co-operative milk society is prosecuted the liability of the accused is an absolute liability as seen from Section 17(1) of the Act and it is unnecessary for the prosecution to prove that the officers of the society Knew that the milk offered for sale was adulterated milk.

7. Reference may be made to some of English decisions in Pearks, Gunston and Tee Ltd. v. Ward 1902-2 KB 1, under the corresponding Food and Drugs Act, 1875. There the question was whether proceedings u/s 6 can be taken against a limited company. Section 6 of the Food and Drugs Act, 1875 provides that,

no person shall sell to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance and quality of the article demanded by such purchaser." Lord Alverstone C. J., observed:

This question, in my opinion, depends upon very much the same considerations as those which arise in an ordinary civil action when it is sought to make a person responsible for the acts of his servants. I think that we ought to hold that a corporation may be liable u/s 6 unless mens rea is necessary in order to constitute the offence. The words of the section are that "no person shall sell to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance, and quality of the article demanded by such purchaser, under a penalty not exceeding twenty pounds", and the Interpretation Act, 1889, Section 2, Sub-section (1) enacts that in the construction of every enactment relating to an offence punishable on indictment or on summary conviction the expression "person" shall, unless the contrary intention appears, include a body corporate. I cannot see that any contrary intention appears in Section 6, The section deals with the sale of an article which is not of the nature, substance, and quality of the article demanded by the purchaser. The description of the article comes from the

purchaser, and the sale is just as much a sale, if by a corporation, as if by an individual person

Reference was made to the prior decisions and His Lordship stated:

It was decided in *Betts v. Armstead* (1888) 20 QBD 771, that the want of guilty knowledge is not a defence to a charge u/s 6, and in *Brown v. Foot* (1892) 61 LJ 110 that a master may be made liable for a sale by his servant and, therefore, it seems to me that any ground for drawing a distinction between a company and individual disappears. Therefore the protective object of the section and the necessary ingredients of the offence all seem to point to the conclusion that a corporation is placed in the same position as an individual, provided the sale is made on its behalf". Channel J. who concurred with the decision observed:

By the general principles of criminal law, if a matter is made a criminal offence, it is essential that there should be something in the nature of mens rea, and therefore, in ordinary cases a corporation cannot be guilty of a criminal offence, nor can a master be liable criminally for an offence committed by his servant. But there are exceptions to this rule in the case of quasi-criminal offences, as they may be termed, that is to say, where certain acts are forbidden by law under a penalty, possibly even under a personal penalty, such as imprisonment, at any rate in default of payment of a fine; and the reason for this is, that the Legislature has thought it so important to prevent the particular act from being committed that it absolutely forbids it to be done; and if it is done the offender is liable to a penalty whether he had any mens rea or not. and whether or not he intended to commit a breach of the law. Where the act is of this character then, the master, who, in fact, has done the forbidden thing through his servant, is responsible and is liable to a penalty. There is no reason why he should not be, because the very object of the legislature was to forbid the thing absolutely. It seems to me that exactly the same principle applies in the case of a corporation. If it does the act which is forbidden it is liable.

8. In another leading case on liability in this type of offence in *Mousell Brothers Ltd. v. London and North Western Rly.* (1917) 2 K3 835 Viscount Reading C. J. dealing with a case under the Railways Clauses Consolidation Act, 1845 observed as follows:

"*Prima facie*" then, a master is not to be made criminally responsible for the acts of his servant to which the master is not a party. But it may be the intention of the Legislature, in order to guard against happening of the forbidden thing, to impose a liability upon a principal even though he does not know of, and is not party to, the forbidden act done by his servant. Many statutes are passed with this object. Acts done by the servant of the licensed holder of licensed premises render the licensed holder in some instances liable, even though the act was done by his servant without the knowledge of the master. Under the Food and Drugs Act there are again instances well known in these Courts where the master is made responsible even though he knows nothing of the act done by his servant and he may be fined or

rendered amenable to the penalty enjoined by the law. In those cases the Legislature absolutely forbids the act and makes the principal liable without a mens rea

Atkin J. expressed the same view in these words:

I think that the authorities cited by my Lord make it plain that while *prima facie* a principal is not to be made criminally responsible for the acts of his servants, yet the Legislature may prohibit an act or enforce a duty in such words as to make the prohibition or the duty absolute; in which case the principal is liable if the act is in fact done by his servants, To ascertain whether a particular Act of Parliament has that effect or not regard must be had to the object of the statute, the words used, the nature of the duty laid down, the person upon whom it is imposed, the person by whom it would in ordinary circumstances be performed, and the person upon whom the penalty is imposed. If authority for this is necessary, it will be found in the judgment of Bowen L. J. in *Reg. v. Tyler* (1891) 2 QB 588 at p. 592

9. This decision has been followed in another case in *Griffiths v. Studebakers Ltd.* (1924) 1 KB 102. The respondent company Studebakers Ltd. was holding a limited trade licence by virtue of which they could use their cars for particular purposes. The conditions of the licence were contravened by the driver employed by the company without their knowledge and contrary to express orders. It was contended that the company cannot be held liable for the breach committed by their servant. Lord Hewart C, J. negatived the contention and observed:

It is quite clear that the limited company as a company could not drive the car, and secondly, it is not disputed that the employee who was driving the car on the day in question was in fact upon the respondent's business and was acting within the scope of his employment; In short, he was doing the very thing which for the advantage of the respondents he was employed to do. The only respect in which he fell short of the requirements of his employers was that, contrary to their wish, expressed in certain ways, he was carrying an excessive number of persons in the car. In these circumstances it seems clear to me that the act of the driver was the act of the respondents.

Relying on the earlier decisions the learned Judge summed up the position as follows:

The Statute and Regulations require that if a motor car is used upon a highway it must be duly licensed; for the benefit of manufacturers of motor cars, who wish to use a car for a special purpose in the way of their trade, limited trade licences are issued, but to the use of cars covered by such licences conditions are attached. It would be fantastic to suppose that a manufacturer, whether a limited company, a firm, or an individual, would, even if he could, always show care to prospective purchasers himself; and it would defeat the scheme of this legislation if it were open to an employer whether a company, a firm, or an individual to say that although the

car was being used under the limited licence in contravention of the condition upon which it was granted: "My hand was not the hand that drove the car.

10. The place of mens rea in special acts has been discussed at considerable length by the Supreme Court in the decision in [Ravula Hariprasada Rao Vs. The State](#), where some of the English decisions referred to already were examined and have been cited with approval.

Reference may also be made to the decisions in Queen Empress v. Tyab Ali ILR 24 Bom 423; Emperor v. Babu Lal ILR 34 All 319; [The State Vs. Ismail Shakur Morani, ; In Re: Kasi Raja, Proprietor, Thiruveswarar Rice Mills, Ariyur](#), and Sebastian v. State of Kerala 1961 Ker LJ 1172

11. So the Legislature can either clearly or by necessary implication rule out mens rea as a constituent part of a crime. No question of mens rea arises where the Legislature has omitted to prescribe a particular mental condition as an ingredient of an offence, because the presumption is that the omission is intentional, If the essence of the offence is solely in the doing of an act and nothing more was required, question of mens rea would not arise. If we look into Sections 7 and 16 of the Prevention of Food Adulteration Act no such word as "knowingly or intentionally" occurs before the word "sells". It is, therefore clear that the intention of the Legislature in enacting these provisions was that the state of the mind of the person who committed the offence was immaterial and irrelevant.

12. In a recent decision of the Supreme Court in [Sarjoo Prasad Vs. The State of Uttar Pradesh](#), their Lordships were considering whether an employee under the master could also be prosecuted u/s 16(1) of the Act and it was held that by the use of the expression "no person shall himself or by any person on his behalf, under Sections 7 and 16, every person, he an employer or an agent, is prohibited from selling adulterated food and infringement of the prohibition is by Section 16, penalised and no question of guilty knowledge arises.

13. Now coming to the argument based on Section 17 of the Act, that section lays down that where an offence under the Act has been committed by a company, every person who at the time the offence was committed, was In charge of, and was responsible to the company for the conduct of the business of the company, "as well as the company" (underlining (here in ") is mine), shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished. There is a proviso to this clause to the effect that the secretary or any other office bearer can prove that the offence was committed without their knowledge, and that In spite of his exercising all due diligence he could not prevent the commission of such offence. Under Clause (2) of Section 17, if the prosecution establishes that the offence had been committed with the consent or connivance of or that it is attributable to any neglect on the part of any director, manager, secretary or other officer shall also be, deemed to be guilty of that offence and shall be liable to be proceeded against and

punished accordingly. Section 17 therefore prescribes a rule of vicarious liability in case of sales by a company making every person who was in charge of the business of the company at the relevant time also liable for the commission of the offence. It is only when a director or officer, of the company other than the company as such or the person who actually sold the article on behalf of the company is prosecuted and sought to be made liable that. Section 17 really comes into play. The section, however, leaves the liability of the company unaffected.

14. Therefore the finding of the learned District Magistrate that the respondent cannot be found guilty for the act of the servant, because the Milk Supply Union had no knowledge of the commission of the offence by their servant and they had taken ordinary care and diligence to see that the employees do not misbehave, cannot be countenanced. It is not a question of intention, of mens rea or of knowledge; it is the sale of adulterated food which the Act makes penal, and the sale by the servant of the Union is clearly in this case a sale by the Union.

15. A similar contention raised by this very some respondent in another case Criminal Revn. Petn, No, 344 of 1961 (Ker) (not reported) was negative by Anna Chandy, J., in the following words:

Section 17 deals with (1) the Company and (2) the persons who at the time the offence was committed was in charge of and responsible to the company for the conduct of its business on a distinct footing and makes both of them liable to be proceeded against and punished whereas the proviso confines itself only to the second category, viz., the persons who were in charge of the company etc. leaving the absolute liability of the company unaffected.

I am in respectful agreement with this view.

16. The acquittal of the respondent cannot, therefore, be justified and has to be set aside.

The order of acquittal is set aside. The respondent, the Calicut Co-operative Milk Supply Union, is found guilty of the offence u/s 16(1) read with Section 7 of Act 37 of 1954 and is convicted and sentenced to pay a fine of Rs. 300/-. Time for payment of fine one month from this date. The appeal is allowed.