

(1960) 08 CAL CK 0026

Calcutta High Court

Case No: Criminal Rev. No. 1127 of 1959

Jagadish Prosad Gupta

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision: Aug. 2, 1960**Acts Referred:**

- Prevention of Food Adulteration Act, 1954 - Section 16(1), 17, 17(1)

Citation: (1961) 2 ILR (Cal) 398**Hon'ble Judges:** J.P. Mitter, J**Bench:** Single Bench**Advocate:** A.K. Dutt and P.C. Ghosh, for the Appellant; F.M. Sanyal, for the Respondent

Judgement

J.P. Mitter, J.

The Petitioners were convicted u/s 16(1)(a)(i) read with Section 17(i) of the Prevention of Food Adulteration Act (Act 37 of 1954). Each was sentenced to pay a fine of Rs. 1,000 in default to suffer rigorous imprisonment for three month. The Petitioners appeal against the said convictions and sentences was dismissed by the learned Additional Sessions Judge.

2. The subject matter of the charge was a quantity of mustard seeds said to have been adulterated. Petitioner No. 1 Jagadish Prosad Gupta was the manager and Petitioner No. 2 Sreelal Bajoria was a partner of Sree Krishna Oil Mills at Tantigaria, Midnapore.

3. The prosecution case was that on the morning of February 15, 1957, a Food Inspector of the District Board of Midnapore visited the premises of the Oil Mills and took a sample from a bag of mustard seeds out of a large number of bags of mustard seeds stacked on a verandah of the Mills. This sample was divided into three parts, one of which was sent to the Public Analyst, one was taken away and the third left with Petitioner No. 1. The sample, when analysed, was found to contain ash slightly in excess of what the law permitted. In due course the Petitioners were

tried and convicted as aforesaid.

4. Mr. Dutt appearing for the Petitioners has contended that the Prosecution failed to establish that Petitioner No. 2 Sreelal Bajoria was in any sense liable for the alleged offence. The material parts of Section 17 of the Prevention of Food Adulteration Act are in these terms:

17. Offences by companies (1).

When an offence under this 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, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this Sub-section shall render any such person liable to any punishments provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in Sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the Company, director, manager, secretary or other officer shall also to be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

5. It is clear that under Sub-section (1) of Section 17 it is the duty of the Prosecution to prove that the person sought to be made liable was in charge of, and was responsible to the company for the conduct of the business of the company. Unless this initial onus is discharged, there is no onus upon the accused as provided in the proviso to Sub-section (1) of Section 17. It is only when the person concerned is proved to have been in charge of, or is proved to have been responsible to the company for the conduct of the business of the company, that he is called upon to prove, if he can, that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of the offence. This aspect of the matter does not appear to have been considered by the learned courts below. The only evidence led by the prosecution was that Petitioner Sreelal Bajoria was one of the proprietors of the Mill. There was no evidence that Bajoria was in charge of or was responsible to the company for the conduct of the business of the company. That being the position, Bajoria's conviction, and the sentence imposed upon Lira, must be set aside. I direct accordingly.

6. With regard to Petitioner No. 1 Jagdish. Prosad Gupta, the following facts require to be considered. A large number of bags of mustard seeds was found stacked on

the verandah of the Mill. The verandah was said to have been near the milling machine. The propinquity of the stack of mustard seeds to the milling machine does not necessarily lead to the inference that the seeds would inevitably be used to produce mustard oil without screening. The evidence in the case disclosed that occasional checks by Food Inspectors revealed that the mustard oil produced at the Mill was pure. On the facts, it is difficult to hold that the bags of mustard seeds lying on the verandah had been appropriated for direct use for the manufacture of oil. Having regard to the quantity which was taken out from one side of a bag, it is difficult to say that the stock of mustard seeds was adulterated. Moreover, the ash content was so little in excess of what was permitted by law that it is impossible to draw the inference that the rest of the stock was adulterated. The prosecution evidence was that before making use of the mustard seeds, the seeds were put on strainers to get rid of impurities. In this state of the evidence I cannot say that the other Petitioner, namely, Jagadish Prosad Gupta, was also guilty of storing adulterated mustard seeds.

7. There is one point, namely, the absence of any unimpeachable evidence to connect the sample taken with the sample which was ultimately analysed. Unless the prosecution was able to prove that the sample taken by " the Food Inspector was the sample which was found to contain ash in excess of what was permitted by law, the prosecution was bound to fail. I am not satisfied on the evidence that the sample examined by the Analyst was the sample which came out of one of the bags of mustard seeds at the Mill premises.

8. I would, therefore, set aside the conviction and sentence of Jagadish Prosad Gupta also and acquit him of the charge.