(1934) 08 CAL CK 0032

Calcutta High Court

Case No: None

Sawal Ram Agarwala and Another		APPELLANT
	Vs	
Emperor		RESPONDENT

Date of Decision: Aug. 30, 1934

Citation: 153 Ind. Cas. 632

Hon'ble Judges: Patterson, J; Khundkar, J

Bench: Division Bench

Judgement

Patterson, J.

The facts of the case to which these two Rules relate have been fully set forth in the judgment of the Appellate Court and I do net think it necessary to recapitulate them here. The convictions against which these Rules are directed are under Section, 6 read with Section 21, Bengal Food Adulteration. Act of 1919, and relate to two samples of mustard oil which were purchased by the Sanitary Inspector of the District of Rangpur from a shop situated within the Municipal limits of Gaibanda. Section 6 prohibits the sale of mustard oil which is not derived exclusively from mustard seed, but it was contended on behalf of the petitioners that this section should be read with Section 5, which would have the effect of introducing other consider rations. I am not prepared ,to accept this contention. Section 6 is, in; my opinion, an entirely distinct and self-contained section and ought to be interpreted as it stands. Its provisions are clear and all that the prosecution is required to establish in order to secure a conviction based on Section 6 read with Section 21 is that the two samples of mustard oil which were admittedly in the shop of petitioner No. 1 and which were admittedly sold to the Sanitary Inspector-by petitioner No. 2, were; not derived exclusively from mustard seed. This the prosecution has sought to do by tendering in evidence the report of the Public Analyst, of the District of Rang-pore.

2. The admissibility of this report has been questioned on the ground that the samples in question were not obtained under any section of the Act, inasmuch as the Sanitary Inspector who purchased those samples had no jurisdiction within the limits of the Gaibandha Municipality. The trial and the appeal proceeded on the fooling that the Sanitary Inspector had in fact]no official status within the Municipality, and the prosecution case in the Courts below was that he ought to be regarded as having made the purchases in his private capacity, that is to say u/s 9 of the Act. In this Court it has however been discovered that, by Rule 3 of the Rules framed under the Act and published under Bengal Local Self-Government, Notification Mo. 1977 P.H. dated July 24, 1930 the Sanitary Officers of the District Board have been empowered under Sections 10 and 12 of the Act in all Municipalities which have no Sanitary Officers of their own, provided the District Board concerned gives its consent to their being so employed. It may be that this Rule has the effect of empowering the Sanitary Inspector to make the purchases in question but as his power to do so had all along been questioned by the defence, it was for the prosecution to prove that he had that power.

3. This the prosecution has not attempted to do, and unless and until it is proved that the Gaibandha Municipality has no Sanitary Officer of its own, and that the District Board of Rangpore has consented to the employment of its Sanitary Inspector in discharging the functions of Health Officer within the limits of that Municipality, it cannot be assumed that the Sanitary Inspector is in possession of the powers in question, and for the purposes of the present proceedings it must be held that he had not got those powers. A further contention raised on behalf of the petitioner in this connection is that by reason of the Sanitary Inspector not having been proved to possess the power referred to above, it cannot be held that the samples of mustard oil which he admittedly submitted to the District Analyst of Rangpore were submitted for analysis under the Act, and that the special rule of evidence contained in Section 14 under which the Public Analyst''s certificate is made admissible in evidence without formal proofs has no application, I am not prepared to accept this contention. It seems to me to be immaterial whether the Sanitary Inspector, be he regarded as an official or as a private individual, obtained possession - of the samples in strict accordance with the provisions of the Act or not. What is important is that the safeguards which the Act lays down in Section 11 should be complied with, and this appears to have been done. I, therefore, hold that the samples in question were submitted for analysis under the Act and that the report of the Public Analyst is admissible in evidence.

4. That report shows that, the specification and iodine values were 17.67 and 106.35, respectively, in one case, and 176.65 and 106.70, respectively, in another case, whereas the rules framed by Government under Sections 4 and 20 of the Act lay down that the saponification and iodine values should not exceed 75 and 101, respectively. The excess in saponification and iodine values indicated above raises a presumption u/s 4, and under the raises framed u/s 20, that the mustard oil in

question is not genuine by reason of the addition hereto of extraneous oil. The excess both in respect of saponification value and iodine value is however small, and the Public Analyst is of opinion that the adulteration (by which he apparently means merely the addition of extraneous oil), is slight, and this being so, it cannot be said that the presumption is a strong, one. Having regard, moreover, to the fact that the samples were very small in bulk, the possibility of even slight errors in analysis leading to incorrect results is not one which can be completely ignored. The fact that in the United Provinces the maximum saponification and iodine values have been fixed at a higher figure also indicates that in the opinion of the authorities in those provinces a larger margin of error should be allowed for than has been allowed for in this province. Having regard, however, to the differences, between the Act and Rules which are in force in the United Provinces, and the Act and Rules which are in force in this province, and especially to the fact that in the United Provinces no attempt appears to have been made to lay down by statute that mustard oil shall be derived exclusively from mustard seed, as has been done in this province, I am not disposed, so far as the cases are concerned, to attach any very great importance to the difference in standards referred to above.

5. The cumulative effect of these considerations is that the statutory presumption referred to above is a very slight one and that probably very little evidence, if direct evidence were available, would be required to displace it. Now it appears that, at the instance of the petitioners, the Director of Public Health was asked to report on the two triplicate samples of mustard oil which had been left in their custody under the provisions of Section 2. His report was however merely to the effect that the mustard oil contained in the two samples was slightly adulterated, no reasons being given in support of that opinion. The petitioners pressed for. a detailed report from the Director of Public Health, but they were unable to obtain one. The Director of Public Health finally sending a reply to the effect that the further information required by the petitioners was irrelevant, it is true that some of the additional information which the petitioners sought to obtain from the Director of Public Health was irrelevant, but it was certainly reasonable on their part to expect him to state what were the saponification and iodine values, respectively, according to the analysis made by him or under his supervision, and whether in his opinion that result led to the conclusion that the samples of oil sent to him contained extraneous oil which had been added to the mustard oil.

6. A number of samples taken from other tins of mustard oil in the possession of the petitioners were also sent to the Director for report, and in respect of those samples he submitted a fairly detailed report giving the saponification and iodine values, and stating his opinion with regard to each sample. Now in respect of several of these samples, although both the saponification and iodine values were in excess of the maxima prescribed by Government, the Director of Public Health gave as his opinion that these samples approximated to the standard of the Act and might be given the benefit of the doubt. It has been contended on behalf of the petitioners that if the

Director had been compelled to submit a further report on the lines indicated above, he might have expressed an opinion with regard to the two samples with which we are now concerned, to the effect that they too might be given the benefit of the doubt in view of the fact that the excess both in respect of the saponification value and the iodine, value was slight.

7. It is also possible that the saponification value and the iodine value, as ascertained by him, would have differed from the saponification and iodine values as ascertained by the Public Analyst of Rangpore. It is impossible to say anything very definite, but I do feel that the petitioners have a real grievance, inasmuch as the only means which the Act provides for rebutting a presumption arising u/s 4 is to have the triplicate samples sent to the Director of Public Health with a view to eliciting an independent opinion and inasmuch as their, repeated requests for further details from the Director of Public Health were not complied with. In the Appellate Court, too, the petitioners made an attempt to obtain further information from the Director of Public Health by calling him as a witness, but this request was also refused. It might well be that if the Director of Public Health had furnished full details, or if he had been called and examined as a witness, the slight presumption arising under the Act from the report of the Public Analyst of Rangpore would have been rebutted.

8. In this view of the matter, I am of opinion, that the petitioners ought to have been given the benefit of the doubt, and that the orders of conviction and sentence passed on them in both cases ought to be set aside. It further appears that at: or about the time of taking the two samples in question, 457 tins of mustard oil were seized from the shop of the petitioners, and that the question of the disposal of those tins is still pending before the Magistrate. The petitioners applied to the Magistrate to have the tins returned to them, but the Magistrate ordered'' that they should be detained pending the disposal of these" two cases. That order was in my opinion'' an incorrect order, inasmuch as the question of the proper manner of disposing of these 457 tins did not in anyway depend upon the result of these two cases, and by the Rules at present under consideration the District Magistrate has Been called on to show cause why those 557 tins of mustard oil should not be restored to the petitioners.

9. The actual seizure of the tins in question appears to have been made by an Assistant Sub-Inspector, (who admittedly had no powers under the Act), but the Sanitary Inspector took charge of the tin''s at a later stage under coyer of an order from the Chairman of the Local Municipality. It is quite certain that the order of the Chairman authorizing the Sanitary Inspector to seize the tins was made without jurisdiction, at least; so far as the provisions of the Bengal Food Adulteration Act are concerned, and, as has already been stated, there is nothing on the record to show that the Sanitary Inspector was empowered under Sections 10 and 12 of the Act under the provisions of the new Rule 3, that is to say, he was not empowered to do

anything under the Act within the limits of the Gaibaudha Municipality. It appears, therefore, that the 457 tins in question were not taken possession of under any of the provisions of the Bengal Food Adulteration Act, and having regard to the subsequent course of events as disclosed by the evidence in the two cases we have just been considering, I am of opinion that these 457 tins should be at once released and restored to the petitioners. Both the Rules are accordingly made absolute in the above terms. The fines, if paid, will be refunded.

Khundkar, J.

10. I agree.