

1960

December 16.

SARJOO PRASAD

v.

THE STATE OF UTTAR PRADESH

(J. L. KAPUR, M. HIDAYATULLAH and J. C. SHAH JJ.)

Food Adulteration—Sale of adulterated oil by servant—Servant, whether liable—Mens rea, if necessary—Second offence—Sentence, lesser than minimum prescribed when can be given—Prevention of Food Adulteration Act, 1954 (37 of 1954) ss. 7, 16.

The appellant was an employee of one T, a vendor of edible oils. He was found to have sold adulterated mustard oil and he and T were prosecuted for an offence under s. 7 read with s. 16 of the Prevention of Food Adulteration Act, 1954. Both were found guilty; T was sentenced to pay a fine of Rs. 200, but in view of a previous conviction the appellant was sentenced to one year's rigorous imprisonment and Rs. 2,000 fine, the minimum prescribed by s. 16(ii). The appellant contended: (i) that a servant who sold food on behalf of his employer was not liable unless it was known that he had done so with the knowledge that the food was adulterated, and (ii) that there were special and adequate reasons justifying the imposition of a penalty less than the minimum prescribed for a second offence.

Held, that s. 7 of the Act enjoins everyone, whether an employer or a servant, not to sell adulterated food, and anyone who contravenes this provision is punishable under s. 16 without proof of *mens rea*.

Re: S. Moses, I. L. R. (1959) Mad. 418, disapproved.

Held, further, that the facts that the appellant was a mere employee of T, that it had not been shown that he had made any profit for himself, and that T had been sentenced to a fine of Rs. 200 only, were special and adequate reasons within the meaning of the proviso to s. 16(ii) to justify the imposition of a penalty less than the minimum prescribed by s. 16(ii).

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 147 of 1959.

Appeal by special leave from the judgment and order dated July 21, 1959 of the Allahabad High Court in Criminal Revision No. 503 of 1958 arising out of the judgment and order dated March 27, 1958, of the Sessions Judge, Allahabad, in Criminal Appeal No. 745 of 1957.

C. B. Agarwala and *K. P. Gupta*, for the appellant.

G. C. Mathur and *C. P. Lal*, for the respondent.

1960. December 16. The Judgment of the Court was delivered by

SHAH, J.—The appellant, Sarjoo Prasad was convicted by P. M. Aga, Magistrate First Class, Allahabad of an offence under s. 7 read with s. 16 of the Prevention of Food Adulteration Act, 1954 (37 of 1954)—hereinafter referred to as the Act—and in view of a previous conviction for a similar offence was sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs. 2,000. The conviction and sentence were confirmed in appeal by the Court of Session at Allahabad and by the High Court of Judicature at Allahabad in revision. The appellant has appealed to this court with special leave under Art. 136 of the Constitution.

The appellant was an employee of one Thakur Din who carries on business at 92-C, Mirganj, Allahabad as a vendor of edible oils and provisions. On September 22, 1956, a Food Inspector of the Allahabad Municipality purchased from the appellant a sample of mustard oil exposed for sale in the shop which on analysis was found to be adulterated with linseed oil. Thakur Din and the appellant were prosecuted in the court of the First Class Magistrate, Allahabad for

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selling adulterated food. The Magistrate convicted Thakur Din and the appellant and sentenced Thakur Din to pay a fine of Rs. 200 and the appellant to suffer rigorous imprisonment for one year and to pay a fine of Rs. 2,000.

The expression "sale" is defined by s. 2(xiii) in the Act as meaning sale of any article of food, whether for cash or on credit or by way of exchange and whether by wholesale or retail, for human consumption or use, or for analysis, and includes an agreement for sale, an offer for sale, the exposing for sale or having in possession for sale of any such article, and includes also an attempt to sell any such article. The definition includes not only actual sale but agreement for sale, offer for sale, exposure for sale and even possession of articles for sale and attempt to sell. The appellant was in charge of the shop at the time when mustard oil was sold to the Food Inspector. Mustard oil was exposed for sale and it was in the possession of the appellant and he actually sold it. But counsel for the appellant contends that by s. 7 of the Act, the owner of a shop alone is prohibited from selling adulterated food, and a servant employed in the shop who sells food on behalf of the employer is not a "person" against whom the prohibition operates. Counsel says that an employee in a shop who with knowledge that an article of food is adulterated, sells it is guilty of aiding and abetting his employer, but without such knowledge he is not liable to be punished for contravening the provisions of the Act.

Section 7 of the Act in so far as it is material provides:

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

(i) any adulterated food;

....."

The material part of s. 16(1) provides:

"If any person,

(a) whether by himself or by any person on his behalf.....sells..... any article of food in contravention of the provisions of this Act.....

or

.....
 he shall,, be punishable..... .”

That the mustard oil sold by the appellant was adulterated has not been challenged in this appeal. The appellant's plea that the mustard oil delivered to the Food Inspector was not meant for sale was disbelieved by the Trial Magistrate and that view has been confirmed by the Court of Session and the High Court. The expression “person” has not been defined in the Act and in the context in which that expression occurs, it *prima facie* includes every one who sell adulterated food. By the collocation of the expression, “no person shall himself or by any person on his behalf”, the employer alone is not prohibited. The intention of the Legislature is plain. Every person, be he an employer or an agent is prohibited from selling adulterated food and infringement of the prohibition is by s. 16 penalised. By s. 19 in a prosecution for an offence pertaining to the sale of any adulterated article of food, it is no defence merely to allege that the vendor was ignorant of the nature of the substance or quality of the food sold by him. Such a defence can only succeed if the person charged with selling adulterated food proves that the article of food was purchased as of the same in nature, substance and quality as that demanded by the purchaser with a written warranty in the prescribed form, that he had no reasons to believe at the time when he sold it that the food was not of such nature, substance, and quality and that he sold it in the same state as he purchased it, and he submits to the food inspector or the local authority a copy of the warranty with a written notice that he intends to rely upon it and specifies the name and address of the person from whom he received it. Prohibition of sale of adulterated food is evidently imposed in the larger interest of maintenance of public health. The prohibition applies to all persons who sell adulterated food, and for contravention of the prohibition all such persons are penalised. Because the Legislature has sought to penalise a person who sells adulterated food by his agent, it cannot be assumed that it was intended to

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penalise only those who may act through their agents. If the owner of a shop in which adulterated food is sold is without proof of *mens rea* liable to be punished for sale of adulterated food, we fail to appreciate why an agent or a servant of the owner is not liable to be punished for contravention of the same provision unless he is shown to have guilty knowledge.

The argument that the Legislature could not have intended having regard to the fact that a large majority of servants in shops which deal in food are illiterate to penalise servants who are not aware of the true nature of the article sold has in our judgment no force. The intention of the Legislature must be gathered from the words used in the statute and not by any assumptions about the capacity of the offenders to appreciate the gravity of the acts done by them. There is also no warrant for the assumption that the servants employed in shops dealing in food stuff are generally illiterate.

The Legislature has, in the interest of the public health, enacted the Act and has provided that all persons are prohibited from selling adulterated food. In the absence of any provision, express or necessarily implied from the context, the courts will not be justified in holding that the prohibition was only to apply to the owner of the shop and not to the agent of the owner who sells adulterated food. The view taken to the contrary by the Madras High Court in *Re S. Moses* ⁽¹⁾ is, in our judgment, erroneous.

There is no substance in the contention that the conviction of the appellant was not for a second offence committed by him under the Prevention of Food Adulteration Act. The prosecutor produced before the court an extract dated April 7, 1956 of a judgment in criminal case No. 208 of 1956 which showed that one "Sarjoo Prasad" had been convicted by P. N. Jauhari, Magistrate F-Class, Allahabad of the offence of adulteration of mustard oil and sentenced to pay a fine of Rs. 80. In the view of the Magistrate, the extract related to the appellant. The name of the person convicted and his father's name and residence were identical with the name of the appellant,

(1) I.L.R. (1959) Mad. 418.

his father's name and his residence. All the details given in the extract tallied with the description of the appellant. In the memorandum of appeal filed to the Court of Session challenging the conviction recorded by the Magistrate First Class, it was not contended that the person convicted in the earlier case was some person other than the appellant.

But the appellant was merely an employee of Thakur Din. It is not shown that he made himself any profit out of the transaction. Thakur Din has been sentenced to pay a fine of Rs. 200 only. The offence committed by the appellant is a repetition of a similar offence committed by him a few months earlier, but we think that having regard to all the circumstances, this is a case in which there are special and adequate reasons which would justify imposition of a penalty less than the minimum prescribed by s. 16(ii) of the Act. We reduce the sentence to imprisonment to three months and we remit the fine. Subject to this modification, the appeal is dismissed.

Appeal dismissed.

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