A **M/S. BABURALLY SARDAR AND ANOTHER**

v.

CORPORATION OF CALCUTTA

November 29, 1965

B [J. R. MUDHOLKAR, R. S. BACHAWAT AND P. SATYANARAYANA RAJU, JJ.]

Prevention of Food Adulteration Act, 1954 (37 *of* 1954), *s.* 19(2) *and proviso to Rule* 12-*A—Description of contents on label of tin—Contents described as "Full cream sweetened condensed milk" and "scientifically preserved pure and produced from healthy cow's milk"—*
C *Description whether amounts to warranty under the Act.*

Samples of a certain brand of tinned condensed milk were taken from the appellants' shop by the Food Inspector. The Public Analyst found the fat content of the condensed milk below standard. When prosecuted under s. 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 the appellants took a plea based on s. 19(2) of the Act and claimed that the label on the tins was a warranty within the meaning
D of that section as well as of the proviso to Rule 12-A. The label on the tins described the milk as "Full cream sweetened condensed milk made on formula of Holland product" and *inter alia* said : "The contents of the tin are scientifically preserved, pure and produced from healthy cow's milk." The trial Magistrate accepted the appellants' plea and acquitted them but on appeal by the State the High Court convicted them. They appealed to this Court with certificate.

E HELD : (i) Defence under s. 19(2) of the Act was available to the appellants provided they showed in the first place, that what was stored by them for sale to the purchasers demanding condensed milk was in fact milk which had been concentrated from full cream milk so as to conform to the standard of quality given in A 11.07 of Appendix B. For, it would be milk which satisfies the standard prescribed therein which can be regarded as 'condensed milk' under the Act. Since however the milk stored by the appellants was found to be below standard
F it could not be regarded as 'the same in nature, substance and quality as that demanded by the purchaser'. Nor again had the appellants obtained a warranty in the prescribed form. Thus the requirements of s. 19(2)(i) were not satisfied. [819 B-C]

(ii) No doubt, under the proviso to Rule 12-A no warranty in the prescribed form is necessary if the label on the article of food or cash memo delivered by the trader to the vendor in respect of that article
G contains a warranty certifying that the food contained in the container or mentioned in the cash memo is the same in nature, substance and quality as demanded by the vendor. But the labels on the tins stored by the appellants contained no warranty of the kind referred to in the proviso. The labels were not in the form prescribed under r. 42B(b) and it was not possible from the matter printed thereon to ascertain by reference to standard tables the quantity of milk solids and fat from the quantity of milk condensed and from the quantity of condensed milk
H contained in the tin. [819 D-820 D]

(iii) The words "Full cream" on the tin did not satisfy the requirements of the law either. 'Full cream' has nowhere been defined in the Act or the rules. Without knowing the quantity of 'full cream' which

was condensed in the milk contained in each tin it was impossible even to calculate the quantity of milk solids and fat in each tin. The label therefore was of little assistance to the appellants. [820 D-E]

Similarly the cash memos carried no warranty whatsoever.

(iv) When a vendor accepts from the trader tins purported to be of condensed milk bearing a label of the above kind he cannot be said to have "had no reason to believe" that it was not condensed milk of the prescribed nature, substance and quality. It may be that the appellants sold the tins in the same state as they purchased them. But this fact was by itself not sufficient to absolve them. [820 F]

Per Bachawat, J—The defence under s. 19(2) of the Act could not succeed as the appellants failed to prove that they purchased the articles of food with a written warranty in the prescribed form. The label on the tin container gave a description of the article of food but it did not give a warranty certifying that the food was the same in nature, substance and quality as demanded by the vendor. In the absence of such a warranty, the appellants had failed to establish the defence under s. 19(2) read with r. 12-A and Form VI-A. [821 A-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 177 of 1963.

Appeal from the judgment and order dated May 14, 1963 of the Calcutta High Court in Criminal Appeal No. 380 of 1962.

S. C. Das Gupta and *Sukumar Ghose*, for appellants.

C. K. Daphtary, Attorney-General, A. N. Sinha and *P. K. Mukherjee*, for the respondent.

The Judgment of MUDHOLKAR and SATYANARAYANA RAJU JJ. was delivered by MUDHOLKAR J. BACHAWAT J. delivered a separate Judgment.

Mudholkar, J. This is an appeal by certificate from a judgment of the High Court of Calcutta setting aside the acquittal of M/s. Baburally Sardar of Steward Hogg Market, Calcutta, appellant no. 1 and of Abdul Razzak, a partner of that firm, appellant no. 2, in respect of an offence under s. 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 read with s. 7(1) of that Act. The facts which are not in dispute are briefly these : On June 1, 1960 a Food Inspector of the Corporation of Calcutta visited the shop of the appellants. At that time Abdul Razzak was in charge. He took samples of Comela Brand condensed milk from the shop, one of which was sent to the Public Analyst. Upon an analysis made by the Public Analyst the milk fat content of the condensed milk was found to be 3.4% which did not conform to the prescribed standard in respect of condensed milk. A complaint was thereupon lodged against the firm before the Municipal Magistrate and Additional Chief Presidency Magistrate,

A Calcutta. Apart from the firm five other persons, including Abdul Razzak were also named as accused persons. One of the accused persons, Mohd. Yasin did not appear but it was represented to the learned Magistrate that the person was not mentally fit. Thereupon the counsel for the Corporation gave him up. The other accused persons pleaded not guilty and were eventually ac-
B quitted by the Magistrate. Against that order an appeal was preferred before the High Court under s. 417 of the Code of Criminal Procedure. The High Court, however, allowed the appeal only against the appellants but dismissed it against the remaining accused persons.

C The defence of the appellants was based upon s. 19(2) of the Act and was briefly this : The tins of condensed milk were purchased by the firm on May 3, 1960 from Messrs S. Choudhury Brothers under a document of sale Ex. A. At that time the firm had demanded a warranty from the traders, that is, Messrs. Choudhury Brothers, but they did not furnish a written guarantee on
D the ground that a certificate and a warranty had been given on each tin of condensed milk. The appellants further pleaded that the tins were in the same condition in which they were when they were purchased from Messrs Choudhury Brothers and that they had no reason to believe that there was any alteration in their nature, substance or quality subsequent to the purchase of the tins.
E It may be mentioned that an attempt was made to secure the appearance of S. Choudhury of Messrs. Choudhury Brothers, but it failed because he could not be traced at the address given in the cash memo.

Section 16(1)(a)(i) of the Act, amongst other things, pro-
F vides that if any person, whether by himself or by any person on his behalf stores or sells any article of food in contravention of any provisions of the Act or of the rules made thereunder he shall be punishable for the first offence with imprisonment for a term which may extend to one year and/or with fine which may extend to Rs. 2000 or both. Section 2(i) defines the word "adulterat-
G ed". According to the definition an article of food shall be deemed to be adulterated in various circumstances, one of which is where the quality or purity of the article falls below the prescribed standard. In the Act "prescribed" means prescribed by the rules. Rule 5 of the Rules framed by the Central Government under s. 23(1) of the Act read with s. 4(2) thereof runs thus :

H

> "Standards of quality of the various articles of food specified in Appendix B to these rules as defined in that appendix."

The definition of standard of quality for condensed milk is given in A.11.07 of Appendix B and runs thus : A

> "Condensed milk means milk which has been concentrated from full cream milk by removal of part of its water with or without the addition of sugar, and includes the article commonly known as 'evaporated milk' but does not include the article commonly known as 'dried milk' or 'milk powder'. It shall be free from preservatives other than sugar and contain at least 31 per cent of milk solids of which at least 9 per cent shall be fat." B

As already stated, the Public Analyst found that the fat content of the condensed milk was only 3.4% whereas the minimum prescribed in the Appendix is 9%. It is, therefore, clear that the condensed milk stored by the appellants for sale was adulterated and, therefore, there was a breach of the provisions of s. 16(1)(a)(i) of the Act. C D

In view of the provisions of s. 19(1) it was not open to the appellants to contend that they were ignorant of the nature, substance and quality of the condensed milk sold by them. Sub-section (2) of s. 19, however, furnishes a defence to a vendor ignorant of the nature, substance and quality of food sold by him provided he satisfies the requirements of that provision. Omitting the second proviso thereto, which is not relevant in the present case, sub-s. (2) of s. 19 reads thus : E

> "(2) A vendor shall not be deemed to have committed an offence if he proves—(i) that the article of food was purchased by him as the same in nature, substance and quality as that demanded by the purchaser and with a written warranty in the prescribed form, if any, to the effect that it was of such nature, substance and quality; F
>
> (ii) that he had no reason to believe at the time when he sold it that the food was not of such nature, substance and quality; and G
>
> (iii) that he sold it in the same state as he purchased it :
>
> Provided that such a defence shall be open to the vendor only if he has submitted to the food inspector or the local authority a copy of the warranty with a written notice stating that he intends to rely on it and H

A specifying the name and address of the person from whom he received it, and has also sent a like notice of his intention to that person."

The aforesaid defence was available to the appellants provided that they showed, in the first place, that what was stored by them B for sale to purchasers demanding condensed milk was in fact milk which had been concentrated from full cream milk so as to conform to the standard of quality given in A.11.07 of Appendix B. For, it would be milk which satisfies the standard prescribed therein which can be regarded as 'condensed milk' under the Act. Upon analysis, however, it was found that the so-called condensed C milk contained in the samples taken by the Food Inspector from the appellants was far inferior to that prescribed for "condensed milk". It could, therefore, not be regarded as "the same in nature, substance and quality as that demanded by the purchaser". Nor again, had the appellant obtained a warranty in the prescribed form. Rule 12-A provides that every trader selling an article of D food to a vendor shall deliver to the vendor a warranty in form 6-A, if required to do so by the vendor. No such warranty was demanded by the appellants, nor given by Messrs. S. Chaudhury Brothers. No doubt, under the proviso to the aforesaid sub-rule no warranty in the prescribed form is necessary if the label on the article of food or cash memo delivered by the trader to the E vendor in respect of that article contains a warranty certifying that the food contained in the container or mentioned in the cash memo is the same in nature, substance and quality as demanded by the vendor. Mr. Das Gupta for the appellants, says that the labels on the tins satisfy the requirements of the proviso and faintly suggested that the cash memo also satisfies the conditions. F The contents of the label upon which reliance is placed by him are as follows :

" 'Comela'—Full Cream sweetened condensed milk made on formula of Holland Product.

G 'Comela Brand'—The contents of the tin are scientifically preserved, pure and produced from healthy Cow's milk. Comela full cream condensed milk easily digestable and are ideal food for babies.

Special care is taken to maintain freshness—

H Prepared by Kwality Diary."

This label contains no warranty of the kind referred to in the proviso. Moreover, it is not even in the form given for a label

prescribed for "Sweetened condensed milk". Under r. 42-B(b) the label prescribed is as follows :

CONDENSED FULL CREAM MILK (Sweetened)
This tin contains the equivalent of .....litres of milk with sugar added.

It may be that the inscription on the prescribed label "This tin contains an equivalent of.....litres of milk with sugar added" was meant to serve the purpose of a warranty though it is couched in different language. For, it may be possible to ascertain by reference to standard tables the quantity of milk solids and fat from the quantity of milk condensed and from the quantity of condensed milk contained in the tin. It would not be possible even to do this on the basis of the particulars given on the labels borne on the tins which were taken as samples by the Food Inspector from the appellants. Mr. Das Gupta strongly relied upon the words "Full Cream" and said that where condensed milk is said to have been obtained from full cream the requirements of law must be deemed to have been satisfied. For one thing "Full cream" has nowhere been defined in the Act or the rules. Moreover, without knowing the quantity of "Full cream" which was condensed in the milk contained in each tin it is impossible even to calculate the quantity of milk solids and fat in each tin. The label, therefore, is of little assistance to the appellants. Moreover, when a vendor accepts from the trader tins purported to be of condensed milk bearing a label of this kind he cannot be said to have "had no reason to believe" that it was not condensed milk of the prescribed nature, substance and quality. It may be that the appellants sold them in the same state as they purchased them. But this fact is by itself not sufficient to absolve them. As for the so-called cash memo it is sufficient to point out that all that it specifies is :

Quantity	Description	Rate	Per	Amount
1	C/C Comela Milk	C 70/-	Case	Rs. 70·00

There is not a whisper of any warranty on it.

In the circumstances, therefore, the High Court was right in setting aside the acquittal of the appellants and convicting them of the offence under s. 16(1)(a) of the Act and sentencing them to pay fine of Rs. 2,000 each. The appeal is without merit and is dismissed.

A **Bachawat, J.** The defence under s. 19(2) of the Prevention of Food Adulteration Act, 1954 cannot succeed, as the appellants failed to prove that they purchased the articles of food with a written warranty in the prescribed form. The label on the tin container gave a description of the article of food, but it did not give a warranty certifying that the food is the same in nature, B substance and quality as demanded by the vendor. In the absence of such a warranty, the appellants have failed to establish the defence under s. 19(2) read with R. 12(a) and Form VI-A. Had there been such a written warranty on the label, the appellants would have established the defence. I agree that the appeal be dismissed.

Appeal dismissed.