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JAGDISH PRASAD ALIAS JAGDISH PRASAD GUPTA

v.

STATE OF WEST BENGAL

December 13, 1971

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[P. JAGANMOHAN REDDY AND I. D. DUA, JJ.]

Prevention of Food Adulteration Act, 1954—*Prevention of Food Adulteration Rules,* 1955—*Appendix* B A 17.06—*Public Analyst—Failure to report on all tests—Does not make report ineffective—Section* 16(*i*)—*Sentence—Circustances justifying reduction—Sanction—Bengal Municipal Act,* 1932.

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The appellant, manager of an Oil Mill, was convicted under s. 7(i)/16(i)(a)(i) of the Prevention of Food Adulteration Act, 1954, and sentenced to one year rigorous imprisonment. His appeal to the Sessions Judge was without success and a revision to the High Court, was also dismissed. In appeal to this Court it was contended that (i) the sanction for prosecution did not show (a) that the Chairman of the Municipality had applied his mind before giving the sanction, (b) that it was

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invalid since it was not granted by the local authority, namely, the municipality and (c) that since the resolution of the Municipality had authorised the Chairman to give the sanction, the new Chairman could not avail himself of that authorisation and, therefore, the trial was vitiated for want of valid and legal sanction; (ii) the report of the Public Analyst was not a proper report in law and was bad and incomplete for failure to carry out all the tests required under A. 17.06 of Appendix B to the Prevention of Food Adulteration Rules, 1955, and also for failure to disclose the data

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in the report; and (iv) the sentence awarded was harsh for a first offender. Reducing the sentence and dismissing the appeal,

HELD : (i) Reading ss. 20 and 51 of the Bengal Municipal Act, 1932, the Chairman of a municipality duly authorised by the municipality can accord sanction for prosecution of offences under the Act. The resolution of the Municipality authorising the Chairman to perform all the functions and exercise the powers of the local authority within the meaning of the

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Prevention of Food Adulteration Act, 1954, is not to grant power to any particular Chairman *eo nominee,* but, is a general power exercisable by any Chairman, for the time being, of the municipality. The High Court has rightly pointed out that under s. 15(2) of the Bengal Municipality Act the Municipality is a body corporate and it has perpetual succession and, as such, any authorisation granted by it is not limited to the Chairman then in office but will continue unless rescinded. [848 D; G-H]

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(ii) It is true that the Public Analyst in his report has only indicated the result of the three tests out of which two tests were as indicated in A 17.06, while, only one, namely, the saponification test, was said to have exceeded the maximum on the strength of which the Public Analyst reported that the sample was adulterated. Omission to report on the other four tests does not make the report ineffective or inconclusive. Even assuming that the other four tests are normal, if the saponification test

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alone did not conform to the standards indicated in A 17.06 of Appendix B to the Rules, the sample cannot be said to have come up to the standard and, therefore, it is adulterated. It is in exercise of the powers conferred by s. 23(i)(b) that rule 5 was made authorising standards of quality of

the various articles of food specified in Appendix B to the Rules. Standards having been fixed, any person who deals in articles of food which do not conform to them contravenes the provisions of the Act and is liable to punishment thereunder. [849 A-C; 850 E]

Andhra Pradesh Grain and Seed Merchants Association and others v. *Union of India & Anr., A.I.R.* [1971] S.C. 2346, referred to.

If the report of the Public Analyst was not satisfactory it was open to the appellant to make an application for sending the sample which was in his possession to the Director. If he had made such an application and sent the sample under s. 13(2) the certificate granted by the Director of the Central Food Laboratory would have superseded the report given by the Public Analyst. This has not been done. In the circumstances he has been properly convicted. [850 H]

(iv) The reason for the legislature to make exception to the minimum of six months rigorous imprisonment prescribed under s. 16(1) is not that the offences specified are not considered to be serious, but the gravity of the offences, having regard to its nature can be less if there are any special or adequate reasons. In the present case having regard to the fact that the appellant has been on bail since 1964 for a period of nearly seven years, and also because not only the oil sample satisfied all the tests except one but the main person concerned in the manufacture of the oil has been acquitted, interests of justice would be served if the sentence of one year is reduced to two months rigorous imprisonment and the appellant is further directed to pay a fine of Rs. 1000/-. [851 F, H]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 50 of 1969.

Appeal from the judgment and order dated December 24, 1968 of the Calcutta High Court in Criminal Revisions No. 235 of 1966.

Nur-ur-din Ahmed, S. C. Agarwal and *Indiraj Jaisingh*, for the appellant.

S. P. Mitra and *G. S. Chatterjee* for *Sukumar Basu* for the respondent.

The Judgment of the Court was delivered by

Jaganmohan Reddy, J. This appeal is by certificate under Art. 134(1)(c) of the Constitution. The appellant is the Manager of Sree Krishna Oil Mills, Midnapore, the proprietor of which was one Srilal Bajoria. Both these persons were tried jointly for an offence under s. 7(1)/16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954—hereinafter referred to as 'the Act'. The proprietor Srilal Bajoria was acquitted but the appellant was sentenced to one year rigorous imprisonment. The offence in respect of which the appellant was charged was that he being the Manager of the Oil Mills for manufacturing mustard oil was responsible for the adulteration. On July 10, 1964, at about 11 A.M. the appellant was going in a truck carrying 100 tins of mustard oil and was stopped by the Food Inspector, Kharagpore Municipality. On being

A questioned by the Food Inspector the appellant informed him that the oil which he was carrying was manufactured at Sree Krishna Oil Mills, Midnapore. As the Food Inspector suspected that this oil may have been adulterated, he took three samples according to the provisions of the Act. He sent one sample to the Public Analyst—one he kept with himself and the third he gave to the B appellant. The Public Analyst on examining the sample sent to him reported on August 5, 1964, that saponification value of the oil was 181.6, Iodine value 107.2 and B. R. reading at 40°C was 60.1 and was of the opinion that the sample of mustard oil was adulterated—*vide* Ext. 5. After obtaining the sanction for prosecution from the Chairman of the Municipality, the appellant was prosecuted before the Magistrate, Ist Class, Midnapore. He C pleaded not guilty but on the evidence and the report of the Public Analyst he was convicted and sentenced as aforesaid. An appeal to the Sessions Judge was without success. Thereafter the appellant filed a revision before the High Court and that was also dismissed.

D Before us the learned counsel for the appellant has urged similar points as were urged before the High Court, namely, (i) that the trial was vitiated for want of valid and legal sanction; (ii) that the report of the Public Analyst was not a proper report in law and cannot form the basis of legal conviction; and (iii) that the Public Analyst's report was bad and incomplete for failure to carry out all the tests required under A. 17.06 of Appendix B to E the Prevention of Food Adulteration Rules, 1955, and also for failure to disclose the data in the report.

It is contended on behalf of the appellant that the sanction to prosecute the appellant was given by the Chairman of Kharagpore Municipality—Shri K. C. Chaki—on August 19, 1964. This F sanction did not show (a) that the Chairman had applied his mind before giving the sanction; (b) that it was valid as it was not granted by the Local Authority, namely, the Municipality; and (c) that since the resolution of the Municipality had authorised the Chairman to give the sanction, the new Chairman cannot avail himself of that authorisation as by that time there were fresh elections and a new Chairman was elected. Accordingly it is submitted that the G sanction given by Mr. Chaki was not a proper sanction.

It appears to us that the challenge to the validity of the sanction is misconceived. As pointed out by the High Court, s. 51 of the Bengal Municipal Act, 1932, enumerates the powers of the Chairman as under :

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> "Save as hereinafter provided, the Chairman shall for the transaction of the business connected with this Act or for the purpose of making any order authorised

thereby, exercise all the powers vested by this Act in the Commissioners and whereby any other law power is vested in the Commissioners for any purpose, the Chairman may transact any business or make any order authorised by that law in the exercise of that power, unless it is otherwise expressly provided in that law."

Section 20 of the Act provides for sanction of the Local Authority for prosecutions under the Act which includes a Municipality. Reading these two provisions together the Chairman of a Municipality duly authorised by the Municipality can accord sanction for prosecution of offences under the Act. In compliance with the aforesaid power under s. 51 of the Bengal Municipal Act, the Municipality by resolution dated July 28, 1960 authorised the Chairman "to perform all the functions and exercise the powers of the Local Authority within the meaning of the Prevention of Food Adulteration Act, 1954." (Exe. 7). This power, it may be noticed, is not granted to any particular Chairman *Eo nominee*, but is a general power exercisable by any Chairman for the time being of the Municipality. It is true that a fresh election of the Chairman was held after the resolution of the Municipality but that does not deprive the new Chairman of the power to grant sanction under that resolution.

The appellant in Criminal Miscellaneous Petitions Nos. 450 & 515 of 1970 seeks permission to allow him to adduce additional evidence to show that there was another resolution by the Kharagpore Municipality dated August 18, 1965, which had given a fresh authorisation to the Chairman to grant sanctions for prosecution under the Act which would show that the previous authorisation was not really valid when sanction was given to prosecute the appellant. Apart from the fact that no case has been made out to adduce any fresh evidence, the resolution itself has been passed after the sanction for the prosecution was given and even that resolution as can be noticed is in similar terms to the earlier resolution passed by the Municipality. This subsequent resolution does not in any way indicate that the previous power could not be availed of by the Chairman who in fact had granted the sanction. At the most it may have been passed by way of abundant caution, having regard to the contentions raised during the trial of the appellant. The High Court has pointed out, and we think rightly, that under s. 15(2) of the Bengal Municipal Act, the Municipality is a body corporate and it has perpetual succession, if so any authorisation granted by it is not limited to the Chairman then in office, but will continue unless otherwise rescinded.

Nextly it has been strenuously urged before us on behalf of the appellant that the report of the Public Analyst is not a complete report in that out of the seven tests that he had to make under

A 17.06 of Appendix B to the Rules he had only made three tests and secondly the report does not give the basis on which the Public Analyst came to the conclusion that the sample of the mustard oil was adulterated. It is true that the Public Analyst in his report has only indicated the result of the three tests out of which two tests were as indicated in A 17.06 while only one, namely, the saponification test was said to have exceeded the maximum on the strength of which the Public Analyst reported that the sample was adulterated. Omission to report on the other four tests does not, in our view, make the report ineffective or the report inconclusive. Even assuming that the other four tests are normal, if the saponification test alone did not conform to the standards indicated in A 17.06 of Appendix B to the Rules the sample cannot be said to have come up to the standard and, therefore, it is adulterated.

An attempt was made to refer us to certain technical books and the decisions in *Jagadish Chandra Jain* v. *Corporation of Calcutta*(1) *Messrs. Netai Chandra and Surendra Nath Dey* v. *Corporation of Calcutta,*(2) and *In re. Perumal & Co.*(3) for the proposition that the standard prescribed by A 17.06 in Appendix B to the Rules is not conclusive because in some places mustard can yield a higher reading. We cannot allow any fresh evidence to be used, nor do we think that the decisions referred to, even if they justify that contention, can alter or vary the standard fixed in exercise of the powers conferred by the Act in Appendix B to the Rules. Section 3 of the Act authorises the Central Government to constitute a Committee called the Central Committee for Food Standards to advise the Central Government and the State Governments on matters arising out of the administration of the Act and to carry out the other functions assigned to it under the Act. Under s. 23(1)(b) of the Act the Central Government may, after consultation with the Committee and subject to the condition of previous publication, make rules "defining the standards of quality for, and fixing the limits of variability permissible in respect of, any article of food." It is in exercise of this power that r. 5 was made authorising standards of quality of the various articles of food specified in Appendix B to the Rules. In view of this provision any article of food which does not conform to the standards specified in Appendix B to the Rules which under s. 2 (1) of the Act is said to be adulterated because "the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities which are in excess of the prescribed limits of variability."

The contention that the standards cannot be conformed to by an ordinary vendor who is not versed in the technicalities is also

(1) 57 C.W.N. 839. (2) A.I.R. 1967 Cal. 65.

(3) A.I.R. 1943 Mad. 47.

not of significance. In this regard it was pointed out by Shah, J., as he then was, speaking for this Court in *Andhra Pradesh Grain and Seed Merchants Association and others* v. *Union of India & Anr.*(1) :

> "The various items in the Schedule setting out standards of quality use technical expressions with which an ordinary retail dealer may not be familiar, and also set out percentages of components which the dealer with the means at his command cannot verify. But by s. 3, the Central Government has to set up the Central Committee for Food Standards to advise the Central and the State Governments on matters arising out of the administration of the Act .....Under s. 23(1)(b) the Central Government makes rules prescribing the standards of quality and the limits of variability permissible in any article of food. The rules are made after consultation with the Committee for Food Standards. The standards set out in the Appendix to the Rules are prescribed after consultation with the Committee for Standards."

It appears to us therefore that standards having been fixed as aforesaid any person who deals in articles of food which do not conform to them contravenes the privisions of the Act and is liable to punishment thereunder.

It was again urged that the Public Analyst had not given the basis for his conclusion that the saponification test did not conform to the standards specified in A 17.06 of Appendix B to the Rules which contention is also not tenable. Under s. 13(5) of the Act any document purporting to be a report signed by a Public Analyst, unless it has been superseded under sub-s. (3), or any document purporting to be a certificate signed by the Director of the Central Food Laboratory, may be used as evidence of the facts stated therein in any proceeding under the Act or under ss. 272 to 276 of the Indian Penal Code. Under the proviso to that sub-section any document purporting to be a certificate signed by the Director of the Central Food Laboratory shall be final and conclusive evidence of the facts stated therein. If the report of the Public Analyst was not satisfactory, it was open to the appellant to have made an application for the sample which was in his possession to be sent to the Director of the Central Food Laboratory for examination. If he had made such an application and sent the sample under s. 13(2) the certificate granted by the

(1) A.I.R. 1971 S.C. 2346.

A Director of the Central Food Laboratory would have superseded the report given by the Public Analyst. This he has not done. In the circumstances he has been properly convicted.

Lastly it has to be considered whether the sentence awarded B in the circumstances requires any modification. It was urged that the prosecution of the appellant was prior to the amendment of sub-s. (1) of s. 16 of the Prevention of Food Adulteration Act with effect from March 1, 1965, under which the sentence has to be a minimum of six months rigorous imprisonment, but there is no such injunction under the unamended section and yet the C maximum sentence has been awarded to the appellant which is harsh for a first offender. Offences under the Act being anti-social crimes affecting the health and well-being of our people, the Legislature having regard to the trend of courts to impose in most cases only fines or where a sentence of imprisonment was passed a light sentence was awarded even in cases where a severe sentence was called for, a more drastic step was taken by it in D prescribing a minimum sentence and a minimum fine to be imposed even for a first offence. An exception was however made in cases falling under sub-cl. (i) of cl. (a) ofs. 16(1) and in respect of an article of food which was considered to be adulterated under s. 2 cl. (i)(1) or misbranded under s. 2 cl. (ix) or for an offence under sub-clause (ii) of clause (a) of s. 16(1), in which case E the Court is given the discretion, for any adequate and special reasons to be mentioned, to award a lesser sentence than six months or impose a fine lesser than one thousand rupees or of both lesser than the minimum prescribed. If for the offence of which the appellant is convicted even under the amended section a lesser sentence can be awarded, if there were adequate and F special reasons, it would be much more so under the unamended section. The reasons for the Legislature to make the exception is not that the offences specified are not considered to be serious, but the gravity of the offence having regard to its nature can be less if there are any special or adequate reasons.

G In our view though offences for adulteration of food must be severely dealt with, no doubt depending on the facts of each case which cannot be considered as precedents in other cases, in this case having regard to the fact that the appellant has been on bail since 1964 for a period of nearly seven years, and also because not only the mustard oil sample satisfied all the tests except one H but the main person concerned in the manufacture of the said oil has been acquitted, interests of justice would be served if the sentence of one year is reduced to two months rigorous imprisonment and the appellant is further directed to pay a fine of

Rs. 1,000/- failing which to be directed to undergo a further term of rigorous imprisonment for one month. We accordingly so direct. A

Subject to this modification, the appeal and the Criminal Miscellaneous Petitions Nos. 450 and 515 of 1970 are dismissed. B

K.B.N. *Appeal and petitions dismissed.*