

MUNICIPAL CORPORATION OF DELHI

A

v.

R. SAHARI, GENL. MANAGER, DAURALA
SUGAR MILLS, DAURALA & ORS ETC.

March 23, 1979

[S. MURTAZA FAZAL ALI AND A. D. KOSHAL, JJ.]

B

Prevention of Food Adulteration Act—Sections 20 & 20-A—Scope of

Tofees sold by a vendor to a Food Inspector having been found to be adulterated, prosecution was launched against him. The vendor produced a warranty in the Trial Court as a result of which he was acquitted by the Magistrate. The Magistrate however directed notice to the respondents under section 20-A for being impleaded and prosecuted on the grounds that the articles manufactured and distributed by them were adulterated. On revision, the Session Judge dismissed the same but on further revision to the High Court, it allowed the revision and set aside the order of the Magistrate.

In the other two Criminal Appeals Nos. 166 & 167 of 1972, the appellants were impleaded under section 20A before the acquittal of the last seller and that Order was upheld by the High Court. On the question whether the magistrate was entitled to implead the distributors or manufacturers under s. 20A even after acquitting the seller on the ground that he was protected by a warranty.

D

Dismissing the appeals

HELD : The opening lines of section 20A clearly contemplate a contingency where the discretionary jurisdiction under this Act can be exercised only during the trial of any offence, i.e. the stage at which the magistrate can exercise his jurisdiction under this section must be before the trial has concluded and ended in acquittal or conviction. A combined reading of section 20A and 20 is that where a distributor or manufacturer or any other person is impleaded in the course of a trial, the obligation to get a fresh sanction for such a person is dispensed with and the sanction obtained for the last seller in the trial, will ensure for the benefit of the prosecution of the other person impleaded. Therefore protection of section 20 is not available if the parties concerned are impleaded after the trial was over. The special statutory concession is given to the prosecution only if the conditions mentioned in s. 20A are fulfilled and not otherwise. [627B-C, F-H]

E

V. N. Kamdar v. Municipal Corporation of Delhi [1974] 1 S.C.R. 157 followed.

F

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 152-153 of 1972.

G

From the Judgment and Order dated 28-10-1970 of Delhi High Court in Criminal Revision Nos. 426/68 and 5/70.

AND

CRIMINAL APPEAL NOS. 166-167 OF 1972

H

From the Judgment and Order dated 28-10-1970 of Delhi High Court in Criminal Revision Nos. 72-73/68.

A *Soli J. Sorabji*, Addl. Sol. Genl. of India, *B. P. Maheshwari* and *Suresh Sethi* for the Appellant in Crl. A. Nos. 152-153/72.

V. M. Tarkunde, *S. C. Malik* and *B. R. Agarwala* for RR 4 in Crl. A. 152/72.

B *H. K. Puri* for RR. 3 in Crl. A.153/72.

Mrs. Urmila Sirur for RR. 3 in Crl. A. No. 152/72.

B. K. Jaggi for the Appellant in Crl. A. No. 166-167/72.

H. S. Marwah and *M. N. Shroff* for RR. in Crl. A. Nos. 166-167/72.

C *B. P. Maheshwari* and *Suresh Sethi* for the Intervener.

The Judgment of the Court was delivered by

FAZAL ALI, J. These appeals by certificate arise out of a common Judgment delivered by the High Court of Delhi and will be disposed of by us by one judgment. In Appeals Nos. 152-153/72, one

D Gian Singh sold toffees to the Food Inspector and as the toffees were found to be adulterated, a prosecution was launched against him under S. 7/16 of the Prevention of Food Adulteration Act. Gian Singh, however, produced in course of the trial a warranty given by the distributors and manufacturers as a result of which the Magistrate acquitted accused Gian Singh. After having acquitted Gian Singh, the

E Magistrate issued notice under S. 20A against the Respondents for being impleaded and prosecution on the gound that the articles manufactured by the distributors were adulterated. The respondents went up in revision to the Sessions Judge which was dismissed. But on further revision to the High Court the High Court allowed the petition and set aside the order of the Magistrate impleading the respondents.

F In the other two appeals i.e. Crl. Appeals Nos. 166 and 167/1972, the manufacturers were impleaded under S. 20A before the acquittal of the last seller and that order was upheld by the High Court and, hence these appeals before us by the appellants.

G The common question of law that arises for consideration in all these appeals is : whether or not the Magistrate is entitled to implead the distributors or manufacturers under S. 20A even after acquitting the last seller on the ground that he is protected by a warranty. In other words, the question for decision in these appeals turns upon the interpretation of S. 20A and S. 20 of the Prevention of Food Adulteration Act. S. 20A runs thus :—

H “Where at any time during the trial of any offence under this Act, alleged to have been committed by any person, not

(Fazal Ali, J.)

being the manufacturer, distributor or dealer of any of food, the Court is satisfied, on the evidence adduced before it, that such manufacturer, distributor or dealer is also concerned with the offence, then the Court may, notwithstanding anything contained in sub-section(1) of S. 351 of the Code of Criminal Procedure, 1898, or in Section 20 proceed against him as though a prosecution had been instituted against him under S. 20".

The opening lines of S. 20A clearly contemplate a contingency where the discretionary jurisdiction under this Act can be exercised only *during the trial of any offence*, that is to say, the stage at which the Magistrate can exercise his discretion under this Section must be before the trial has concluded and ended in acquittal or conviction. S. 20 which precedes S. 20-A runs thus :—

"S. 20 (1) No prosecution for an offence under this Act, not being an offence under S. 14 or section 14A, shall be instituted except by or with written consent of the Central Government or the State Government or a person authorised in this behalf, by general or special order, by the Central Government or the State Government;

Provided that a prosecution for an offence under this Act may be instituted by a purchaser referred to in section 12, if he produces in court a copy of the report of the public analyst alongwith the complaint.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence punishable under sub-section (IAA) of Section 16 shall be cognizable and non-bailable".

A combined reading of S. 20A and S. 20 is that where a distributor or manufacturer or any other person is impleaded in the course of a trial, the obligation to get a fresh sanction for such person is dispensed with and the sanction obtained for the last seller in the trial will ensure for the benefit of the prosecution of the other person impleaded also and no further sanction is necessary. It is manifest that this special statutory concession is given to the prosecution only if the conditions mentioned in S. 20A are fulfilled and not otherwise. In other words, the protection of S. 20 is not available to the prosecution if the parties concerned are impleaded after the trial is over. In such a case, a fresh trial will have to be started by obtaining sanction under

A S. 20. This matter is no longer *res integra* as it has been fully considered by this Court in *V. N. Kamdar v. Municipal Corporation, Delhi*⁽¹⁾ where this Court observed as follows :—

“....In order that the manufacturer, distributor or dealer may be impleaded under S. 20A, it is necessary that there should be a trial for an offence committed under the Act by a person and that the manufacturer, distributor or dealer must be concerned in the offence. When once the manufacturer, distributor or dealer is impleaded, the trial proceeds as if he is also an accused in the case. That is made clear by the closing words of the section. As already indicated, no prosecution for an offence under the Act can be instituted by a Food Inspector without the sanction specified in S. 20.... The real purpose of enacting S. 20A is to avoid, as far as possible, conflicting findings. If, in the prosecution instituted against the vendor, it is found that the vendor has sold the article of food in the same state as he purchased it and that while it was in his possession it was properly stored, and the vendor is acquitted, it would look rather ridiculous if in the prosecution against the manufacturer, distributor or dealer, it is found on the evidence that he did not give a false warranty, but that the article was not stored properly while it was in the possession of the vendor or that he did not sell the article in the same stage as he purchased it. This being so, the object of the legislature in enacting the section will be frustrated if a Magistrate were to exercise his discretion improperly by failing to implead the manufacturer, distributor or dealer under S. 20A in a case where he should be impleaded. But that is no reason to hold that a separate prosecution against the manufacturer, distributor or dealer would be barred, if he is not impleaded under s. 20A, and tried along with the person who is alleged to have committed an offence under the Act. In order to avoid multiplicity of proceedings and conflict of findings, it is imperative that the Magistrate should implead these persons under S. 20A whenever the conditions laid down in the section are satisfied. As I said, it is a far cry from this to say that if this is not done, the manufacturer, distributor or dealer would get an immunity from a separate prosecution.”

B For these reasons, therefore, and in the facts and circumstances of the case so far as Cr. Appeals No. 152-153/1972 are concerned, the

(1) [1974] 1 S.C.R. 157.

(*Fazal Ali, J.*)

Magistrate had no jurisdiction to implead the respondents after having concluded the trial by the acquittal of the last seller. Similarly, the Magistrate was fully justified in Crl. Appeals No. 166 and 167/72 in impleading the appellants during the course of the trial as the trial was still continuing and the case would, therefore, squarely fall under S. 20A of the Act and no further sanction would be necessary. For these reasons, therefore, all the appeals are dismissed.

N.K.A.

Appeals dismissed.

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