STATE OF PUNJAB

v.

NOHAR CHAND

May 17, 1984

[D.A. DESAI AND AMARENDRANATH SEN, JJ.]

Territorial Jurisdiction of the Criminal Court, whether the Court where sub-standard fertiliser was found be marketed will have the jurisdiction to take cognizance and try the manufacturer of sub-standard fertilizer, even if the manufacturing activity is at an entirely different place and under different court jurisdiction along with the marketing agent—Code of Criminal Procedure, 1973 (Act II of 1974), sections 179 and 180, scope of.

The respondent was carrying on business of manufacturing fertilizers at Ludhiana under the name and style of Messrs Varinder Agro-Chemicals (India) and marketed his proudct through his agent Messrs Sachdeva Enterprises Kapurthala. On finding the sample collected by a Fertilizer Inspector from the said agent on December 12, 1978 to be of sub-standard, quality the Chief Agricultural Officer, Kapurthala filed a criminal complaint being CC No. 156-C of 1980 on December 24, 1980 in the Court of the Chief Judicial Magistrate, Kapurthala against the two partners of Messrs Sachdeva Enterprises and the Respondent under s. 13A of the Essential Commodities Act, 1955 read with s. 13(1) (a) of the Fertilizers Control Order 1957. On July 20, 1981 respondent moved an application before the trial court praying that he be discharged and the proceedings be dropped against him on the ground that the Kapurthala Court had no territorial jurisdiction to try him because he carried on business of manufacture of fertilizers at Ludhiana. Relying on the decision of the Gujarat High Court in *State of Gujarat* v. *Agro-Chemicals etc.* (1980 Cr. L. J. p. 516), the Learned Chief Judicial Magistrate discharged the respondent and dropped the proceedings against him. The Criminal Revn. Application No. 48 of 1981 filed by the State of Punjab was allowed by the Additional Sessions Judge, Kapurthala holding that in view of the provisions of Section 180 of the Code of Criminal Procedure, the Kapurthala Court had jurisdiction to try the respondent along with the other coaccused. Thereupon the respondent preferred a revision petition being Crl. Misc. No. 1473 M of 1982 in the High Court of Punjab and Haryana. A learned Single Judge of the High Court relying on the decision of that Court in *Satinder Singh and Ors.* v. *State of Punjab,* Crl. Misc. Appln. No. 1158-M/1981 dated 24-2-1982 which accepted the view taken by the Gujarat High Court, allowed the revision petition and set aside the decision of the Additional Sessions Judge. Hence the State Appeal by Special Leave of the Court.

Allowing the appeal, the Court

A HELD : 1. The Court in whose jurisdiction sub-standard fertilizer was found to be maketed will have the jurisdiction to try manufacturer of sub-standard fertilizer even if the manufacturing activity is at an entirely different place. The manufacturer as well as the dealer can be tried at a place where the consequences of the manufacturing and selling of sub-standard fertilizer had ensued as envisaged in ss. 179 and 180 of the Code of Criminal Procedure. [843C-D]

B

1 : 2. Now if maufacturing sub-standard fertilizer is by itself an offence and marketing the sub-standard fertilizer is itself a distinct offence but they are so inter-connected as cause and effect, both can be tried at one or the other place. If one manufactures the sub-standard fertilizer, wherever it is marketed the inter-relation or casual connection is of cause and effect. The situation will be adequately covered by ss. 179 and 180 of the Code of Criminal Procedure. [843G-H]

C

Incharge Production, Haryana State Coopt. Supply And Marketing Federation Ltd. (HAFED) Fertilizer v. *State of Punjab*, Crl. Misc. No. 6763 M of 1982 decided by the High Court on 9-3-1983 approved.

D

1 : 3. When a sample of fertilizer is taken from a bag which was in the same condition as delivered by the manufacturer and it was in possession of a marketing agent manufacture and sale of sub-standard fertilizer would constitute indisputably one transaction. But this is predicated upon the facts which may be disclosed in the trial and proved. [844D-E]

E

Bhagwan Das Jagdish Chander v. *Delhi Administration* [1975] Supp. S.C.R 30, distinguished.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 247 of 1984.

F

Appeal by Special leave from the Judgment and Order dated the 28th July, 1982 of the Punjab and Haryana High Court in Criminal Misc. No. 1472-M/82.

K.C. Dua and S.K. Bagga for the Appellant.

G

Frank Anthony and *Sushil Kumar* for the Respondent.

The Judgment of the Court was delivered by

H

DESAI, J. Special leave granted.

One Nohar Chand, the respondent herein, was carrying on

business of manufacturing fertilisers at Ludhiana under the name and style of M/s Varinder Agro-Chemicals (India). One inspector designated as Fertiliser Inspector visited the premises of M/s Sachdeva Enterprises, Kapurthala ('agent' for short) on December 12, 1978 and obtained a sample of the fertiliser manufactured by Nohar Chand which was being marketed by the agent. The sample was obtained for the purpose of analysis to ascertain whether it conformed to the prescribed standard. On analysis it was found to be sub-standard. The Chief Agricultural Officer, Kapurthala filed a criminal complaint being C.C. No. 156-C of 1980 on December 24, 1980 in the Court of the Chief Judicial Magistrate, Kapurthala against the two partners of M/s Sachdeva Enterprises, one Raj Shetty and respondent Nohar Chand Gupta, the manufacturer of sub-standard fertiliser u/s 13-A of the Essential Commodities Act, 1955 read with Section 13(1)(a) of the Fertilisers Control Order, 1957. The learned Chief Judicial Magistrate framed the charge against all the accused for the afore-mentioned offence. On July 20, 1981 respondent Nohar Chand moved an application before the learned Magistrate praying that he be discharged and the proceedings be dropped against him on the ground that the Court of Chief Judicial Magistrate, Kapurthala had no territorial jurisdiction to try him because he carried on business of manufacture of fertilisers at Ludhiana. The learned Chief Judicial Magistrate following the decision of the Gujarat High Court in *State of Gujarat* v. *Agro-Chemicals etc.*,(1) discharged the respondent and dropped the proceedings against him. The State of Punjab preferred Criminal Revision Application No. 48 of 1981 in the Court of the learned Additional Sessions Judge, Kapurthala who by his judgment and order dated February 13, 1982 set aside the order of learned Chief Judicial Magistrate holding that in view of the provisions contained in Section 180 of the Code of Criminal Procedure, the Court of the Chief Judicial Magistrate, Kapurthala had jurisdiction to try the respondent along with the other co-accused. Thereupon the respondent preferred a revision petition being Criminal Misc. No. 1473-M of 1982 in the High Court of Punjab and Haryana. A learned Single Judge of the High Court held that in view of the decision in *Satinder Singh and Ors.* v. *State of Punjab*(2) which accepted the view taken by the Gujarat High Court, the learned Additional Sessions Judge was in error in interfering with the order of the learned Chief Judicial Magistrate and that the Court of the Chief Judicial Magistrate,

(1) 1980 Criminal Law Journal 516.

(2) Crl. Misc. Application No. 1158-M of 1981 dated 24.2.1982

A Kapurthala had no jurisdiction to try Nohar Chand, the manufacturer. Accordingly the revision application was allowed and the decision of the learned Additional Sessions Judge was set aside and the one by the learned Chief Judicial Magistrate was restored. Hence this appeal by special leave.

B The allegation against the respondent was that he manufactured sub-standard fertiliser and through his marketing agents M/s Sachdeva Enterprises, Kapurthala marketed the same. The offence was disclosed when the Fertiliser Inspector took a sample of the sub-standard fertiliser from the marketing agents at Kapurthala. It is an C admitted position that the respondent who is the manufacturer carries on his bussiness of manufacturing fertilisers at Ludhiana. The question posed is : whether the Court of Chief Judicial Magistrate, Kapurthala where the marketing agents of sub-standard fertiliser manufactured by the respondent marketed the same, will have jurisdiction to try the respondent, the manufacturer of the sub-D standard fertiliser along with the marketing agents.

The learned Single Judge of the High Court following the decision in *Satinder Singh's case* held that the manufacturer of sub-standard fertiliser cannot be tried where the commodity was being marketed The view taken by the High Court with respect is E wholly untenable in law. But before examining the legal position subsequent development of law in the same High Court on this very point may be noticed.

To begin with, let it be pointed out that the decision against which the present appeal is being heard was quoted before another F learned Single Judge of the same High Court and as the learned Single Judge had grave doubt about the correctness of the view taken by the learned Judge in this case, he referred the matter for authoritative pronouncement to a larger bench of the same High Court. This referred matter : *Incharge Production, Haryana State Co-operative Supply and Marketing Federation Ltd. (HAFED) Fertilizer* G *v. State of Punjab*(1) came up for hearing before a Division Bench of the High Court. The Division Bench referred to the decision rendered by the learned Single Judge in this case and clearly disapproved it and in terms overruled it. Simultaneously it also overruled the decision in *Satinder Singh's case* which the learned H Judge had followed in this case. It can be safely said that the larger

(1) Criminal Misc. No. 6763-M of 1982 dated 9.3.83.

bench of the High Court has disapproved the view taken by the learned Judge in this case. A

The respondent, the manufacturer of the sub-standard fertiliser is to be tried alongwith those who marketed the sub-standard fertiliser manufactured by him as his agents. The question is whether the court where the sub-standard fertiliser is marketed would have jurisdiction to try the manufacturer of the sub-standard fertiliser whose manufacturing activity is at a different place. This very argument was posed before the Division Bench of the High Court. The High Court after referring to Sections 179 and 180 of the Code of Criminal Procedure, 1973 held that the court where sub-standard fertiliser was found to be marketed will have the jurisdiction to try the manufacturer of sub-standard fertiliser even if the manufacturing activity is at an entirely different place. The Division Bench held that the manufacturer as well as the dealer can be tried at a place where the consequences of the manufacturing and selling of sub-standard fertiliser had ensued as envisaged in Sections 179 and 180 of the Code of Criminal Procedure. That in our opinion appears to be the correct view in law. B C D

Section 179 provides that when an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a court within whose local jurisdiction such thing has been done or such consequence has ensued. Section 180 provides that where an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, the first-mentioned offence may be inquired into or tried by a court within whose local jurisdiction either act was done. E F

Now if manufacturing sub-standard fertiliser is by itself an offence and marketing the sub-standard fertiliser is itself a distinct offence but they are so inter-connected as cause and effect, both can be tried at one or the other place. If one manufactures the sub-standard fertiliser, wherever it is marketed the inter-relation or casual connection is of cause and effect. The situation will be adequately covered by Secs. 179 and 180 of the Code of Criminal Procedure. We are in agreement with the later decision of the Division Bench rendered on March 9, 1983 that the court where the sub-standard fertiliser is being marketed will equally have the G H

jurisdiction to try the manufacturer of sub-standard fertiliser. This is so obvious that any further discussion appears to us to be superfluous.

Mr. Frank Anthony, learned counsel who appeared for the respondent urged that the concurring decision of Alagiriswami, J. in *Bhagwandas Jagdish Chander* v. *Delhi Administration*[1] would clearly show that the manufacture of an adulterated article of food and selling the same cannot be said to be part and parcel of the same transaction and that unless therefore the complaint shows that the sample of fertiliser was taken from a bag of fertiliser as delivered by the manufacturer, it is distinctly possible that adulteration may have taken place on a subsequent occasion and therefore one cannot infer manufacture of sub-standard fertiliser from it being so marketed when the sample was taken from the marketing agency. This approach overlooks the fact that the trial is yet to be held. One can envisage two situations. When a sample of fertiliser is taken from a bag which was in the same condition as delivered by the manufacturer and it was in possession of a marketing agent manufacture and sale of sub-standard fertiliser would constitute indisputably one transaction. But this is predicated upon the facts which may be disclosed in the trial and proved. In *Bhagwandas Jagdish Chander's case,* the allegation was that the appellant before the court sold ghee to a vendor which was on analysis found to be adulterated and both were jointly tried under Section 7 read with Sec. 16 of the Prevention of Food Adulteration Act, 1954. In the course of trial, the purchaser of ghee wanted warrantor to be discharged so that he can be examined as a defence witness to prove his own purchase of the offending article. This application was granted and the warrantor was acquitted. After the acquittal of the warrantor, the learned Magistrate impleaded the manufacturer Mr. Gauri Shanker Prem Narain under section 20-A of the Prevention of Food Adulteration Act, 1954. An appeal was preferred by the Municipal Corporation of Delhi against the acquittal of the warrantor and the other accused. The High Court maintained the acquittal of Lakshmi Narain but set aside the acquittal of warrantor. That is how the matter came up to this Court. We fail to see how this decision can at all help the respondent in this case. However, reliance was placed on one observation in the concurring judgment of Alagiriswami, J. which reads as under :

(1) [1975] Suppl. SCR 30.

"It would be noticed that while the charge states that the sample of ghee purchased from Lakshmi Narain was found to be adulterated, there is no allegation that the ghee sold by the appellant to Lakshmi Narain was adulterated. While it may be readily conceded that the common object or common intention or unity of purpose between the manufacturer, the distributor and the vendor was to sell the article of food sold, it is not said that it was to sell the adulterated article of food."

At a later stage, it is observed that 'the validity of the charge has to be decided on the facts put forward as the prosecution case. If it is not established against anyone of them that the article of food manufactured, distributed or sold by him was adulterated that person will be acquitted, not because the charge was not valid or was defective but because there was no proof to substantiate the charge. But without that allegation there cannot be said to be a unity of purpose or common object or common intention on the part of all of them who manufacture, distribute or sell the adulterated food.' It was further observed that "the manufacture, distribution and sale of adulterated ghee would be the same transaction if it was found to be adulterated at all the three stages. Otherwise it only means that they were all same transaction only in the sense that the common object of all of them is the selling of the ghee." How the extracted observation in any way helps the respondent passes comprehension. Firstly, the question of jurisdiction of the court trying the offender was never raised in that case. And here the respondent was discharged on the ground of want of jurisdiction. Secondly, the decision proceeded on the facts of the case as would be evident from the extracted passage which recites the charge. That aspect does not figure in this case. Let it be made clear that no affidavit was filed on behalf of the respondent in this Court, nor the complaint was read over to us. And the case proceeds on the averments not presently disputed. Therefore in this case we are left with the allegations as found in the judgment of the High Court and the learned Additional Sessions Judge and it clearly establishes that where the marketing agent of the manufacturer of fertiliser which is found to be sub-standard is being prosecuted for marketing sub-standard fertiliser, the manufacturer can be tried with him and the court where the sub-standard fetiliser was marketed will have jurisdiction to try them both.

A Therefore the High Court was in error in setting aside the order of the learned Additional Sessions Judge. This was the only point in this appeal and as it clearly transpired that the High Court was in error in interfering with the order of the learned Additional Sessions Judge, this appeal is allowed and the judgment of the High Court is quashed and set aside and the judgment of the learned B Additional Sessions Judge is restored.

S.R. *Appeal allowed*