

OM PRAKASH

v.

DELHI ADMINISTRATION & ANR.

December 10, 1975

[P. N. BHAGWATI AND R. S. SARKARIA, JJ.]

Prevention of Food Adulteration Act (37 of 1954), section 7—Taking of samples from different receptacles of food for analysis at one time—Whether one or several sales and one or several offences.

Samples of cow's milk were taken by the concerned officers from 6 out of several cans carried by the appellant in a truck and were sent for analysis. Finding the samples adulterated, the appellant was prosecuted for an offence punishable under s. 16 read with s. 7 of the Prevention of Food Adulteration Act, 1954.

Both the trial Court and the first Appellate Court treated the sales of six samples as forming part of the same transaction constituting one single offence. The High Court, in revision, held that the sale of each sample constituted a distinct and separate offence, that the appellant was, therefore, liable for 6 different offences, and remanded the case for re-trial of the appellant for 6 offences.

Dismissing the appeal to this Court,

HELD : (a) The acts prohibited by s. 7 include manufacturing for sale, storing, selling or distributing any adulterated article of food. Hence, not only is the act of storing for sale an offence, but also the act of selling out of the adulterated article of food so stored. The definition of "sale" in s. 2(xiii) includes sale for analysis. Therefore, where samples are taken for analysis from different receptacles, whether at one and the same time or at different times, each taking constitutes a distinct and independent sale, because, each sample would be taken for determining, by analysis, whether the article of food in a particular receptacle is adulterated or not. The taking of each sample would be necessary and justified, because, it may be that the article of food in one receptacle is adulterated while in the other it is not, or, the nature and degree of adulteration may vary from receptacle to receptacle. It is only where samples are taken from the same receptacle at one and the same time or within reasonable proximity of time that it may not be possible to say that the taking of each of those samples constitutes a distinct and separate sale. [1984 F, H, 985 B-G]

Fecitt v. Walsh [1891] 2 Q.B. 304, applied.

(b) In *Shankar Lal Agarwalla v. Corporation of Calcutta*, A.I.R. 1962 Cal. 611, the 3 prosecutions against the accused were not for three different transactions of sale constituted by taking samples from three tins of ghee, but were for three acts of storing adulterated ghee, and so the decision is not relevant. But observations contra therein that the taking of samples from different receptacles at the same time from the same place for analysis, constitutes only one offence, are incorrect. [1986 G, 987 A-D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 138 of 1971.

Appeal by Special Leave from the Judgment and Order dated the 22nd March 1971 of the Delhi High Court in Criminal Revision No. 232 of 1969.

K. C. Kalra, R. C. Verma and S. L. Aneja for the Appellant.

A *F. S. Nariman, B. P. Maheshwari, N. K. Jain and Suresh Sethi for Respondent No. 2.*

The Judgment of the Court was delivered by

B BHAGWATI, J.—This appeal, by special leave, raises a short and interesting question of law relating to the interpretation of the provisions of the Prevention of Food Adulteration Act, 1954. The facts giving rise to the appeal are few and may be briefly stated as follows.

C On 12th July, 1967, a raiding party headed by Dr. A. D. Kumar, the Assistant Health Officer of the Municipal Corporation of Delhi and comprising *inter alia* Shanti Nath, Navnit Lal, H. R. Sood and H. K. Bhanot, Food Inspectors, intercepted a truck bearing No. DLL 1925 near Chandni Chowk, Delhi at about 7 a.m. in the morning. The truck contained twenty-five to thirty cans of cow's milk which was being carried for sale by the appellant. The raiding party took the truck inside the compound of the Municipal office and there, samples of cow's milk were taken from eight cans chosen at random by different Food Inspectors, one sample being drawn from each can. Each sample was divided into three parts and after carrying out the usual formalities, one part of each sample was sent to the Public Analyst for analysis. The result of the analysis was that each sample was found to be adulterated under s. 2, sub-s. (i), cl. (1) of the Act, in that the percentage of non-fat solids was lower than that prescribed by Item A 11.01.01 read with Item A 11.01.11 in Appendix B to the Prevention of Food Adulteration Rules, 1955. The prescribed minimum percentage of non-fat solids in cow's milk in Delhi was 8.5 while the percentage found in each of the samples was below that figure. In fact, it varied from sample to sample and ranged between 5.47 and 8.06. On finding, as a result of the report of the Public Analyst, that each sample was adulterated under s. 2, sub-s. (i), cl. (1), the Municipal Corporation filed four different complaints against the appellant, one in respect of four samples, the other in respect of two samples and the third and the fourth in respect of each of the remaining two samples. The cases arising out of the first two complaints were consolidated and a single charge was framed in respect of six samples on the ground that the appellant sold to the Food Inspectors samples of adulterated cow's milk out of six cans which he was carrying for sale and thereby committed an offence punishable under s. 16 read with s. 7 of the Act. Similar charges were framed in the remaining two cases, the charge in one case being for sale of sample of adulterated cow's milk out of the seventh can and the charge in the other being for sale of sample of adulterated cow's milk out of the eighth can.

H So far as the first case is concerned, the learned Magistrate accepted the prosecution case, including the report of the Public Analyst and held that the appellant was guilty of selling to the Food Inspectors samples of adulterated cow's milk out of six cans carried by him. But instead of treating the sale of each sample as a distinct and separate offence, the learned Magistrate regarded the sales of the six samples as forming part of the same transaction and constituting only one offence, since all the six samples were taken at the same time from the

cans which the appellant was carrying in the truck. The learned Magistrate, in this view, convicted the appellant of a single offence under s. 16 read with s. 7 of the Act and sentenced him to suffer rigorous imprisonment for a period of six months and to pay a fine of Rs. 1000/- or in default to suffer imprisonment for a further period of three months. The other two cases also, in view of the report of the Public Analyst and other prosecution evidence, resulted in the conviction of the appellant under s. 16 read with s. 7 of the Act and in each of those two cases, the appellant was sentenced by the learned Magistrate to suffer rigorous imprisonment for a like period and to pay a fine in a like amount as in the first case. The sentences of imprisonment in the three cases were, however, directed to run concurrently with one another.

The appellant preferred three appeals to the Additional Sessions Judge, Delhi, one in respect of conviction and sentence in each case. So far as the first case is concerned, the learned Additional Sessions Judge maintained the conviction, but taking the view that the only deficiency in the quality of samples of cow's milk sold by the appellant being in respect of non-fat solids and there also, the deficiency being very small, ranging only from 0.45 to 2.85, the sentence awarded to the appellant was rather excessive, the learned Additional Sessions Judge reduced the sentence to rigorous imprisonment for three months, leaving the sentence of fine untouched. The conviction in the second case was also maintained in appeal but the learned Additional Sessions Judge held that the offence in that case would constitute a part of the offence in the first case and hence he did not think that a separate sentence would be called for or justified and in this view he confirmed the conviction of the appellant, but set aside the sentence imposed on him. So also in the third case, the learned Additional Sessions Judge made the same order in appeal maintaining the conviction of the appellant but setting aside the sentence passed on him.

It does not appear from the record whether the appellant preferred any revision application against the order passed by the learned Additional Sessions Judge in the second and third cases in so far as it confirmed the conviction of the appellant or the State preferred any revision application against that order in so far as it set aside the sentence imposed on the appellant. But so far as the order passed by the learned Additional Sessions Judge in the first case was concerned, the appellant preferred a revision application against it in the High Court of Delhi. The first case, as already pointed out above, related to sales of samples of adulterated cow's milk out of the six cans carried by the appellant. Both the learned Magistrate and the learned Additional Sessions Judge had treated the sales of these six samples as forming part of the same transaction and constituting one single offence. The High Court, however, took the view that the sale of each sample constituted a distinct and separate offence and the appellant was, therefore, liable to be tried not for one single offence but for six different offences in respect of sales of six samples. The High Court observed that the sale of each sample was a separate sale and each such sale constituted a separate breach of the provisions of s. 7 of the Act leading to a separate offence punishable under s. 16 of the Act.

A The High Court accordingly set aside the order of conviction and sentence passed against the appellant and remanded the case to the learned Magistrate for retrial of the appellant for each of the six different offences constituted by the sales of six samples. This led to the filing of the present appeal with special leave obtained from this Court.

B The appellant contended that the gravamen of the charge against him was that he had stored for sale adulterated cow's milk in six cans carried by him in the truck. The act of storing was one single act and it was immaterial whether the storing was in one can or in several cans. Merely because samples were taken by the Food Inspectors from different cans, it did not mean that so many different offences were committed by the appellant, for the different samples only confirmed that cow's milk stored by the appellant in these cans was adulterated.

C The offence was one and single and that was storing adulterated cow's milk for sale, whether in one can or more. It was alleged on behalf of the appellant that even if the offence charged against the appellant were not storing adulterated cow's milk for sale, but selling samples of adulterated cow's milk out of six cans to the Food Inspectors for analysis, taking of sample from each can did not constitute a distinct and separate offence of selling adulterated cow's milk.

D There was only one sale by the taking of sample from six cans, since all the samples were of the same article of food, namely, cow's milk and were taken at the same place and at the same time. Otherwise, contended the appellant, the result would be that if the Food Inspector goes on taking samples from the same stock of cow's milk or other article of food, the sale of each sample would constitute an independent offence and there would be as many offences as the number of samples taken, though the stock of the commodity is the same. That would be a most startling and unjust consequence. Therefore, said the appellant, though samples were taken by the Food Inspectors from six different cans, there was only one offence of selling adulterated cow's milk committed by the appellant and the High Court was in error in holding that the appellant was liable to be tried for six different offences. These were the two contentions urged on behalf of the appellant in support of the appeal. Neither of these two contentions is, in our opinion, well founded and both must be rejected.

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G It is clear on a plain reading of s. 7 of the Act that the acts prohibited by that section include manufacturing for sale, storing, selling or distributing any adulterated article of food. The law is now well settled that the act of storing an adulterated article of food would be an offence only if storing is for sale. If adulterated article of food is stored by any person for consumption or for any purpose other than sale, it would not come within the inhibition of the section. Now, when, out of adulterated article of food stored for sale, a quantity is sold, the sale constitutes an offence distinct and independent from the offence of storing for sale. Not only is the act of storing for sale an offence but also the act of selling out of the adulterated article of food so stored. Here in the present case, the charge against the appellant was not of storing adulterated cow's milk for sale. It was a charge of selling to the Food Inspector samples of adulterated cow's milk out of six cans carried by the appellant. It is, therefore, unnecessary to

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consider whether storing of adulterated cow's milk in each of the six cans constituted a distinct and separate offence and we do not express any opinion on it. The only issue which requires to be considered by us is whether the sale of sample of adulterated cow's milk from each can constituted a distinct and separate offence or there was only one offence committed by the appellant by selling samples of adulterated cow's milk from six cans.

Now, the definition of 'sale' in section 2(xiii) includes within it sale of any article of food for analysis and it would seem that even if several samples are taken by the Food Inspector for analysis from the same stock of adulterated article of food, taking of each sample would constitute a distinct and independent sale and each such sale would be an offending act attracting the penal provisions of the Act. The position would indeed be beyond doubt where samples are taken from different receptacles, whether at one and the same time or at different times, because each sample would be taken for determining whether the article of food in a particular receptacle is adulterated or not. It may be that the article of food in one receptacle is adulterated, while in the other it is not, and even the nature and degree of adulteration may vary from one receptacle to another. Each sample taken would, therefore, be really and truly for the purpose of analysis. So also there would be no scope for argument where samples are taken from the same receptacle at different times, because sample, taken at an earlier point of time, if found adulterated on analysis, would merely show that the article of food in the receptacle at that particular point of time was adulterated and it would not dispense with the analysis of the article of food in the receptacle at a later point of time, for at such later point of time, the article of food in the receptacle may not be adulterated or it may consist of different proportions or the adulteration in it may be much more deleterious or injurious to human health. The taking of each sample would be necessary and justified for the purpose of analysis, and hence each taking of sample would constitute a distinct and independent sale. It is only where samples are taken from the same receptacle at one and the same time or within reasonable proximity of time that it may not be possible to say that the taking of each of these samples constitutes a distinct and separate sale. When a sample is once taken from the receptacle for analysis, there cannot be any question of taking another sample for analysis at the same time. The taking of the second sample would be wholly unnecessary so far as the purpose of analysis is concerned and it would lay itself open to an attack that it is not really and truly for the purpose of analysis. It is only where a sample is taken for analysis that its taking constitutes a sale. The taking of the second sample would not, therefore, amount to a sale involving an offence. But in the other two cases, where samples are taken from different receptacles, though stocked at one place—at one time or at different times—or samples are taken from the same receptacle at different times, the taking of each sample would constitute a sale and hence a distinct and separate offence.

This view, which we are taking, is clearly supported by the decision of the Queen's Bench Division in *Fecitt v. Walsh*⁽¹⁾. There, while the

(1) (1891) 2 Q. B. 304.

- A appellant was delivering at a workhouse milk contained in five cans pursuant to a contract of sale, the respondent, acting under s. 3 of the Sale of Food and Drugs Act Amendment Act, 1879, procured a sample from each of the five cans and on finding that there was a large deficiency of cream in two of the samples, the respondent laid two separate informations against the appellant in respect of those two samples under s. 9 of the Sale of Food and Drugs Act, 1875.
- B Justices convicted the appellant in a separate penalty upon each information and on appeal against these convictions, the appellant contended that on the facts, there could not be more than one information against him, since there was only one sale of milk by him and it was being delivered in five cans merely because that was a convenient form of delivery. Day, J., negated this argument of the appellant and held that procuring of each sample was a separate offence as to each
- C can in respect of which an information could be laid against him and the convictions of the appellant on the basis of separate informations laid against him were, therefore, right. The learned Judge observed :

- D "As far as he was concerned there were five transactions; in respect of each of those transactions he must have proceeded under the statute and would then be deemed to have purchased in each case from the seller. It seems to me that the sergeant in procuring these samples must be deemed to have been the purchaser in each particular case, and that as he was the purchaser of five samples, the purchase of each one was a separate transaction, and that in respect of each of them an information would lie. As a matter of fact, the
- E respondent only proceeded in respect of two of the samples, obtaining a separate conviction upon separate informations in respect of each of them, and our answer to the first question must be that he was right, and that more than one information could be laid against the appellant."

- F The analogy of this decision is striking and it clearly shows that where samples are taken from different receptacles for the purpose of analysis, the taking of each sample would be a separate transaction of sale and each such transaction of sale would constitute a separate offence, if the sample is found to be adulterated.

- G The appellant leaned heavily on the decision of the Calcutta High Court in *Sanker Lal Agarwalla v. Corporation of Calcutta*⁽¹⁾ where it was held by D. N. Das Gupta, J., that where three Food Inspectors visit the godown of an accused dealing in *ghee* the same day and at the same time and each takes samples of *ghee* from three different lots of tins and the three samples collected are found adulterated, the offence committed under the Prevention of Food Adulteration Act by the accused is the same, namely, the offence of storing and selling adulterated *ghee* at the particular hour of the particular day and it cannot be
- H said that three distinct offences under s. 7 of the Act have been committed by the accused and consequently when "three separate prose-

(1) A.I.R. 1962 Cal. 611.

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 cutions under s. 7 of the Act have been launched against the accused and he is convicted in one of the prosecutions, the other two prosecutions are barred under s. 403, Criminal Procedure Code". But we do not think this decision can be invoked in aid of the contention of the appellant. It is clear from the facts of this case that the three prosecutions against the accused were not for three different transactions of sale constituted by the taking of samples from three lots of tins of *ghee*, but were for three different acts of storing adulterated *ghee* and it was for this reason that D. N. Das Gupta, J., observed that the single act of storing adulterated *ghee* could not be split up into three different acts according to brands and the launching of three different prosecutions on the ground that three distinct offences have been committed by the accused was not justified or warranted by law. We are not concerned with the correctness or otherwise of this observation as it is not relevant for the purpose of the present case. It is no doubt true that some of the observations made in the judgment seem to support the contention of the appellant that where samples are taken at the same time on the same day from different receptacles kept at the same place—as the six cans in the present case were—and each of the samples is found adulterated, there is only one offence committed by the accused and not as many offences as the number of samples taken by the Food Inspectors. But to the extent to which these observations refer to the offence constituted by the taking of samples, we must express our dissent and hold that they do not represent the correct law on the subject.

We are, therefore, of the view that the High Court was right in coming to the conclusion that the sale of each of the samples taken from the six cans constituted a distinct and separate offence and the appellant was liable to be tried for each of the six offences. We accordingly dismiss the appeal.

V.P.S.

Appeal dismissed.