

Birbal Dass v. State of Haryana (S. S. Sodhi, J.)

the moral obligations of a man towards his wife and children so that they may not, out of sheer destitution become a hazard to the well-being of orderly society. Question of giving special reasons for enforcement of said moral obligations during the pendency of a *lis* therefore, does not arise. The reference accordingly is answered in negative.

(6) The case be now listed before learned Single Judge for decision.

P.C.G.

Before : Gokal Chand Mital & S. S. Sodhi, JJ.

BIRBAL DASS,—*Petitioner.*

versus

STATE OF HARYANA.—*Respondent.*

Criminal Misc. No. 6896-M of 1986

2nd April, 1990.

Prevention of Food Adulteration Act (37 of 1954)—Ss. 2(i)(a), 2(ix), 7 & 16(1)(a)—Code of Criminal Procedure, 1973—S. 482—Offence of adulteration of whisky—Label on bottle proclaiming alcoholic strength at 75° proof—Sample analysed to be only 72.30° proof—No standard of alcoholic strength prescribed under the Act—Even in absence of prescribed standard offence under S. 7 can be committed on mere fact that strength of whisky proclaimed on label was different from that of the sample.

Held, that where the alcoholic strength of whisky is not in fact what is proclaimed on its label, it would clearly fall within the ambit of the prohibition contained in S. 7 of the Prevention of Food Adulteration Act, 1954 and would render the person concerned liable to the penal consequences prescribed under S. 16(1)(a).

(Para 9)

Chaman Lal and others v. State of Punjab (Crl. Misc. 5600-M of 1981 decided on July 22, 1982).

Tar Balbir Singh v. State of Punjab, 1986(2) C.L.J. (C&CR) 217.
(Overruled)

Petition under section 482 Cr. P.C. praying that the proceedings against the petitioner as also his co-accused pending in the court of Sub Divisional Judicial Magistrate, Safidon, in the case aforesaid may kindly be quashed alongwith the FIR and the summoning order, as the said proceedings are nothing more than of an apparent abuse of the process of the court.

Anil Kheterpal, Advocate, for the Petitioner.

S. C. Mohunta, A.G. with R. S. Kundu, A.A.G., for the Respondent.
State.

ORDER

S. S. Sodhi, J.

(1) Where the label on a bottle of whisky proclaims its alcoholic strength to be 75° proof but is found by the Public Analyst to be only 72.30° proof, does this constitute an offence under the Prevention of Food Adulteration Act, 1954 (referred to hereafter as 'the Act')? Herein lies the controversy forwarded by I. S. Tiwana, J. for consideration by a larger Bench.

(2) The petitioner Birbal Dass is a licenced English Whisky/Wine Vender at Safidon. On June 12, 1986 a sample of Empire Fine Whisky was purchased from him by the Food Inspector, which, on analysis was found by the Public Analyst to have an alcoholic strength of 72.30° proof instead of 75° proof as stated on the label of the bottle. A notice was consequently served upon the petitioner under Section 13(2) and this was later followed by a complaint being filed against him under Section 16 (i) (a) of the Act. It is for the quashing of this complaint that the petitioner moved this Court under Section 482 of the Code of Criminal Procedure on the plea that as the Act prescribes no standard for alcoholic strength, no case is made out against the petitioner for proceedings under the Act.

(3) Support for the proposition canvassed is indeed forthcoming from the judgment of this Court in Criminal Misc. 5600-M of 1981 (*Chaman Lal and others v. State of Punjab*) decided on July 22, 1982. The sample taken in that case was of 'Flying Whisky'. According to the label thereon, its alcoholic strength was 75° proof, but on analysis, it was found to be 78.87° proof. The proceedings initiated against the petitioner in that case, under Section 16(1)(a) of the Act were quashed on the ground that no standard of alcoholic

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strength had been prescribed under the Act. This was later followed by Surinder Singh, J. in *Tar Balbir Singh v. State of Punjab* (1). Here again, the case pertained to a sample taken from a bottle of whisky. The label stated that the alcoholic strength to be 75° proof, but it was found by the Public Analyst to be 78.45° proof. The complaint in this case too was quashed again on the ground that no standard of alcoholic strength had been prescribed under the Act.

(4) Reference was also made to *M. V. Krishnan Nambissan v. State of Kerala* (2), which concerned sale of butter-milk, where it was held that the person selling it could not be convicted under Section 7 read with Section 16(1)(a)(i) of the Act has no standard for the contents of butter-milk either specifically or with reference to other items had been prescribed.

(5) Next counsel adverted to *Naresh Kumar v. The State of Punjab* (3), where the matter concerned the sale of *Pattasas* which were found to have a coating of soap-stone. Here again, it was held that as no standard has been prescribed regarding their quality, purity or the proportion of various constituents that go in its making and nor had soap-stone been declared to be injurious to health, no offence could be said to have been committed which was punishable under Section 16(1)(a)(i) of the Act.

(6) In dealing with these judicial precedents, a reading of *Chaman Lal* and *Tar Balbir Singh's case* (supra) would show that no reference was made thereto the important provisions of the Act which have a direct bearing on the issue raised. Reference in this context must at the very out-set, be made to Section 7 of the Act, which reads as under :—

“—No person shall himself or by any person on his behalf manufacture for sale or store, sell or distribute —

(i) any adulterated food;

(ii) any misbranded food;

(iii) any article of food for the sale of which a licence is prescribed, except in accordance with the conditions of the licence;

(1) 1986 (2) C.L.J. (C&CR) 217.

(2) A.I.R. 1966 S.C. 1676.

(3) 1981 CrL. L.J. 915.

- (iv) any article of food the sale of which is for the time being prohibited by the Food (Health) Authority in the interest of Public Health;
- (v) any article of food in contravention of any other provision of this Act or of any rule made thereunder; or
- (vi) any adulterant.”

(7) The Act renders violation of these provisions a punishable offence under Section 16(1)(a)(i) thereof. The punishment extending to three years' imprisonment and fine.

(8) Next to note is the definition of the word 'adulterated' as contained in Section 2(i)(a) whereby an article of food has to be treated as adulterated :—

- “(a) if the article sold by a vendor is not of the nature, substance or quality demanded by the purchaser and is to be prejudice, or is not of the nature, substance or quality which it purports or is represented to be.”

Further Section 2(ix) lays down that an article of food shall be deemed to be mis-branded:—

- (e) if false claims are made for it upon the label or otherwise;
- (g) if the package containing it, or the label on the package bears any statement, design or device regarding the ingredients or the substances contained therein, which is false or misleading in any material particular; or if the package is otherwise deceptive with respect to its contents;

(9) In terms of these provisions, there can be no escape from the conclusion that where the alcoholic strength of Whisky is not in fact what is proclaimed on its label, it would clearly fall within the ambit of the prohibition contained in Section 7, which, in turn, would render the person concerned liable to the penal consequences prescribed under Section 16(1)(a) of the Act. This being so, we cannot, with respect, subscribe to the view expressed in *Chaman Lal* and *Tar Balbir Singh's cases* (supra), that as no alcoholic strength has been prescribed in the Act, no offence is committed

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thereunder, if it does not conform to what has been stated on the label. On the contrary, in our view, in such a case, whether or not an offence has been committed is a matter to be considered and adjudicated upon in the context of the provisions of Sections 2, 7 and 16 of the Act.

(10) Further, it deserves to be emphasised that the offence here consists of the sample not being in accordance with what is proclaimed on the label with regard to its constituents or contents and therefore, its contents not being likely to cause any prejudice to the consumer, and whether the alcoholic strength is more or less than that mentioned on the label, are not really matters of any consequence in so far as the commission of the offence is concerned. In holding so, we quote with approval the rationale of the judgment of the High Court of Andhra Pradesh in *Public Prosecutor vs. Umedmall Gohala* (4), where the sample of groundnut taken by the Food Inspector was found to contain 15 per cent Safflower oil with only the remaining 85 per cent in fact being ground nut oil. This Safflower oil was more expensive than groundnut oil and it was also not injurious to health, but despite this, it was held that the offence stood committed within the meaning of Sections 2 and 7 of the Act and that in terms of these provisions, it was not necessary to prove that the adulterated article was injurious to health or that the purchaser could have been prejudicially affected by it. The seller was thus held liable under Section 16(1)(a) of the Act.

(11) As regards *M. V. Krishnan Nambissan* and *Naresh Kumar's* cases (supra), a reading thereof would show that both these cases are clearly distinguishable on facts from the point in issue here. No question arose there of the article in question being mis-branded as in the present case and they, therefore, do not afford any assistance to the petitioner.

(12) The clear and settled position in law thus being as set out, the proposition canvassed by the counsel for the petitioner, namely: that as no standard for alcoholic strength had been prescribed under the Act, no offence is constituted by the sample of the Whisky having an alcoholic strength different from that mentioned on the label, cannot stand. This reference is thus answered accordingly and as a consequence, the petition under Section 482 of the Code of Criminal Procedure, 1973 is hereby dismissed.

R.N.R.

(4) 1977(1) Food Adulteration cases 264.