

(24) There has been filed criminal miscellaneous application No. 1551 of 1970 in Criminal Appeal No. 424 of 1969 on behalf of the four appellants. There has also been filed a compromise deed signed by Jangir Singh, Gurdev Singh and Hardev Singh injured persons and Surjit Singh son of Tara Singh and Sucha Singh. In both these documents, it is stated that the appellants have compounded the offences with the injured persons and the eye-witnesses who gave the evidence in the case. Their contents show that the parties have buried the hatchet and the appellants have felt repentant for what they have done. Both the parties have stated that in order to maintain cordial relations between the members of the party of the complainant and that of the appellants, grant of permission is necessary. We find that it is a fit case for the permission being granted and the parties being allowed to compound the offences under Section 324 and 324 read with section 34, Indian Penal Code. The same is grant-

(25) The appellants were released on bail on April 17, 1969, when their appeal was admitted to hearing. The offences having been compounded by the parties, the appellants need not surrender to their bail bonds. The appeal filed on behalf of the appellants is decided accordingly. The party of the complainant including Jangir Singh petitioner having along with the appellants prayed for compounding of offences, the revision petition filed by him has become infructuous and is dismissed accordingly.

Tewatia, J.—I agree.

N.K.S.

APPELLATE CRIMINAL

Before Gurdev Singh and Gurnam Singh, JJ.

MUNICIPAL COMMITTEE, AMRITSAR,—Appellant.

versus

BALDEV RAJ,—Respondent.

Criminal Appeal No. 286 of 1969.

August 30, 1972.

Prevention of Food Adulteration Act (XXXVII of 1954)—Sections 10(7) and 16(1)(a)—Sale of sample of adulterated article of food to Food Inspector—Seller not connected with the shop nor aware of

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adulteration—Whether guilty under section 16(1) (a)—Independent witnesses to the taking of sample not examined—Provisions of section 10(7)—Whether violated.

Held, that in view of the clear language of section 16(1)(a)(i) and (ii) of the Prevention of Food Adulteration Act, 1954, it is not only the person who procures the adulterated article of food that is liable to punishment but also the one who sells the same. The plea that the seller was not aware that the article of food sold by him was adulterated is of no avail to him so far as his guilt is concerned, though in some cases it may be taken into account in determining the quantum of punishment to be awarded. Similarly the mere fact that the shop from which the sample of article of food found to be adulterated is purchased, does not belong to the person who sold this sample but to a relation of his, or that the seller of the sample does not prepare that particular article of food himself, in no way affects the liability of the seller under section 16(1)(a) of the Act.

(Paras 7 and 8)

Held, that the provisions of section 10(7) of the Act are mandatory and it is the duty of the Food Inspector to associate with him two independent respectable persons of the locality while taking the sample of the article of food except when it is not possible to procure the presence of such witnesses. But the law nowhere prescribes that the prosecution is bound to examine all the witnesses in whose presence the sample was taken or at least two non-official independent witnesses besides the Food Inspector, nor does it anywhere lay down that unless atleast the two non-official witnesses support the complainant's case, no conviction can be recorded. It is not unoften that witnesses are won over by the accused and, therefore, the prosecution is not bound to produce witnesses who according to its information are not going to support its case either because they have been won over by the accused or for some reason. Hence the provisions of section 10(7) of the Act are not violated if the two independent witnesses in whose presence the sample is taken are not examined at the trial.

(Para 11)

Appeal from the order of Shri R. S. Gupta, Additional Sessions Judge, Amritsar, dated 18th October, 1968, reversing that of Shri H. S. Ahluwalia, Judicial Magistrate, 1st Class, Ambala, dated 20th February, 1968, acquitting the respondent.

Roop Chand, Advocate, for the appellant.

U. S. Sahney, Advocate, for the respondent.

JUDGMENT

GURDEV SINGH, J.—This is an appeal by the Municipal Committee, Amritsar, by the leave granted by this Court under section 417(3) of the Criminal Procedure Code, against the acquittal of Baldev Raj

who was prosecuted and tried for an offence under section 16(1)(a)(i) and (ii) of the Prevention of Food Adulteration Act, 1954.

(2) The respondent Baldev Raj's prosecution was initiated on a complaint made by the Food Inspector Krishan Kumar, who alleged that on the morning of 3rd March, 1966, after disclosing his identity, he purchased a sample of *halwa* from the respondent and the same on analysis was found to contain prohibited orange shade coal tar dye and was thus adulterated under the Prevention of Food Adulteration Act, 1954. Besides himself appearing at the trial, the complainant Food Inspector Krishan Kumar P.W. 1, examined Madan Lal P.W. 2, one of the persons in whose presence the sample of *halwa* was taken by him. Ram Singh another person who had also attested the relevant memos was given up as having been won over. Madan Lal P.W. 2 corroborated the statement of the Food Inspector that sample of *halwa* weighing 1½ kilograms was sold to Krishan Kumar by Baldev Raj, respondent, for Rs. 6 and receipt Exhibit P. B. regarding the taking of this sample, as well as the memo Exhibit PC of the sample, were prepared in his presence and attested by him. The shop on which the respondent, Baldev Raj sold the sample was admittedly that of his grandfather Lachhman Dass who holds the license to carry on the business of a *halwai*.

(3) The respondent Baldev Raj in the course of his trial admitted having supplied the sample of *halwa* to Food Inspector and executed the relevant receipt and the memo Exhibits PB and PC. While denying that the said *halwa* was adulterated he further attempted to evade his liability by pleading that the shop at which the sample was taken did not belong to him but to his grandfather Lachhman Dass and he had gone there only for a short while, probably implying thereby that he was not working at the shop and was not concerned with the preparation of *halwa*. Though he admitted the sale of the sample and the execution of the relevant memo and the receipt, all the same he complained that he signed these memos under the threat of the police. Madan Lal P.W. 2 in his cross-examination conceded that during those days the respondent Baldev Raj was a student and it was only to meet his grandfather that he used to visit the shop.

(4) On consideration of the evidence the learned trial Magistrate rejected the plea that the respondent was just a casual visitor to the shop of his grandfather or had not supplied the sample of *halwa* to the Food Inspector but signed the memos under duress. Since the report of the Chemical Examiner proved that the sample of *halwa*

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was adulterated with prohibited dye, the Magistrate found him guilty and observed as follows :

“It is alleged that he was a student at that time but no evidence has been led in support of this allegation, although documentary evidence could be led to show the fact that he was student from the school or some other place. While the accused had stated that he was made to sign the memos under threat of the police, he could have easily incorporated his objection before or after signing the memos if he had any. Moreover, the law on the above is quite clear. Every person, be he an employer or an agent, is prohibited from selling adulterated food and infringement of the prohibition is by section 16 penalised. By section 19 in a prosecution for an offence pertaining to the sale of any adulterated article of food, it is no defence merely to allege that the vendor was ignorant of the nature of the substance or quality of the food sold by him. Prohibition of sale of adulterated food is evidently imposed in the larger interest of maintenance of public health. If the owner of a shop in which adulterated food is sold is without proof of *mens rea* liable to be punished for sale of adulterated food, there is no reason why an agent or a servant of the owner is not liable to be punished for contravention of the same provision unless he is shown to have guilty knowledge. (See A.I.R. 1961 Supreme Court page 631)”

(5) In this view of the matter, the respondent was convicted and sentenced to 6 months' rigorous imprisonment and a fine of Rs. 1,000 or in default of payment of fine he was ordered to undergo further rigorous imprisonment for 2 months.

(6) It was on appeal against this order dated the 20th February, 1968, that the respondent was acquitted. The learned Additional Sessions Judge, Amritsar, Shri Raghbir Singh Gupta, who heard the appeal, quashed the appellant's conviction on the ground that it was not proved that the shop from which the sample was taken actually belonged to the respondent and not to his grandfather; that it was Lachhman Dass who was carrying on confectionary business and he was himself present when the sample was taken by the Food Inspector. These facts, in his opinion, did not bring the case of the respondent under section 16(1) (a) of the Prevention of Food Adulteration Act. In coming to this conclusion the learned Sessions Judge,

after quoting the relevant part of section 16(1)(a) of the Prevention of Food Adulteration Act, observed as follows :—

“It appears to me that any person who by himself or by any other person on his behalf manufactures or sells any adulterated food is answerable under section 16 sub-section (1). Assuming that adulterated pudding was found in the shop of Lachhman Dass the necessary import would be that he himself is answerable in this regard. I wonder when that Lachhman Dass was present in the shop and was working therein why he was not prosecuted and on the other hand his grandson, who is admittedly a student, has been prosecuted.”

(7) This view of the liability of the respondent for selling the sample of adulterated *halwa* to the Food Inspector, has been vehemently assailed before me by Mr. Roop Chand Chowdhry, learned counsel for the appellant Municipal Committee. He has contended, and in my opinion rightly so, that the mere fact that the shop from which the sample of article of food which is found to be adulterated is purchased, does not belong to the person who sold this sample but to a relation of his, or that the seller of the sample does not prepare that particular article of food himself, in no way affects the liability of the seller under section 16(1)(a) of the Act. He has also attacked the finding of the learned Additional Sessions Judge that the respondent on the date of the sale was a student and was not working at the shop from which the sample was taken but was merely a casual visitor. So far as the latter contention is concerned, it must be accepted, as apart from the fact that the appellant when examined at the conclusion of the prosecution case under section 342 of the Criminal Procedure Code never took up the plea that he was, during those days, studying in any school or college, he neither produced any evidence or any certificate from any educational institution nor curiously enough, examined even his grandfather to whom the shop belongs. We also find no basis for the finding that at the time the sample was taken, Lachhman Dass himself was present. Had Lachhman Dass been there, we cannot imagine that he would have permitted the respondent, his grandson, who according to the defence case was a student, to sign the relevant memos. No elderly person of that type would allow so close a relation of his who is receiving education to get embroiled in such an affair. On the other hand, had Lachhman Dass been present at the time the sample was taken, his normal conduct would have been to take the responsibility for the

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sample himself and not expose his grandson to the risk of being prosecuted when it was found that the sample was being taken by the Food Inspector, obviously to have the same tested for purity. The finding of the learned Additional Sessions Judge that Lachhman Dass was present on the shop or that the respondent Baldev Raj was a student, is based upon no evidence. Mere admission of Madan Lal P.W. 2 is of no avail as careful reading of the evidence would convince any one that he had attempted to help the respondent at the trial. Though he could not deny his signatures on the relevant memos, he favoured the respondent by saying that the sample was never given by the respondent.

(8) So far as the legal position is concerned, the language of section 16(1)(a)(i) and (ii) is clear. It is not only the person who procures the adulterated article of food that is liable to punishment but also the one who sells the same. The plea that he was not aware that the article of food sold by him was adulterated is of no avail to him so far as his guilt is concerned, though in some cases it has been taken into account in determining the quantum of punishment to be awarded.

(9) This stands settled by the judgment of their Lordships of the Supreme Court in *Sarjoo Prasad v. The State of Uttar Pradesh* (1) wherein it has been held that every person, be he an employer or an agent is prohibited from selling adulterated food and infringement of the prohibition is by section 16, penalised. Their Lordships further observed as follows :—

“By Section 19 in a prosecution for an offence pertaining to the sale of any adulterated article of food, it is no defence merely to allege that the vendor was ignorant of the nature of the substance or quality of the food sold by him. Such a defence can only succeed if the person charged with selling adulterated food proves that the article of food was purchased as of the same in nature, substance and quality as that demanded by the purchaser with a written warranty in the prescribed form, that he had no reason to believe at the time when he sold it that the food was not of such nature, substance and quality and that he sold it in the same state as he purchased it, and he submits to

the Food Inspector or the local authority a copy of the warrant with a written notice that he intends to rely upon it and specifies the name and address of the person from whom he received it. Prohibition of sale of adulterated food is evidently imposed in the larger interest of maintenance of public health. The prohibition applies to all persons who sell adulterated food, and for contravention of the prohibition all such persons are penalised. Because the Legislature has sought to penalise a person who sells adulterated food by his agent, it cannot be assumed that it was intended to penalise only those who may act through their agents. If the owner of a shop in which adulterated food is sold is without proof of mens rea liable to be punished for sale of adulterated food, we fail to appreciate why an agent or a servant of the owner is not liable to be punished for contravention of the same provision unless he is shown to have guilty knowledge."

(10) In view of this authoritative statement of law, the learned Additional Sessions Judge was clearly wrong in holding that the respondent was not guilty.

(11) Mr. U. S. Sahney, appearing for the respondent has further urged that there are other grounds on which the finding of the court cannot be reversed and it must be held that the appellant had committed no offence. In this connection he submits that the provisions of section 10(7) of the Prevention of Food Adulteration Act have not been complied with in as much as the two independent witnesses in whose presence the sample had been taken were not examined at the trial to support the complainant's case. Reliance in this connection is placed upon a Bench decision of this Court in *State v. Sadhu Singh*, (2) to which one of us was a party. That authority has, however, no applicability to this case. What was held in that case was that the provisions of section 10(7) of the Act are mandatory and it is the duty of the Food Inspector to associate with him two independent respectable persons of the locality while taking the sample of the article of food except when it is not possible to procure the presence of such witnesses. This provision has been fully complied with in the case which is now before us. It is in the evidence of the Food Inspector, which has been corroborated by the relevant memos

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exhibits PB and PC, that the sample was taken in presence of the two members of the public, including Madan Lal. The only defect that has been pointed out by Mr. Sahney is that out of these two witnesses Madan Lal alone was examined at the trial while the other was given up on the plea that he had been won over. He argues that unless both the non-official witnesses are examined at the trial in proof of the taking of the sample and they support the prosecution allegation, the requirement of section 10(7) of the Act, which is a mandatory provision, are not satisfied. The contention has to be noticed only to be rejected. The law nowhere prescribes that the prosecution is bound to examine all the witnesses in whose presence the sample was taken or at least two non-officials besides the Food Inspector, nor does it anywhere lay down that unless at least two non-official witnesses in whose presence the sample is taken support the complainant's case, no conviction can be recorded. It is not unoften that witnesses are won over by the accused. It is now well-settled by their Lordships of the Supreme Court that the prosecution is not bound to produce witnesses who according to its information are not going to support its case either because they have been won over by the accused or for some other reason. In the circumstances there is no violation of section 10(7) of the Act.

(12) Mr. Sahney then argued that the orange colouring of the *halwa* may be due to the fact that *halwa* was prepared not with refined sugar but with *gur*. Apart from the fact that no such plea was taken at the trial it is not explained how the use of *gur* will give rise to the presence of prohibited coal-tar dye.

(13) For all these reasons we find that the respondent's acquittal recorded by the lower Appellate Court cannot be sustained. It is based on wrong assumption of facts and misconception of true legal position with regard to the respondent's liability. We, accordingly, accept the appeal and setting aside the respondent's acquittal, restore the order of the learned trial Magistrate convicting the respondent under section 16(1)(a)(i) of the Prevention of Food Adulteration Act.

(14) The trial Court had awarded the respondent six months' rigorous imprisonment and a fine of Rs. 1,000, in default of payment of which he was directed to undergo further sentence of rigorous imprisonment for two months. The punishment awarded is the

minimum prescribed by law. The learned counsel for the respondent has urged that the respondent be not sent to prison as he is entitled to the benefit of the Probation of Offenders Act, 1954. Reliance is placed on a recent decision of their Lordships of the Supreme Court, J. M. Shelat and H. R. Khanna, JJ., in *Ishar Dass v. The State of Punjab* (3) wherein it has been held that "as the legislature enacted the Probation of Offenders Act despite the existence on the statute book of the Prevention of Food Adulteration Act, the operation of Probation of Offenders Act cannot be whittled down or circumscribed because of the provisions of the earlier enactment, viz., Prevention of Food Adulteration Act".

(15) Reference in this connection was made to section 4 of the Probation of Offenders Act and it was observed :

"Indeed, as mentioned earlier the non-obstante clause in section 4 of the Probation of Offenders Act is a clear manifestation of the intention of the legislature that the provisions of the Probation of Offenders Act would have effect notwithstanding any other law for the time being in force. We may also in this context refer to the decision of this court in the of *Ramji Missir v. State of Bihar* (4) wherein this court while dealing with the Probation of Offenders Act observed that its beneficial provisions should receive wide interpretation and should not be read in a restricted sense".

(16) In view of this authoritative statement of law we find that the benefit of the Probation of Offenders Act cannot be denied to the respondent. In dealing with this matter we have, however, to keep in mind the following further observations made by their Lordships in *Ishdar Dass's case*:

"Adulteration of food is a menace to public health. The Prevention of Food Adulteration Act has been enacted with the aim of eradicating that anti-social evil and for insuring purity in the articles of food. In view of the above object of the Act and the intention of the legislature as revealed by the fact that a minimum sentence of imprisonment for a period of six months and a fine of

(3) A.I.R. 1972 S.C. 1295.

(4) A.I.R. 1963 S.C. 1088=1962 Supp. 2 S.C.R. 745,

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rupees one thousand has been prescribed, the courts should not lightly resort to the provisions of the Probation of Offenders Act in the case of persons above 21 years of age found guilty of offences under the Prevention of Food Adulteration Act. As regards person under 21 years of age, however, the policy of the law appears to be that such a person in spite of his conviction under the Prevention of Food Adulteration Act, should not be deprived of the advantage of Probation of Offenders Act which is a beneficent measure and reflects and incorporates the modern and latest trend in penology."

(17) As ruled in *Ramji Missar v. State of Bihar*, (4) it is the age of the accused at the time of his conviction that has to be taken into account in considering whether he is entitled to the benefit of section 6 of the Probation of Offenders Act. The respondent on his own admission being over 21 years of age at the time of his conviction is thus not entitled to the benefit of that provision. In view of the observations of their Lordships of the Supreme Court that have been quoted above from *Ishar Dass's case* (3) that in dealing with a case under the Prevention of Food Adulteration Act for which minimum sentence of imprisonment and fine is laid down, the Courts should not lightly resort to the provisions of the Probation of Offenders Act in the case of persons above 21 years of age, the respondent is not even entitled to the benefit of section 4 of the Probation of Offenders Act. There is nothing in the circumstances of the case that warrants the withholding of the sentence of imprisonment and fine prescribed for the purpose.

(18) For all these reasons, we accept the appeal and setting aside the order of the learned Additional Sessions Judge, restore that of the trial Magistrate, and direct that the respondent shall undergo six months' rigorous imprisonment and pay a fine of Rs. 1,000 or in default undergo further sentence of 2 months' rigorous imprisonment.

Gurnam Singh, J. I agree.

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