Bhagwan Dass Jagdish Chander vs Delhi Administration on 25 March, 1975

Equivalent citations: 1975 AIR 1309, 1975 SCR 30, AIR 1975 SUPREME COURT 1309, (1975) 1 SCC 866, 1976 MADLW (CRI) 19, 1975 SCC(CRI) 410, 1975 ALLCRIC 208, 1975 CURLJ 1091

Author: M. Hameedullah Beg

Bench: M. Hameedullah Beg, A. Alagiriswami, N.L. Untwalia

PETITIONER:
BHAGWAN DASS JAGDISH CHANDER

Vs.

RESPONDENT:
DELHI ADMINISTRATION

DATE OF JUDGMENT25/03/1975

BENCH:
BEG, M. HAMEEDULLAH
BENCH:
BEG, M. HAMEEDULLAH
ALAGIRISWAMI, A.
UNTWALIA, N.L.

CITATION:
1975 AIR 1309 1975 SCR 30
1975 SCC (1) 866
CITATOR INFO :
F 1975 SC2178 (8)
RF 1976 SC 621 (34)
APL 1983 SC 545 (7)
D 1984 SC1492 (8)

ACT:
Prevention of Food Adulteration Act, 1954-Ss. 7, 16 and 19(2)-Joint trial of vendor and distributor of food article-If legal-S. 20A-Scope of.

HEADNOTE:
The appellant, a firm of ghee merchants, through its partner as A2 was charged with having sold ghee to Al (the vendor of ghee). A sample of that ghee purchased by the Food

Inspector was found (on analysis) to be adulterated. The two accused were prosecuted jointly under ss. 7 and 16 of the Prevention of Food Adulteration Act, 1954.

At the trial, the vendor prayed for the discharge or acquittal of the warrantor so that he might examine the warrantor as his defence witness to prove his own purchase of the article under a warranty. The trying magistrate acquitted the partner of the appellant. The vendor was also acquitted on the ground that he was protected by a warranty covered by s. 19(2) of the Act.

On appeal, the High Court, while maintaining acquittal of A-1, set aside the acquittal of the appellant (A-2). On the question whether the charge should be quashed because two accused were set tip for trial jointly.

HELD : The High Court was right in holding that the joint trial of the appellant with the vendor was not illegal. [42A]

(1)(a) In a suitable case, a vendor, a distributor, and a manufacturer could be tried together provided the allegations made before the Court show that there were connecting links between their activities so as to constitute the same transaction. The connecting links, in a case could be provided by (i) the fact that a sale at an anterior stage could be viewed as the cause of the subsequent sale; (ii) the allegation that each of the accused parted with the article of food when it was in an adulterated state and (iii) the common object of the manufacturer, the distributor and the vendor was that the article should reach the consumer to be used as food. The third and last link is decisive and must tilt the balance in favour of legality of a joint trial of the parties concerned. [41-C-D]

(b)A mens rea as a particular state of mind which could be described as guilty or wrongful was not needed, and, therefore, could not provide the connecting link between the co-accused in a trial for such an offence in order to constitute the same transaction. [39D]

Sarjoo Prasad v. The State of Uttar Pradesh, A.I.R. 1961 S.C. 631, referred

(c)Where a joinder of several accused persons concerned dealing in different ways with the same adulterated article of food at different stages is likely to jeopardise a fair trial, a separate trial ought to be ordered. It is not proper to acquire or discharge an accused person on this ground alone. The order of separate trial in a case where prejudice to an accused from a joint trial is apprehended is enough. A joint trial of such accused persons is not ab initio illegal. [40A]

V.N. Kamdar & Anr. v. Municipal Corporation of Delhi [19741 IS.C.R. 157 @-161 and Kadiri Kunhammad v. The State of Madras. A.I.R. 1960, S.C. 661 @663, followed.

31

(2)Neither S. 7 nor S. 14 of the Act bars trial of several

offences by the same accused person, be he a manufacturer, a distributor or a last seller referred to as "the vendor" in S. 14 of the Act. The definition of "sale" in sub-s. (xiii) of the Act, is wide enough to include every kind of seller. Every seller can be prosecuted for an offence created by s. 7 of the Act. The mere fact that, for purposes of S. 14 , the person who could be thelast seller is described as "the vendor", could not affect a liability for an offence under s. 7 of the Act by a sale of an article of food which is found to be adulterated. A sale of an article of food by a " manufacturer, distributor or dealer" is a distinct and separable offence. Section 14 was not meant to carve out an exemption in favour of a distributor or a manufacturer who sells articles of food, found to be adulterated, irrespective of the question whether any warranty was given for them. [36C-F]

The spacial provisions contained in Ss.19(2) and 20A do not take away or derogate from the effect of the ordinary provisions of the law which enable separate as well as joint trials of accused persons in accordance with the provisions of the old Ss. 233 to 239, Cr. P. C. On the other hand, there is no logically sound reason why, if a distributor or a manufacturer can be subsequently impleaded under s. 20A of the Act, he cannot be joined as a co-accused initially in a joint trial if the allegations made justify such a course.[37B]

(b)The special provisions of S. 20A are only enabling and do not give rise toa mandatory duty. They do not bar either a separate or a joint trial of an accused person if other conditions are satisfied. Similarly S. 239(d), Cr. P.C. is only an enabling section. [41-B]

In the instant case although the charge stated that the ghee sold by the vendor was found to be adulterated, it is not stated that it was in that very state when the appellant sold it to the vendor. It is left to be inferred from the charge that the appellant also sold the ghee in an adulterated state. It is true that defects in the charge would not invalidate a trial. Even so, continuation of such an old prosecution is likely to handicap the appellant in his defence. Assuming that the charge implied an allegation that ghee was adulterated when the appellant sold it to the vendor an enquiry in 1975 into the actual state of the ghee sold by the' distributor in 1967 would be obviously difficult. It would impose undue hardship on the distributor to prove at this distance of time, the actual state of the small quantity of ghee analysed. [41G-H]

Alagiriswami, J. (concurring in the final result)

The High Court was not correct in saying that the action of both the accused formed part of the same transaction and there was unity of purpose of the manufacturer, the distributor and the vendor furnished by the purpose of all of them to sell, and, therefore. it was the same transaction and ill of them could be tried together. [43E]

(1)If the common purpose of all of them was to sell ghee, joint trial of all of them would not be valid; but, if it was to sell adulterated ghee it would be valid. If it is alleged that at every one of the stages ghee was adulterated then it would be the same transaction and they could all be jointly tried. In the absence of an allegation that the ghee distributed by the appellant to the vendor was adulterated both of them could not be tried together. [43G]
(2)At the stage of considering the validity of the charge, it is the allegation that is material ; at the stage of considering the guilt of the parties, it is proof that is material. [43H]
In the instant case, although the charge states that the ghee purchased from the vendor was found to be adulterated, there was no allegation that the ghee sold by the appellant to the vendor was adulterated. While the common object was to sell the article of food sold, it is not said that it was to sell adulterated article of food. [42E]
32
(3)It is now well settled that for establishing an offence under the Act it is not necessary to establish mens rea i.e., criminal intention either on the part of the manufacturer or distributor or vendor. Even knowledge on the part of all of them that the food was adulterated is not necessary. Ignorance on the part of any one of them that the food was adulterated would not absolve them of liability. [42H]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 59 and 60 of 1971.

From the judgment and order dated the 28th October, 1970 of the Delhi High Court in Criminal Appeals Nos. 8 and 9 of 1969.

E. C. Agarwala, for the appellant (in both the appeals) B. P. Maheshwari, for respondent no, 2.

The Judgment of M. H. Beg and N. L. Untwalia, JJ. was delivered by Beg, J. A. Alagiriswami, J. gave a separate Opinion.

BEG, J.-These two criminal appeals, after certification of the cases as fit for decision by this Court, under Article 134(1) (c) of the Constitution, arise out of the prosecution of M/s. Bhagwan Das Jagdish Chander, Ghee Merchants and Commission Agents at Delhi, under Sections 7/16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'the Act'). The appellant was prosecuted jointly with Laxmi Narain, the vendor of 450 gms. of ghee to a Food Inspector, on 22-8-1967. On analysis, the sample was found to be adulterated. Laxmi Narain, a partner of M/s. Laxmi Sweets, Delhi, in defence, successfully relied upon Section 19(2) of the Act and was acquitted.

Section 19, which reads as follows, may be set out here in toto :

> "19(1) It shall be no defence in a prosecution for an offence pertaining to the sale of any adulterated or misbranded article of food to allege merely that the vendor was ignorant of the nature, substance or quality of the food sold by him or that the purchaser having purchased any article for analysis was not prejudiced by the sale.
>
> (2)A vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves-
>
> (a)that he purchased the article of food----
>
> (i) in a case where a licence is prescribed for the sale thereof, from a duly licensed manufacturer, distributor or dealer;
>
> (ii)in any other case, from any manufacturer, distributor or dealer, with a written warranty in the prescribed form; and
>
> (b) that the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it.
>
> (3)Any person by whom a warranty as is referred to in Section 14 is alleged to have been given shall be entitled to appear at the hearing and give evidence".

Section 14 of the Act, to which reference was made in Section 19(3), says:

> "S. 14. No manufacturer, distributor or dealer of any article of food shall sell such article to any vendor unless he also gives a warranty in writing in the prescribed form about the nature and quality of such article to the vendor.
>
> Explanation.-In this section, in sub-section (2) of Section 19 and in Section 20A, the expression "distributor" shall include a commission agent".

In the course of the trial, Laxmi Narain filed an application praying that the warrantor may be discharged or acquitted so that Laxmi Narain may examine the warrantor as his defence witness to prove his own purchase of the offending article under a warranty. It may be mentioned that, as the complaint describes the warrantor accused as "M/s. Bhagwan Das Jagdish Chander through an authorised person", appearance was put in by Jagdish Chander, a partner, as the accused person responsible on behalf of the firm.

The trying Magistrate allowed the application of Laxmi Narain and acquitted Jagdish Chander on the ground that Laxmi Narain would be deprived of a valuable defence unless this was done and relied upon V. N. Chokra v. The State(1) in support of this action. Of course, an accused person has a right to appear in defence under Section 342A of the Code of Criminal Procedure; and, Laxmi

Narain, taking advantage of this provision, did depose in his own defence. But, it seems that it was urged on behalf of Laxmi Narain that Jagdish Chander could not be compelled to appear as a defence witness until he had been discharged or acquitted. The Magistrate accepted this ground as good enough for the acquittal of Jagdish Chander. After, the evidence of Jagdish Chander and Laxmi Narain, as defence witnesses, the trying Magistrate acquitted Laxmi Narain also on the ground that Laxmi Narain was protected by a warranty covered by Section 19(2) of the Act. Thus, both the accused persons were acquitted.

After their acquittal, the Magistrate impleaded the manufacturers, M/s. Gauri Shanker Prem Narain, under section 20A of the Act. 'This provision reads as follows :

> "20A. Where at any time during the trial of any offence under this Act alleged to have been committed by any person, not being the manufacturer, distributor or dealer of any article of food, the Court is satisfied, on the evidence adduced before it, that such manufacturer, distributor or dealer is also concerned (1) AIR 1966 Punjab 421.

with that offence, then, the Court may, notwithstanding anything contained in sub- section (1) of Section 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 section 20".

Although, we are not concerned in the appeals before us with the prosecution of the manufacturer, M/s. Gauri Shanker Prem Narain, yet, we find that one of the questions framed for consideration and decided by the Delhi High Court relates to the meaning and scope of Section 20A of the Act. We may mention that a statement has been made at the Bar that the manufacturer has also been acquitted. We do not know whether this acquittal was on the ground that the manufacturer cannot be impleaded under section 20A of the Act after the trial is concluded by the acquittal of the two accused. It is clear that Section 20A contemplates action which can only be taken during the course of the trial. A separate trial would require a "written consent of the Central Government or the State Government or a local authority or of a person authorised in this behalf by general or special order by the Central Government or the State Government or a local authority", unless it is a complaint by a purchaser, other than a Food Inspector, who could rely upon Section 12 of the Act. But, an addition of an accused under section 20A of the Act constitutes an expressly laid down exception to the requirement of a sanction under section 20(1) of the Act.

In the case before us, the prosecutor, the Municipal Corporation of Delhi, appealed against the acquittals of Laxmi Narain and Jagdish Chander. In the Delhi High Court, two questions, arising in the case before us and in other similar cases, were framed and referred for decision by a Full Bench as follows :

> "(i) Whether a joint trial of the vendor, the distributor and the manufacturerer for offences under the Prevention of Food Adulteration Act, 1954 is illegal ? and
>
> (ii) What is the scope of Section 20A of the said Act ?"

On the 1st question. the Full Bench held : that;- the general procedure for joint trials, found in Sections 234 to 239 of the Criminal Procedure Code, applies to prosecutions under the Act which contains no other or special procedure for joinder of charges or of accused persons in the same trial; that, the joint trial of the vendor Laxmi Narain with the warrantor Jagdish Chander was permissible as the actions of both these accused form parts of the same transaction, as explained by this Court in the State of Andhra Pradesh v. Cheemalapati Ganeswara Rao & Anr.(1); that, this view was reinforce by the consideration that mens rea was not an essential element for offences under the Act, and the High Court relied on the pronouncement of this Court in Andhra Pradesh Grain and Seeds Merchants Association v. Union of India(2) for this proposition; that, proof (1) [1964] 3 SCR 297.

(2) [1970] (2) S.C.C. 71.

of a guilty mind is not necessary in statutes creating absolute liability for offences against public health and public welfare; that, there was a "unity of purpose" between the manufacturer and distributor and vendor of the adulterated article of food sold furnished by the purpose of all of them to sell; that, an indication of a "unity of purpose", which is less stringent than either a "common object" or a "common intention", was sufficient to establish the sameness of a transaction for the purposes of Section 239 of the Criminal Procedure Code; that, although the joinder of the vendor or manufacturer in a single trial was legally valid under section 239 of the Criminal Procedure Code, it did not appear to be incumbent upon the Court to hold such a joint trial where such joinder may jeopardise the interests of justice; that, Section 19 of the Act, as it stands, does not require that the warrantor should be separately prosecuted only after the vendor had successfully established that he could rely upon a warranty covered by Section 19(2) of the Act; that, as both the vendor and his warrantor could get an adequate opportunity to prove their cases in a trial for sale of an adulterated article under the Act, no right of an accused person, either in law or justice, was jeopardized by such a joint trial; that, in any event, a person accused of such an offence under the Act "can always insist that a co-accused should be discharged or acquitted on the ground that he wants to examine him as a witness"; that, Section 19(3) of the Act confers a right upon the vendor and not upon the warrantor; that, no interests of an accused person were prejudicially affected in the case before us by a joint trial of the vendor and the distributor.

As regards Section 20A of the Act, the Full Bench held:

> that, this provision, which is an Exception to Section 351 (1) of the Criminal Procedure Code, "can be invoked after the trial of the vendor has commenced and before it has concluded and not after that"; and that, Section 20A of the Act is not controlled by Section 239 of the Criminal Procedure Code but is a self contained provision so that "the person concerned in the offence", mentioned therein, is not to be equated with "a person who has committed the same offence", mentioned in Section 239 of the Criminal Procedure Code.

The High Court, while maintaining the acquittal of Laxmi Narain, set aside the acquittal of the appellant M/s. Bhagwan Das Jagdish Chander. It is not clear to us why two appeals to this Court became necessary as the appellant does not question the correctness of the acquittal of Laxmi

Narain. Separate Counsel have, however, appeared and argued the case for the appellant firm and its partner Jagdish Chander. We propose to deal with the case as one only and assume that both the firm and its partner Jagdish Chander question the validity of the trial on a complaint where the only allegation against the appellant firm, arraigned as an accused through its partner, was that it was a distributor of the adulterated ghee sold. The charge framed against the appellant was "That, on or about the 22nd day of Aug. 1967 at 12 noon a sample of ghee was purchased by Lakshmi Narain and the said ghee was sold by you to accused No. 1 Laxmi Narain on 21-8-67 and the said sample of ghee on analysis was found to be adulterated and hereby committed an offence punishable under sections 7/16 of the Prevention of Food Adulteration Act of 1954 and within my cognizance".

The material question before us, shorn of subtlety and bereft of verbiage, could be said to, be: Should this charge be quashed, after holding that the prosecution of the appellant, which was duly sanctioned by the competent authority, was invalid merely because, initially, the appellant was sent up for trial jointly with Laxmi Narain, or, alternatively, should we quash it on any other ground? We are not impressed by the argument that a distributor could only be prosecuted for selling without giving a warranty to a vendor which is a separate offence under section 14 of the Act. It is clear from Section 14 itself that a manufacturer as well as a distributor can sell. The definition of "Sale", given in sub s. (xiii) of the Act, is wide enough to include every kind of seller. Every seller can be prosecuted of an offence created by Section 7 of the Act which prohibits a sale as well as distribution of an adulterated article of food. The mere fact that, for the purposes of Section 14, the person who could be the last seller, in the sense that he sells to the actual consumer, is described as "the vendor", could not affect a liability for an offence under section 7 of the Act by a sale of an article of food which is found to be adulterated. A sale of an article of food by a "manufacturer, distributor, or dealer" is a distinct and separable offence. Section 14 was not meant to carve out an exemption in favour of a distributor or a manufacturer who sells articles of food, found to be adulterated, irrespective of the question whether any warranty was given for them.It is true that the manufacture of an adulterated article of food forsale is also an offence under section 7 of the Act. But, neither Section7 nor Section 14 of the Act bars trial of several offences by the same accused person, be he a manufacturer, a distributor, or a last seller, referred to as "the vendor"

in Section 14 of the Act.

We are also unable to accept as correct a line of reasoning found in V. N. Chokra v. The State (supra) and Food Inspector, Palghat Municipality v. Setharam Rice & Oil Mills(1), and in P. B. Kurup v. Food Inspector, Malappuram Panchayat(2), that, in every case under the Act, there has to be initially a prosecution of a particular seller only, but those who may have passed on or sold the adulterated article of food to the vendor, who is being prosecuted, could only be brought in subsequently after a warranty set up under section 19(2) has been pleaded and shown to be substantiated. Support was sought for such a view by referring to the special provisions of Section 20A and Section 19(2) and Section 20 of the Act. A reason for Sec. 20A seems to be that the prosecution of a person impleaded as an accused under Section 20A in the course of a trial does not require a separate sanction Section 20A itself lays down that, where the Court trying the offence is itself satisfied that a "manufacturer,

distributor, or dealer is also (1)1974 F. A.C. V. 534(Crl. Appeal Nos. 222, 223, 225 to 227/73 etc. etc. decided on 3-7-74). (2) 1969 Kerala Law Times p. 845.

concerned with an offence", for which an accused is being tried, the necessary sanction to prosecute will be deemed to have been given. Another reason seems to be that such a power enables speedy trial of the really guilty parties. We are in agreement with the view of the Delhi High Court, that these special provisions do not take away or derogate from the effect of the ordinary provisions of the law which enable separate as well as joint trials of accused persons in accordance with the provisions of the old Sections 233 to 239 of Criminal Procedure Code. On the other hand, there seems no logically sound reason why, if a distributor or a manufacturer can be subsequently impleaded, under Section 20A of the Act, he cannot be joined as a co-accused initially in a joint trial if the allegations made justify such a course.

This brings us to the most debated point in the case: Was the sale of ghee on 22-8-67 by the last seller or vendor, Laxmi Narain, so connected with the sale by the accused appellant Jagdish Chander to Laxmi Narain on 21-8-67 that, if the ghee was found adulterated in the hands of Laxmi Narain, the appellant Jagdish Chander could be prosecuted jointly with Laxmi Narain as the two sales were part of the "same transaction" within the meaning of Section 239(d) of Criminal Procedure Code of 1898 corresponding to Section 223 of the Code of 1973?

We do not propose to attempt, in this case, the task of defining exhaustively what constitutes the same transaction within the meaning of Section 239 of Criminal Procedure Code of 1898 corresponding to Section 223 of the Criminal Procedure Code of 1973. It is practically impossible as well as undesirable to attempt such a definition of a concept which has to be necessarily elastic. Moreover, this Court has, in the State of Andhra Pradesh v. Cheemalpati Ganeshwara Rao and Anr. (supra), already expressed its views (at page 321.), which we respectfully quote and follow, on this question :

> "What is meant by 'same transaction' is not defined anywhere in the Code. Indeed, it would always be difficult to define precisely what the expression means. Whether a transaction can be regarded as the same would necessarily depend upon the particular facts of each case and it seems to us to be a difficult task to undertake a definition of that which the Legislature has deliberately left undefined. We have not come across a single decision of any Court which has embarked upon the difficult task of defining the expression. But, it is generally thought that where there is proximity of time or place or unity of purpose and design or continuity of action in respect of a series of acts, it may be possible to infer that they form part of the same transaction. It is, however, not necessary that every one of these elements should co-exist for a transaction to be regarded as the same. But if several acts committed by a person show a unity of purpose or design that would be a strong circumstance to indicate that those acts form part of the same transaction".

Learned Counsel for the appellant, however. relies on the immediately following observations (at page 322) The connection between a series of acts seems to us to be an essential ingredient for those

acts to constitute the same transaction and, therefore, the mere absence of the words 'so connected together as to form in cl. (a), (c) and (d) of S. 239 would make little difference. Now, a transaction may consist of an isolated act or may consist of a series of acts. The series of acts which constitute a transaction must of necessity be connected with one another and if some of them stand out independently, they would not form part of the same transaction but would constitute a different transaction or transactions.

Therefore, even if the expression 'same transaction' alone had been used in s. 235(1) it would have meant a transaction consisting either of a single act or of a series of connected acts. The expression 'same transaction' occurring in cls. (a), (c) and

(d) of s. 239 as well as that occurring in s.

235(1) ought to be given the meaning according to the normal rule of construction of statutes".

It is contended that it would be dangerous to leave the "unity of purpose and design", which may constitute a transaction, so vague as to bring in the manufacturer and every conceivable distributor as accused persons whenever any adulterated food, manufactured and scaled by one party and distributed by another, is finally sold by a vendor in the market. The learned Counsel for the appellant contended that we must, therefore, restrict the concept of a "transaction", in a prosecution for sale of an adulterated article of food, to an alleged criminal participation in the adulteration of the actual article of food sold. It was urged that some vague and general connection or concern of all the co-accused as manufacturers or distributors of the article sold will not do. It had, according to the contention on behalf of the appellant, to be specifically alleged that the accused was concerned with the adulteration or sale of the particular article of food sold. The argument of the learned Counsel for the appellant seems to us to go so far as to suggest that an allegation was indispensable of a participation in some kind of conspiracy to sell the actual adulterated article of food which was sold in order to enable a trial in which the seller, the distributor, and, the manufacturer could be jointly tried for offences which could be looked upon as parts of a single transaction. To accept such an argument would be to import into such a case the need to establish a conspiracy between the accused manufacturer or distributor, as the case may be, and the actual vendor or the last seller to the consumer. We think that such a result would be obviously incorrect. It was pointed out by this Court, in Sarjoo Prasad v. The State of Uttar Pradesh(1), that mens rea, in the sense of a guilty knowledge of adulteration of the food sold, is not necessary to prove for an offence under Section 7 of the Act. Indeed, Section 19(1) specifically rules out such a defence although S. 19(2) makes it available in the particular case of the accused who has taken the precaution of protecting himself from what seems otherwise to be an absolute liability without proof of guilty knowledge. Even if we were to widen (2) A.1-R 1974 SC 2154.

the concept of "mens rea" here to embrace carelessness or indifference as the required states of mind in the manufacture or distribution or sale of an adulterated article of food, as an ingredient of a, legally punishable offence, the law obviously and expressly does not require parties to, an offence under the Act to have a particular guilty knowledge about the particular item of food found to be adulterated. We cannot introduce such a requirement into a case simply because several accused

persons are being jointly tried. The law does require proof, for a successful defence, of a degree of care and caution revealed by the actions of the seller, distributor, or manufacturer, which will be enough to procure an exemption from criminal liability for a sale of adulterated article of food without knowledge of its actual adulteration. But, we cannot, for this reason, equate such. an offence with one in which the co-accused must necessarily have a common knowledge or design to sell an article actually known to them to be adulterated. In other words, a particular state of mind, which could be described as guilty or wrongful, could not, even if it could be there individually and separately in a) particular case, provide the connecting link between the co- accused in a trial for such an offence in order to constitute the same transaction. The link, if any, has to be found elsewhere.

In our opinion, considering the character of the offence and the nature of the activities of manufacturers and distributors, who generally deal in bulk, and of the ordinary vendor, who sells particular items to the consumer, the common link, which could provide the unity of purpose or design so as to weave their separate acts or omissions into one transaction, has to be their common intention that a particular article, found adulterated, should reach the consumer as food. Ignorance of the fact of adulteration is immaterial. In order to justify a joint trial of accused their common object or intention to sell the article as food is enough. In such a case of a strict liability created by statute, for safeguarding public health, the mental connection between the acts and omissions of the manufacturer, the distributor, and the last vendor would be provided simply by the common design or intention that an article of food, found to be adulterated, should reach and be used as food by the consumer. Each person dealing with such an article has to prove that he has shown due care and caution by taking prescribed steps in order to escape criminal liability. Otherwise, if one may so put it, a mens rea shared by them is presumed from a common carelessness exhibited by them. Again, a sale at an anterior stage by a manufacturer or distributor to a vendor and the sale by the vendor to the actual consumer could be viewed as linked with each other as cause and effect.

We think that the activities of the manufacturer, the distributor and the retail seller are sufficiently connected, in such a case of sale of an article of food found to be adulterated, by a unity of purpose and design, and, therefore, of a transaction, so as to make their joint trial possible in a suitable case. But, at the same time, we think that, where, a joinder of several accused persons concerned with dealing in different ways with the same adulterated article of 10 SC/75-4 food at different stages is likely to jeopardise a fair trial, a separate trial ought to be ordered. It is not proper to acquit or discharge an accused person on this ground alone. The ordering of a separate trial, in a case where prejudice to an accused from a joint trial is apprehended, is enough. Indeed, we can go even further and say that, ordinarily, they ought to be separately tried. But, a joint trial of such accused persons is not ab-initio illegal. It can take place in suitable cases. We may point out that, in V. N. Kamdar & Anr., v. Municipal Corporation of Delhi(1), this Court held (at p. 161) :

> "The normal rule under the Criminal Procedure Code is to try each accused separately when the offence committed by him is distinct and separate. The provisions of ss. 233 to 239 would indicate that joint trial is the exception. In State of Andhra Pradesh v. Cheemalapati Ganeswara Rao & Anr., [1964] (3) SCR 297, 324) this Court said that separate trial is the normal rule, and joint trial is an exception

> when the accused have committed separate offences. Section 5(2) of the Criminal Procedure Code provides that the provisions of that Code will apply to trial of an offence under any law other than the Indian Penal Code subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offence."

In Kadiri Kunhahammad v. The State of Madras(2), this Court said (at p. 663) "Section 239(d) authorises a joint trial of persons accused of different offences committed in the course of the same transaction; and there can be no doubt that in deciding the question whether or not more persons than one can be tried together under the said section, the criminal Court has to consider the nature of the accusation made by the prosecution. It would be unreasonable to suggest that though the accusation made by the prosecution would justify a joint trial of more persons than one, the validity of such a trial could be effectively challenged if the said accusation is not established according to law. It is true that, in framing the charge against more persons than one and directing their joint trial, Courts should carefully examine the nature of the accusa- tion; but if they are satisfied that prima facie the accusation made shows that several persons are charged of different offences and that the said offences prima facie appear to have been committed in the course of the same transaction, their joint trial can and should be ordered."

We do not interpret Kadiri Kunhahammad's case (supra) to mean that a joint trial of accused persons is obligatory in every case where a catenation of facts, said to constitute separate but related or cognate (1) [1974] (1) S.C.R. 157 161.

(2) A.I.R. 1960 SC 661 @663.

offences, can be viewed as one transaction. The question whether there should be a joint or separate trial in a case should be determined on the facts of that case and the requirements of justice there. As pointed out by this Court in V. N. Kamdar & Anr. v. Municipal Corporation of Delhi (supra) the special provisions of Section 20A are only en- abling and do not give rise to a mandatory duty. They do not bar either a separatea joint trial of an accused person if other conditions are satisfied.Similarly, Section 239(d) of the Criminal Procedure Code of 1898,which is reproduced as Section 223(d) of the Criminal Procedure Code of 1973, is only an enabling section. No doubt it has to be shewn that the requirements of Section 239(d) have been fulfilled whenever this provision is sought to be utilised. The result is that we think that, in a suitable case, a vendor, a distributor, and a manufacturer could be tried together provided the, allegations made before the Court show that there are connecting links between their activities so as to constitute the same transaction. The connecting links, in a case such as the one before us, could be provided by: firstly, the fact that a sale at an anterior stage could be viewed as the cause of the subsequent sale; secondly, the allegation that each of the accused parted with the article of food when it was in an adulterated state ; and, thirdly, by the common object of the manufacturer the distributor, and the vendor, that the article should reach the consumer to be used as food. The third and last mentioned link seems decisive and must tilt the balance in favour of legality of a joint trial of the parties concerned. But, we are also conscious of the fact that Courts cannot ignore broader requirements of justice. In the case before us, all that the complaint states is that the appellant firm had sold the offending ghee to the vendor

Laxmi Narain a day earlier. The assertion that it was in an adulterated state at that time was wanting in the complaint. Although, the charge framed, set out above, states that the sample of ghee sold by Laxmi Narain, to whom it was sold by the appellant, was found in an adulterated state, yet, it is not stated there that it was in that very state when the appellant bad sold it to Laxmi Narain. It is true that Laxmi Narain successfully pleaded a warranty under which he obtained the ghee from the appellant firm. It is left to be infester from these facts that the appellant also sold the ghee while it was in an adulterated state. It could be urged that this would follow from the successful defence of Laxmi Narain. The defects in the charge would not invalidate the trial. But, we think that a continuation of such an old prosecution is likely to handicap the accused Jagdish Chander in his defence. Even if we were to assume that the charge, as framed, implies the allegation that the ghee was adulterated also when the distributor sold it to the vendor, an enquiry in 1975 into the actual state of the ghee sold by the distributor to the vendor in 1967 would be obviously difficult. The appellant, content with the initial acquittal, had probably rested on his oars and not taken the trouble to challenge the correctness of the analyst's report. And, even if that report was quite correct it may not establish the state in which the small quantity of ghee analysed was when it was sold by the distributor. It would impose undue hardship on the distributor to prove, at this distance of time, the actual state of the small quantity of ghee analysed which must have been a part of the consignment supplied by the distributor who is perhaps also relying on the manufacturers warranty. Although we hold, in agreement with the Delhi High Court, that the joint trial of the appellant with Laxmi Narain was not illegal, we think that, on the special facts ,of this case, the interests of justice will be better served by quashing such a stale charge because the appellant's defence will suffer if he is 'called upon to answer it now. Consequently, we allow these appeals to the extent that we quash the charge against the appellant and order that he be discharged.

ALAGIRISWAMI, J.-I agree with my learned brothers as regards the final conclusions arrived at and the order proposed, But I think it is necessary to say a few words on the first question which was decided by the Full Bench of the Delhi High Court. The question is as follows "(i) Whether a joint trial of the vendor, the distributor and the manufacturer for offences under the Prevention of Food Adulteration Act, 1954 is illegal ?

It is unnecessary to set out the facts which are found in the judgment of my learned brothers. The Full Bench found that the joint trial of the vendor Laxmi Narain with the warrantor Jagdish Chander (the appellant before us) was permissible as-the actions of both these accused form parts of the same transaction, that there was a unity of purpose between the manufacturer, the distributor and the vendor of the adulterated articles of food sold furnished by the purpose of all of them to sell, that an indication of a unity of purpose was sufficient to establish the sameness of a transaction as contemplated by s. 239 of the Crminal Procedure Code. The charge framed against the appellant is as follows "That you, on or about the 22nd day of August 1967 at 12 noon a sample of ghee was purchased Lakshmi Narain and the said ghee was sold by you to accused No. 1 Lakshmi Narain on 21-8- 1967 and the said sample of ghee in analysis was found to be adulterated and hereby committed an offence punishable under section 7/16 of the Prevention of Food Adulteration Act of 1954 and within my cognizance."

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. It is true that it is now well established that for establishing an offence under the Prevention of Food Adulteration Act it is not necessary to establish mens rea i.e. criminal intention either on the part of the manufacturer or distributor or vendor. Even knowledge on the pan of all of them that the food was adulterated is not necessary. Ignorance on the part of any one of them that the food was adulterated would not absolve them of liability. But before the manufacturer, the distributor and the vendor could be tried jointly it must be alleged that the manufactured-food was adulterated when the manufacturer passed it on to the distributor and, it was also adulterated when the distributor passed it on to the vendor and that it was adulterated when the vendor sold it to the consumer. It is not necessary to prove that the article of food was adulterated at all the three stages for the purpose of deciding the validity of the charge being framed against all the three of them provided the necessary allegation is there. At that stage :the question of proof does not come in. The validity of the charge has to be decided on the, facts put forward as the prosecution case. If it is not, established against any one 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 an of them to manufacture, distribute or sell the adulterated food. 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. Selling ghee by itself is not an offence; only selling adulterated ghee is an offence. The Delhi High Court is not therefore correct in saying that the action of both the accused form part of the same transaction and there was unity of purpose of the manufacturer, the distributor and the vendor furnished by the purpose of all of them to sell and therefore it was the same transaction and all of them could be tried together. It would not be the same transaction in so far as selling adulterated ghee was concerned unless the ghee was in fact adulterate at every one of these stages. If the common purpose all of them was to sell ghee joint trial ofall of them would not be valid but if it was to sell adulterated gheeit would be valid,If it is alleged that at every one of the stages, that is of manufacture,distribution and sale the ghee was adulterated then it would be the same transaction and they could all be jointly tried. In the absence of an allegation that the ghee distributed by the appellant to the ,Vendor Lakshmi Narain was adulterated both of them cannot be tried together' The manufacturer could also have been tried along with them only if it is alleged that the ghee he manufactured was adulterated. In the absence of this 'allegation there cannot be a joint trial. At the. stage of considering the validity of the charge it is the allegation that is material; at the stage of , considering the guilt of the parties' it is proof that is material. In the present case it may be that the appellant could be prosecuted for giving a false warranty because he had issued a warranty and the food sold by the vendor to whom he issued the warranty was found to be adulterated.

Appeals allowed. P.B.R.