

A M/s SRI MAHAVIR AGENCY & ANR.

v.

THE STATE OF WEST BENGAL & ANR.

(Criminal Appeal No. 982 of 2023)

B APRIL 17, 2023

[ABHAY S. OKA AND RAJESH BINDAL, JJ.]

C *Prevention of Food Adulteration Act, 1954 : ss.7, 14, 16(1)(a)(i), 19(2) – Food Adulteration – Protection u/s. 19(2), to the vendor – Availability of – Appellant purchased ‘Pan Parag’ from the manufacturer through invoices and sold the same – Sample of ‘Pan masala’ collected from the business premises of the buyer of pan masala, from the appellant – Samples seized tested and found to be below standard – Appellant’s case that he is merely a vendor who purchased pan masala from the manufacturer in sealed packet and sold it to its customers; and that manufacturer had given warranty about the nature and quality of product sold, thus, pleaded protection u/s. 19(2) – Trial court gave the buyers the benefit of protection u/s. 19(2), however, held the appellant guilty u/s. 16(1)(a)(i) rw s. 7 – Order of conviction and sentence upheld by the courts below – On appeal, held: Sub-clause (ii) of s. 19(2)(a) provides that 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 that he purchased the article of food from any manufacturer, distributor or dealer with a written warranty in prescribed form – Appellant was having a valid defence in terms of s. 19(2) as the packed item sold by him namely ‘Pan Parag’, was having a written warranty in prescribed form from the manufacturer – Hence, had the protection available u/s. 19(2)(a) – Impugned judgment and order of the High Court set aside – Prevention of Food Adulteration Rules, 1955 – r. 12A.*

G *Mangaldas Raghavji Ruparel and another v. State of Maharashtra State 1965(2) SCR 894 – referred to.*

Case Law Reference

1965 (2) SCR 894

referred to

Para 14

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M/s SRI MAHAVIR AGENCY & ANR. v. THE STATE OF WEST BENGAL & ANR. 127

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 982 of 2023. A

From the Judgment and Order dated 08.06.2016 of the High Court at Calcutta in CRR No. 64 of 2014.

A.K. Sengupta, Suraj Prakash, Sujeet Kumar Gupta, Venkateswara Rao Anumolu, Advs. for the Appellants. B

Sunil Fernandes, Ms. Astha Sharma, Srisatya Mohanty, Sanjeev Kaushik, Ms. Mantika Haryani, Shreyas Awasthi, Himanshu Chakravarty, Ms. Ripul Swati Kumari, Divyansh Tiwari, Bhanu Mishra, Devvrat Singh, Ms. Muskan Surana, Kunal Chatterji, Ms. Maitrayee Banerjee, Rohit Bansal, Ms. Kshitij Singh, Advs. for the Respondents. C

The Judgment of the Court was delivered by

RAJESH BINDAL, J.

1. The appellant was accused in a complaint filed under Section 16(1)(a)(i) read with Section 7 of the Prevention of Food Adulteration Act, 1954 (for short “the Act”). He was convicted and sentenced to undergo rigorous imprisonment for a period of six months by Senior Municipal Magistrate, Calcutta. In appeal, the conviction and sentence of the appellant was upheld by the Additional District & Sessions Judge, Fast Track Court, Calcutta *vide* judgment dated 26.06.2009 in Criminal Appeal No.106/2007. The order was challenged before the High Court at Calcutta by filing a revision petition bearing C.R.R. No.64/2014 which was dismissed on 08.06.2016. The judgment has been impugned before this Court. D E

2. Learned counsel for the appellant raised a legal argument and submitted that the appellant is merely a vendor who purchased food item pan masala, namely, ‘Pan Parag’ from M/s Kothari Pouches Limited, the manufacturer, in sealed packaged condition and sold it to its customers. In terms of Section 14 of the Act, the manufacturer had given warranty about the nature and quality of the product sold by the petitioners. It was in the form of a bill having a specific note with reference to the warranty. The protection is available to the appellant in terms of Section 19(2) of the Act which provides for defences which may be available in prosecutions under the Act. The Courts below failed to consider the aforesaid legal argument and upheld the conviction. F G H

A 3. On the other hand, learned counsel for the respondents submitted that it is a case in which samples of pan masala namely ‘Pan Parag’ were collected from the business premises of Chanda Aggarwal, buyer of pan masala from the appellant. Initially complaint was filed against Chanda Aggarwal and Binod Agarwal. However, on an application filed by them, the appellant was impleaded as an accused as they had produced the bill showing purchase from the appellant. Only the appellant was convicted in the said matter as Chanda Aggarwal and Binod Agarwal were given benefit of protection under Section 19(2) of the Act. The samples of seized pan masala were tested twice, once by the Public Analyst for Calcutta Municipal Corporation and then by Central Food Laboratory at CFTRI, Mysore on the application of the appellant. Both times the sample did not conform to the standards laid down for ‘Pan Masala’ under the Act and Rules framed thereof and the tests failed. Hence, the offence was clearly established.

D 4. It was further submitted that the appellant cannot be allowed to go scot-free only on technical grounds. A warranty has to be given by the manufacturer or distributor in the prescribed form. In the case in hand, there is no such warranty produced by the appellant. There are concurrent findings of fact recorded by all the Courts below. Another argument raised is that the appellant cannot be said to be a vendor. No case for interference is made out.

E 5. In response to the arguments raised by learned counsel for the respondents, the learned counsel for the appellant referred to the Constitution Bench judgment of this Court in *Mangaldas Raghavji Ruparel and another v. State of Maharashtra State*¹ to submit that though the word “Vendor” has not been defined in the Act, however, it has been defined to mean a person who has sold the article of food, which is alleged to be adulterated.

6. Heard learned counsel for the parties and perused the relevant referred record.

G 7. To appreciate the arguments raised by the learned counsel for the parties, reference to provisions of Sections 14 and 19 of the Act would be relevant. The same reads as under:-

“14. Manufacturers, distributors and dealers to give warranty.—No manufacturer or distributor of, or dealer in,

H ¹ AIR 1966 Supreme Court 128

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: A

Provided that a bill, cash memorandum or invoice in respect of the sale of any article of food given by a manufacturer or distributor of, or dealer in, such article to the vendor thereof shall be deemed to be a warranty given by such manufacturer, distributor or dealer under this section. B

Explanation.—In this section, in sub-section (2) of Section 19 and in Section 20-A, the expression “distributor” shall include a commission agent.” C

“ 19. Defences which may or may not be allowed in prosecutions under this Act.—*(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.* D

(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— E

(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. F

(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. G

(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.” H

A 8. A perusal of Section 14 of the Act shows that there is a bar on the manufacturer or distributor or dealer to sell any article to any vendor unless he has given a warranty in writing about the nature and quality of such article to the vendor. Rule 12A of the Prevention of Food Adulteration Rules, 1955 (for short, “the Rules”) prescribes the procedure to give warranty.

B It reads as under:-

C *“12A. Warranty.- Every manufacturer, distributor, or dealer selling an article of food to a vendor shall give either separately or in the bill, cash memo or a label a warranty in Form VIA.”*

D 9. Proviso to Section 14 thereof provides that a bill, cash memorandum or invoice in respect of the sale of any article of food given by a manufacturer or distributor of, or dealer in, such article to the vendor thereof shall be deemed to be a warranty given by such manufacturer, distributor or dealer.

10. Form VIA, as referred to in 12A of the Rules provides text of the warranty to be furnished by the manufacturer, distributor or dealer selling the article of food. The same reads as under:-

E

“[FORM VIA
(See rule 12 A)
FORM OF WARRANTY

Invoice No. Place.....
Form Date.....
To

F

Date of Sale	Nature and quality of Article/Brand Name, if any	Batch No. or Code No.	Quantity	price
1	2	3	4	5

G

I/ We hereby certify that food/ foods mentioned in this invoice is/are warranted to be of the nature and quality which it/ these purports/purport to be.

.....
Signature of Manufacturer,
Distributor or Dealer

Name and Address of
Manufacturer/ Packer
(in case of packed article).

Licence No.
(Wherever applicable.)”

H

11. A conjoint reading of Section 14, Rule 12A and Form VIA provides that no manufacturer or distributor or a dealer of any food article shall sell such article to any vendor unless he has given a warranty in writing in the prescribed form regarding nature and quality of such articles to the vendor. The procedure to give a warranty has been provided in Rule 12A of the Rules. Proviso to Section 14 provides that even a bill, cash memo or invoice in respect of sale of any article given by the manufacturer or distributor or dealer shall be deemed to be a warranty given by such manufacturer, distributor or dealer. Form VIA provides the text of the warranty to be given.

12. Exhibit C/Annexure P-1, *i.e.* Invoice No. 1377 dated 12.08.1999 *vide* which the appellant had purchased the 'Pan Masala' from M/s Kothari Pouches Ltd., is on record. It contains a certification "*1. We hereby certify that the goods mentioned in this invoice are warranted to be of nature and quality which theses purport to be.*" A perusal of the aforesaid certification given by the manufacturer of the 'Pan Masala' shows that it was in terms of the requirement of law.

13. Section 19(2) of the Act provides for the defences which are available to a vendor from prosecution under the Act. Sub-clause (ii) of Section 19(2)(a) of the Act provides that 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 that he purchased the article of food from any manufacturer, distributor or dealer with a written warranty in prescribed form. Accordingly, the appellant was having a valid defence in terms of Section 19(2) of the Act as the packed item sold by him namely 'Pan Parag' was having a written warranty in prescribed form from the manufacturer.

14. The term 'Vendor' as such has not been defined either in the Act or in the Rules. In *Mangaldas Raghavji Ruparel's* case(supra), the word 'Vendor' is defined to mean a person who has sold the article of food, which is alleged to be adulterated. The Bench stated:-

"The word "Vendor" though not defined in the Act, would obviously mean the person who had sold the article of food which is alleged to be adulterated."

15. In the case in hand, it is the appellant who sold the article of food after purchasing the same from the manufacturer through the invoices which contained the warranty as prescribed under the Act and

A the Rules. Hence, he had the protection available under Section 19(2)(a) of the Act.

16. Though, Section 20A of the Act provides for impleadment of manufacturer, distributor, or dealer in a pending complaint, however, nothing was pointed out at the time of hearing that any such action was

B taken.

17. In view of the aforesaid reasons, the appeal is allowed. Impugned judgment and final order of the High Court is set aside. Bail bonds of the appellant stand discharged.

Nidhi Jain
(Assisted by : Mayank Batra and Tamana, LCRA's)

Appeal allowed.