

## State vs Bal Makund on 5 August, 1953

**Equivalent citations: AIR1954ALL97, AIR 1954 ALLAHABAD 97**

### JUDGMENT

Malik, C.J.

1. These are four Government appeals against the orders of acquittals passed in four cases for prosecution under the United Provinces Prevention of Adulteration Act, Act No. 6 of 1912.

2. It would be convenient to take up the three cases, Criminal Appeal No. 143 of 1951, Criminal Appeal No. 144 of 1951 and Criminal Appeal No. 146 of 1951 together, and Criminal Appeal No. 420 of 1951 separately. In Criminal Appeal No. 143 of 1951 and Criminal Appeal No 146 of 1951 the accused Balmakand and Amar Nath respectively were charged with having sold adulterated Lahi oil, while in Criminal Appeal No. 144 of 1951 Amar Nath was prosecuted for having sold adulterated Alsi oil.

3. The accused are wholesale dealers. The Sanitary Inspector suspected that the Lahi and Alsi oils sold by the accused were adulterated and he thereupon went and purchased some quantity of oils. These he sent to the Public Analyst, U. P. Government, for analysis and report. The Analyst found that the samples sent were all adulterated and thereupon the accused were prosecuted before Sri R. D. Pande, Additional Magistrate, 1st class, Naini Tal. The learned Magistrate tried the cases summarily and acquitted the accused on the ground that the accused were protected by Section 6 of the Act. It is against these orders of acquittal passed by the learned Magistrate that these appeals have been filed. It has been urged on behalf of the State that the view taken by the learned Magistrate that the accused were entitled to rely on Section 6 was erroneous.

4. Section 4 of the Act provides that-

"Whoever sells to the prejudice of the purchaser any article of food, or any drug which is not of the nature, substance, or quality of the article or drug demanded by such purchaser, or sells or offers or exposes for sale or manufactures for sale any article of food or any drug which is not of the nature, substance, or quality which it purports to be .....shall be punished for the first offence with fine which may extend to two hundred rupees and for a second or any subsequent offence with fine which may extend to one thousand rupees or imprisonment of either description not exceeding three months or both."

It is not necessary to quote the proviso. The case for the prosecution was that the accused sold or offered or exposed for sale an article of food which was not of the nature, substance, or quality which it purported to be.

5. The fact that the Alsi oil and the Lahi oil were adulterated has been found by the Public Analyst on an analysis of the samples sent to him, and the learned counsel for the accused have not challenged the Analyst's report. It has, however, been urged on behalf of the accused that the accused had offered for sale only such article as had been supplied to them from the mills that were manufacturing it, not knowing that the articles were adulterated. In other words, the plea is a plea of want of 'mens rea', or that the articles were sold in good faith by the accused believing them to be unadulterated articles. It is, however, open to the Legislature to enact that sale of adulterated foodstuffs would per se be punishable. Section 6, Prevention of Adulteration Act, provides that "In any prosecution under Section 4 it shall be no defence to allege that the vendor was ignorant of the nature, substance, or quality of the article or drug sold by him, or that the purchaser having bought only for analysis was not prejudiced by the sale."

There is, however, a proviso to the section, and if the vendor can come under the proviso, he must be held to be not guilty. The proviso makes it clear that the vendor must have taken from the person, who supplied him with the article, a written warranty to the effect that the articles sold were of the nature, substance or quality which they purported to be, that the vendor had no reason to believe at the time when the articles were sold that the articles were adulterated and, lastly, that the adulteration was not done when the articles were in his possession. In the case before us the accused were able to prove the second and the third requirements, that is, that they sold in good faith what they had been supplied by the mills and had no reason to think that the Alsi oil or Lahi oil were adulterated. The learned Magistrate also believed their statements that they sold the Alsi oil and the Lahi oil in the same state in which the accused had purchased them. It was admitted by the Sanitary Inspector that he purchased the samples from sealed tins.

6. The only question was whether the accused had also obtained a written warranty to the effect that the Alsi oil and the Lahi oil ' were not adulterated. The learned Magistrate thought that the invoices of purchase which were in writing and were on the record went to satisfy the first requirement. We are not satisfied that the invoice of purchase, in which the mills selling the articles to the accused had mentioned what they were selling, was the type of written warranty which the Legislature had contemplated under proviso (a) to Section 6. It is in public interest that the vendors of articles of food should sell to the public unadulterated food-stuffs, & it is with that object that this Act was passed. Generally it is not the manufacturer who directly comes into the market to sell his articles to the consumer, but there are many middle men who intervene. It would be easy in such cases for the shop keepers to evade responsibility by pleading that they did not know that the article of food purchased by them for sale was adulterated. It is on that account that the section has provided that ignorance of the fact of adulteration will be no excuse, and the vendor will only be protected if, apart from other things, he had obtained a written warranty as regards quality from the person from whom, he had purchased the articles for sale. An invoice is merely a description of the articles sold and cannot be said to be a warranty given in accordance with the provisions of proviso (a) to Section 6,

7. Learned counsel has urged that Alsi oil is not edible, and as regards Lahi oil his argument is that there is no evidence to show that it is edible. Learned counsel has, however, admitted that Lahi is a type of black mustard seed which is more pungent than the ordinary mustard seed and is used by

people who prefer more pungent oil than ordinary mustard oil. We think we can take judicial notice of the fact that mustard oil is edible at least in this State. As regards Alsi oil learned counsel said that Alsi oil is the same thing as linseed oil. The question is whether linseed oil is an article of food under Section 4 of the Act. "Food" has been defined in Section 2 as including "every article used for food or drink by man other than drugs or water and all material used or admixed in the composition or preparation of such article, and shall also include flavouring matters and condiments."

The definition, therefore, is very general and any article used for food or drink by man would come under this section. The matter came up before a learned single Judge of this Court in -- 'Kamla Kant v. State', AIR 1951 All 595 (A), and the learned Judge held that linseed oil was an article of food. We see no reason to differ from that conclusion.

8. In our view, therefore, the learned Magistrate erred in relying on the proviso to Section 6 and acquitting the accused.

9. As regards the fourth case (Criminal Appeal No. 420 of 1951) in which Purna Nand was acquitted, a sample of vegetable ghee, Swastika Trade Brand, was taken from him by the Sanitary Inspector. The sample was sent to the Public Analyst who reported that the sample was adulterated and sesame oil in the sample was less than the required minimum of 5 per cent. As regards adulteration, no questions were asked to the accused, but he was asked whether it was not a fact that the Swastika Trade Mark vegetable ghee, the sample of which was sent to the Public Analyst, contained less than 5 per cent, of sesame oil. The accused admitted that the sample was taken from his sealed tin and pleaded that he was innocent. We take it that the Swastika Trade Mark is a registered trade mark under the Patents Designs Act. Learned counsel for the State has admitted that there is no rule or regulation made by the State Government under Section 14, Prevention of Adulteration Act, requiring that all vegetable ghee should contain at least 5 per cent, of sesame oil. Section 5A of the Act, therefore, does not apply to the case, and unless it can be shown that there is a rule or regulation under this Act which requires that the vegetable ghee should contain sesame oil in a certain proportion, we fail to see how the accused can be convicted under Section 4 of the Act. We are not satisfied that the case against Purna Nand has been made out beyond all doubt.

10. The result, therefore, is that Government Appeals Nos. 143, 144 and 146 of 1951 are allowed. The accused are convicted under Section 4, U. P. Prevention of Adulteration Act, and sentenced to pay a fine of Rs. 10/- each. Criminal Appeal No. 420 of 1951 is dismissed.