Jai Narain vs Municipal Corporation Of Delhi on 23 August, 1972

Equivalent citations: 1972 AIR 2607, 1973 SCR (1) 923, AIR 1972 SUPREME COURT 2607, (1972) 2 SCC 637, 1973 SCC(CRI) 52, 1973 (1) SCR 923

Author: J.M. Shelat

Bench: J.M. Shelat, I.D. Dua, Hans Raj Khanna

PETITIONER:
JAI NARAIN

Vs.

RESPONDENT:
MUNICIPAL CORPORATION OF DELHI

DATE OF JUDGMENT23/08/1972

BENCH:
SHELAT, J.M.
BENCH:
SHELAT, J.M.
DUA, I.D.
KHANNA, HANS RAJ

CITATION:
1972 AIR 2607 1973 SCR (1) 923
1972 SCC (2) 637
CITATOR INFO :
R 1974 SC1818 (16)

ACT:
Prevention of Food Adulteration Act, 1954-Ss. 2(1) (J), 7(1), 16(1) -Sale of patisa prepared with unpermitted coal tar dye--Activity--being distinctly anti-social if s. 4 Probation of Offenders Act could be applied-Probation of Offenders Act, 1958.

HEADNOTE:
In Isherdas v. Punjab this Court held on a consideration of s. 18 of the Probation of offenders Act that its operation is not excluded in cases of persons found guilty of offences under the Prevention of Food Adulteration Act, 1954. That decision. however, expressed a note of caution that adulteration of food being a menace to public health and the Act having been enacted with the object of eradicating that

antisocial evil and for ensuring purity of articles of food sold to the members of the public, Courts should not lightly resort to the provisions of s.4 of the Probation of Offenders Act.
Isherdas v. Punjab A.I.R. 1972 S.C. 1295.
The appellant, an employee of a sweetmeat shop found guilty under s.7(1) read with s. 16(1) of the Prevention of Food Adulteration Act and sentenced to simple imprisonment for a period of six months and of rupees onethousand. It was found that the patisa sold by him were prepared withunpermitted coal tar dye and therefore, were adulterated food stuffas defined by s. 2(1) (j). On the question whether in the circumstancesof the case and the nature of the evil to prevent which s. 16 of the Prevention of Food Adulteration Act, was enacted, s. 4, of the Probation of Offenders Act could be applied.,
HELD : The sale of an article of food prepared with unpermitted coal tar dye is an anti-social activity, deleterious to the health of those who would consume them as article of food, the eradiction of which is the principal aim of the Act and in particular of s.16 thereof. The evil would appear to be more pernicious when it is realised that patisa are more often than not purchased and consumed by children and by persons from the non-affluent sections of the society. The colouring matter was obviously used to attract customers, without any regard to the injury it would cause to those who consumed them. The appellant's activity being thus distinctly anti.-social, it would be neither expedient nor in consonance with the object with which the Prevention of Food Act.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 172 of 1969.

Appeal by certificate under Article 134(1)(c) of the Con- stitution of India from the judgment and order dated June 20, 1969 of the Delhi High Court at New Delhi in Criminal Revision No. 385 of 1968.

Hardev Singh, for the appellant.

Jindra Lal and B. P. Maheshwari, for the respondent. The Judgment of the Court was delivered by Shelat, J. In March 1967, the appellant was an employee in a sweetmeat shop, known as Bengal Sweet Shop being shop No. 6, Sector 11, in Ramakrishna Puram, New Delhi. The shop was owned by one Budh Ram and one A. K. Bhattacharya. On March 15, 1967, wit. F. Dean, a Food Inspector in the employment of the Municipal Corporation of Delhi, went to the said shop and purchased 'patisa' which were sold to him by the appellant. These were sold to him from a lot exposed for sale. The Food Inspector then divided the patisa into three portions and packed each of them into sealed

bottles, one of which was handed over by him to the appellant. On an analysis of the sample by the Public Analyst appointed under the Prevention of Food Adulteration Act, XXXVII of 1954 it was found that the patisa were prepared with unpermitted coal tar dye, and therefore, were adulterated food stuff. A complaint to that effect was filed before the Magistrate, 1st Class, Delhi, who, after recording evidence, found the appellant and the said Budh Ram guilty under s. 7(1) read with S. 16(1) of the Act, and sentenced each of the two accused to simple imprisonment for a period of six months and a fine of Rs. 1,000, in default imprisonment for a further period of three months. On an appeal by the appellant and his co-accused, the said Budh Ram, the Additional Sessions Judge allowed Budh Ram's appeal and set aside the order of conviction passed against him on the ground that though he and the said Bhattacharya were partners in the firm which carried on the said shop, there was nothing to show that Budh Ram was in charge of the said shop or its business or was in any way responsible for the sale of articles sold in the shop. He found that Budh Ram was, on the contrary, an employee of a club in New Delhi and was therefore at best a sleeping partner. So far as the appellant was concerned, the Additional Sessions Judge held that he was an employee of the firm, concerned with the sales, that the prosecution had led sufficient evidence to establish its case against him, and therefore, his conviction could not be interfered with. Regarding the sentence awarded to him, the Additional Sessions Judge remarked that (a) the case was not covered by S. 2(i) (j) of the Act, but was one which amounted to violation of rules 23 to 30 of the Rules framed under the Act, (b) that there was nothing in the evidence to show that the use of the unpermitted coal tar dye in the manufacture of the patisa in question rendered them injurious to health, and (c) that there was no allegation of the appel-

lant having committed a similar offence before. On these 'grounds he partially allowed the appeal by reducing the sentence of imprisonment to the period of imprisonment already undergone by the appellant before. he was granted bail. The order awarding the said fine was not interfered with.

Against that order, the Municipal Corporation filed a revision petition in the High Court urging that in view of the mandatory provisions of s. 16 of the Act providing for the compulsory miniMum sentence, the Additional sEssions Judge ought not to have interfered with and reduced the sentence imposed by the Trial Magistrate. The High Court accepted that contention and setting aside the order of sentence, as modified by the Additional Sessions Judge, restored the order of sentence passed by the Trial Magis- trate. The High Court, however, granted a certificate under Art. 1 34 (c) of the Constitution. The appellant filed this appeal on the strength of that certificate. Counsel for the appellant did not challenge before us either the order of conviction or the order of sentence passed against him by the High Court, which, as aforesaid, confirmed the conviction and restored the order. of sentence passed by the Trial Magistrate. The only point raised by him was that the appellant should be given the benefit of s. 4 of the Probation of Offenders Act, 1958 under which the sentence of imprisonment awarded to the appellant could be dispensed with and an admonition should instead be given to him.

In a recent decision in Isher Das v. Punjab(1) to which two of us were parties, it was held on a consideration of s. 18 of the Probation of Offenders Act that its operation is not excluded in cases of persons found guilty of offences under the Prevention of Food Adulteration Act, 1954. The former Act was brought on the statute book in 1958, but no specific exception as regards the Prevention of

Food Adulteration Act, 1954, though an earlier Act, is to be found therein, just as an exception in respect of the Prevention of Corruption Act, 1947 has been expressly made. The provisions of the Probation of Offenders Act, 1958, therefore, apply to persons found guilty under the Prevention of Food Adulteration Act. That decision, however, expressed a note of caution that adulteration of food being a menace to public health and the Act having been enacted with the object of eradicating that antisocial evil and for ensuring purity of articles of food sold to the members of the public courts should not lightly resort to the provisions of s. 4 of the Probation of Offenders Act which applies to offenders who are 21 years of age or above.

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

The question, therefore, is whether we ought to, apply, in the circumstances of the case and the nature of the evil to, prevent which s. 16 of the Prevention of Food Adulteration was enacted, s. 4 of the Probation of Offenders Act and release the appellant from the sentence of simple imprisonment awarded to him with an admonition and a warning only.

Under s. 2 (i) (j), the patisa, in the preparation of which a nonpermissible colouring matter has been used, is an adulterated article. Such an article is adulterated food as defined by cl. (v) of s. 2, as that clause defines 'food' to include any article used in the preparation of human food or any flavouring matter. Sec. 7 provides that no person shall himself or by any person on his behalf manufacture for sale, or store, or sell "any adulterated food" or any article of food in contravention of any other provision of the Act or of any rule made thereunder. Sec. 16 provides for a minimum sentence of imprisonment for not less than six months inter alia for the offence of selling adulterated food. The proviso confering discretion to the courts in the matter of sentence does not apply to sales of food which is adulterated under s. 2(i) (j). The policy of s. 16, therefore, is clearly to impose a sentence not less than that provided therein inter alia for sale of food articles adulterated as defined _by s. 2 (i) (j). Under rule 23 of the Prevention of Food Adulteration Rules, 1955, addition of a colouring matter to any article of food except as specifically permitted under the rules is prohibited. Rule 28 makes only the coal tar dyes specified therein permissible in the preparation or manufacture of articles of food set out in rule 29.

There is no dispute that the coal tar dye used in the patisa sold by the appellant was not one of the coal tar dyes permissible under rule 28. That is also clear from the report of the Public Analyst, the correctness of which was not under any challenge before us. Though there was no express evidence on the record that the use of the particular coal tar dye in the making of the patisa sold at this shop was injurious to health, it must be presumed to be so from the fact that it is not one of the permitted coal tar dyes enumerated in r. 28. It is, therefore, clear that the sale of such an article of food was an anti-social activity, deleterious to the health of those who would consume them as article of food, the eradication of which is the principal aim of the Act and in particular of s. 16 thereof. The evil would appear to be more pernicious when. it is realised that patisa are more often than not purchased and consumed by children and by persons from the unaffluent sections of the society, who cannot afford to buy costlier sweets prepared by more sophisticated processes. The colouring matter was obviously used to attract customers, without any regard to the injury it would cause to those who consumed them. The appellant's activity being thus distinctly anti-social, we do not think that it would be

either expedient or in consonance with the object with which the Prevention of Food Adulteration Act was passed to apply s. 4 of the Probation of Offenders Act.

There being no other point raised for our consideration, the appeal fails and is dismissed.

K.B.N. Appeal dismissed