A

V. N. KAMDAR AND ANOTHER

v.

MUNICIPAL CORPORATION OF DELHI

May 1, 1973

[K. K. MATHEW AND I. D. DUA, JJ.]

B *Prevention of Food Adulteration Act, 1954, Ss. 20 and 20A—Vendor acquitted on plea that he purchased under warranty—In order to avoid multiplicity of trials warrantor should be tried along with vendor—But non-impleadment of warrantor at trial of vendor does not bar subsequent separate prosecution of warrantor.*

R who was tried for an offence under s. 16 read with s. 7 of the Prevention of Food Adulteration Act, 1954, stated in Court that he had purchased the C curry-powder in question in sealed tins from the appellant under a warranty given by them and that he sold the curry-powder in the same condition in which he had purchased it from the appellants. The first appellant was examined in the case. He gave evidence that the curry-powder was manufactured by the second appellant company and that it had been sold in tins to the concern of which R was the proprietor. He also admitted the issue of a warranty on behalf of the second appellant. In the light of this evidence R was acquitted. Subsequently the appellants were sought to be tried for issuing a false warranty. The appellants contended that the proceedings against them should be quashed D as according to the provisions of the Act, they ought to have been impleaded in the proceedings against R. The High Court concurred with the conclusions of the Courts below and held that the fact that the appellants were not impleaded and tried along with R was no bar to the prosecution of the appellants. In appeal by special leave, this Court had to consider the effect of Ss. 20 and 20A of the Act.

Dismissing the appeal,

E HELD : (1) There is no provision in the Act which obliged the Food Inspector to have joined the appellants as parties to the complaint filed against R. Section 20 of the Act has nothing to do with the matter. On the other hand s. 19(3) which says that any person by whom a warranty is alleged to have been given shall be entitled to appear at the hearing and give evidence, seems to proceed on the assumption that it is not obligatory on the part of the Food Inspector to join the manufacturer, distributor or dealer in a complaint against a person for an offence alleged to have been committed under the Act. [160B-D]

F (ii) Section 20A is an enabling one. There is nothing mandatory about it. It is left to the discretion of the Magistrate whether, in a particular case, having regard to the evidence adduced, it is necessary, in the interest of justice, to implead the manufacturer, distributor, dealer as the case may be. [161B]

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. Section 5(2) of the Criminal Procedure Code provides that the provision of G 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. If that be so, unless there is something in s. 20A which creates an exception to the normal procedure prescribed by the Criminal Procedure Code, there would be no justification for importing into the section by implication an absolute obligation to implead the manufacturer, distributor or dealer and try him also with the person who is alleged to have committed an offence under the Act, in the sense that if the manufacturer, distributor or H dealer is not impleaded and tried under the provisions of s. 20A, a separate trial would be barred. [161D-G]

State of Andhra Pradesh v. *Cheemalapati Ganeswara Rao and Another*, [1964] 3 S.C.R. 297, 324, referred to.

The real purpose of s. 20A is to avoid, as far as possible, conflicting findings. In order to avoid multiplicity of proceedings and conflict of findings it is imperative that the Magistrate should implead these persons under s. 20A whenever the conditions laid down in the section are satisfied. It is a far cry from this to say that if this is not done, the manufacturer, distributor or dealer, would get an immunity from a separate prosecution. [162E, G] A

(iii) It is impossible to predicate in the abstract whether a joint trial would be more advantageous to the manufacturer, distributor or dealer than a separate trial. Therefore the plea that there could be discrimination if unguided discretion is given to an authority to choose one or the other, could not be accepted. [163D] B

Northern India Caterers Private Ltd. and Another v. *State of Punjab and Another*, [1967] 3 S.C.R. 399, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 49 of 1973. C

Appeal by special leave from the judgment and order dated August 22, 1972 of the Delhi High Court at New Delhi in Cr. Revn. No. 93 of 1972.

L.M. Singhvi, S. K. Dhingra, K. C. Sharma, S. Sengupta, O.C. Mathur and *Ravinder Narain*, for the appellant.

F. S. Nariman, Additional Solicitor-General of India, B. P. Maheshwari, Suresh Sethi, R. K. Maheshwari and *N. K. Jain*, for the respondent. D

The Judgment of the Court was delivered by

MATHEW, J.—The Municipal Corporation of Delhi filed a complaint on September 10, 1970, before the Judicial First Class Magistrate, Delhi, against the appellants under s. 7 read with s. 16(f) of the Prevention of Food Adulteration Act, 1954, hereinafter called "the Act", alleging that they gave a false warranty in respect of the curry powder manufactured by them. In response to the summons, the appellants appeared and filed an application for quashing the proceedings on the ground that the complaint was incompetent. E

The learned Magistrate dismissed the application. The appellants filed a revision from the order to the Additional Sessions Judge. That was dismissed. The appellants then filed a revision against that order before the High Court. The High Court also dismissed the revision. It is against this order that the appellants have filed this appeal by special leave. F

On November 28, 1968, the Food Inspector went to the shop of one Ram Prakash Oberoi and found that he was storing for sale curry powder. The Food Inspector purchased three sealed tins of curry powder from him and after following the procedure enjoined by the Act, sent one sample to the Public Analyst, who, after examining it, sent his report that the sample was adulterated. A complaint was filed against Ram Prakash Oberoi by the Food Inspector alleging that he committed an offence under s. 16 read with s. 7 of the Act. Ram Parkash Oberoi, in his statement under s. 342, stated that he had purchased the curry powder in sealed tins from the appellants under a warranty given by them and that he sold the curry powder in the same G H

A condition in which he had purchased it from the appellants. The first appellant was examined in the case. He gave evidence that the curry powder was manufactured by the second appellant company and that it had been sold in tins to the concern of which Ram Prakash Oberoi was the proprietor. He also admitted the issue of a warranty on behalf of the second appellant. In the light of the evidence, Ram Prakash B Oberoi was acquitted, as, according to the Magistrate, he had fully discharged the onus which lay upon him in order to avail himself of the defence under s. 19(2) of the Act. In the concluding portion of the judgment, which was pronounced on October 25, 1969, the Magistrate observed that it is open to the Municipal Corporation of Delhi "to institute a complaint against the warrantor concerned for issuing a false warranty for the sale of adulterated curry powder to M/s. T. D. C Bhagwan Dass, the proprietor of which was accused Ram Prakash Oberoi through bill Ex. DW1/A out of which a sample bearing No. DN. 2385 was taken by P.W. 2 from Ram Prakash Oberoi".

The contention of the appellants in the application before the Magistrate to quash the proceedings was that they ought to have been impleaded in the proceedings against Ram Prakash Oberoi and tried for the offence alleged to have been committed by them and, that not D having been done, the complaint was barred.

The High Court concurred with the conclusions of the Courts below and held that the fact that the appellants were not impleaded and tried along with Ram Prakash Oberoi under s. 20A was no bar to the prosecution of the appellants for the offence of giving false warranty and that the complaint was competent.

E

The appellants submitted before us that it was incumbent upon the Food Inspector to have filed a joint complaint against Ram Prakash Oberoi and the appellants as the Food Inspector had every opportunity to know that the appellants had given a warranty when the articles which were found to be adulterated were sold to Ram Prakash Oberoi. They submitted that under s. 14A, the vendor is bound to disclose the F name of the person who given the warranty to the Food Inspector and, as the Food Inspector had knowledge that the vendor was covered by a warranty issued by the appellants, it was his duty to have joined the appellants as accused in the complaint filed by him against Ram Prakash Oberoi. They also submitted that in case it is held that there was no duty upon the Food Inspector to have joined the appellants also as accused, the learned Magistrate who tried the case against Ram G Prakash Oberoi, in any event, ought to have impleaded the appellants in that case under s. 20A of the Act and tried the appellants for the offence alleged to have been committed by them and that not having been done, the present complaint was barred.

We do not think that there is any substance in these contentions. Section 14 provides that no manufacturer, distributor or dealer of any H 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. Section 14A states that every vendor of an article of food shall, if so required, disclose to the Food Inspector the name, address and other particulars of the person from

whom he purchased the article of food. In s. 19(2) it is said 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 : (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. We are not aware of any provision in the Act which obliged the Food Inspector to have joined the appellants as parties to the complaint filed against Ram Prakash Oberoi. Section 20 of the Act upon which the appellants relied has nothing to do with this matter. That section only says that no prosecution for an offence under the Act shall be instituted except by, or with the written consent of, the Central Government or the State Government or a local authority or a person authorised in this behalf, by general or special order, by the Central Government or the State Government or a local authority. The proviso to the section makes an exception to the general rule in the case of a prosecution for an offence instituted by a purchaser referred to in s. 12, if he produces in Court a copy of the report of the public analyst along with the complaint. On the other hand, s. 19(3) seems to proceed on the assumption that it is not obligatory on the part of a Food Inspector to join the manufacturer, distributor or dealer in a complaint against a person for an offence alleged to have been committed under the Act. That section says that any person by whom a warranty referred to in s. 14 is alleged to have been given shall be entitled to appear at the hearing and give evidence. It would be clear from this provision that if the Food Inspector is bound to join the person who gave the warranty as a party whenever a complaint is filed against the vendor for storing or selling adulterated articles of food, there was no reason why the legislature should have made a provision enabling the person who gave the warranty to appear in Court and give evidence. It is to be noted that s. 19(3) only gives liberty to the person who gave the warranty to appear and give evidence and that by volunteering to appear and give evidence, he does not become an accused. The opportunity to appear and give evidence is to enable the person who gave the warranty to show that the vendor has not properly stored the article while in his possession or that he did not sell the article in the same state as he purchased it and thus to avoid a prosecution against him on the basis of a false warranty.

The further question is whether the failure of the Magistrate who tried the complaint against Ram Prakash Oberoi to implead the appellants under s. 20A of the Act and try them also along with Ram Prakash Oberoi would in any way bar the present complaint. Section 20A provides :

> "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

A also concerned with that offence, then, the court may, notwithstanding anything contained in sub-section (1) of s. 351 of the Code of Criminal Procedure, 1898, or in s. 20 proceed against him as though a prosecution had been instituted against him under s. 20."

The section is an enabling one. There is nothing mandatory about it. It B is left to the discretion of the Magistrate whether, in a particular case, having regard to the evidence adduced, it is necessary, in the interest of justice, to implead the manufacturer, distributor or dealer as the case may be. Even in a case where a Magistrate could properly have impleaded the manufacturer, distributor or dealer in a proceeding against a person alleged to have committed an offence under the Act but failed to do so, that would not in any way confer an immunity C upon the manufacturer, distributor or dealer from a prosecution for any offence committed by him.

Counsel for the appellants argued that although the word used in s. 20A is only 'may', it imports an obligation on the part of the Magistrate to implead the manufacturer, distributor or dealer, as the power to implead is coupled with a duty, when it appears from the evidence that the manufacturer, distributor or dealer, as the case may be, has D committed an offence under the Act.

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 and Another*(1) this Court said that separate trial is E 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. If that be so, unless there is something in s. 20A which creates F an exception to the normal procedure prescribed by the Criminal Procedure Code, we would not be justified in importing into the section by implication an absolute obligation to implead the manufacturer, distributor or dealer and try him also along with the person who is alleged to have committed an offence under the Act, in the sense that if the manufacturer, distributor or dealer is not impleaded and tried under the provisions of s. 20A, a separate trial would be barred. In G order that the manufacturer, distributor or dealer may be impleaded under s. 20A, it is necessary that there should be a trial for an offence committed under the Act by a person and that the manufacturer, distributor or dealer must be concerned in the offence. When once the manufacturer, distributor or dealer is impleaded, the trial proceeds as if he is also an accused in the case. That is made clear by the closing words of the section. As already indicated, no prosecution for an H offence under the Act can be instituted by a Food Inspector without the sanction specified in s. 20. When a manufacturer, distributor or

(1) [1964] 3 S.C.R. 297, 324.

dealer is impleaded, he becomes an accused in the case but no objection can be taken by him on the score that no sanction had been obtained for prosecuting him. And, at the close of the trial, the Magistrate must pass an order either acquitting or convicting him. It does not follow that the failure of the Magistrate to implead the manufacturer, distribu or or dealer in a case in which he could be impleaded under s. 20A would confer an immunity from a separate trial against him for the offence for which he could have been tried under s. 20A. There is also no likelihood of any prejudice being caused to him merely because he was not impleaded in the trial of an offence under the Act committed by any other person as, any evidence taken in that proceeding wou d not be binding on him when he is tried separately. In other words, if a separate prosecution is instituted against the manufacturer, distributor or dealer, the prosecution cannot rely on the evidence in the proceedings against the person who committed the offence as *per se* evidence against him. It must adduce evidence in the case against the manufacturer, distributor or dealer to show that he is guilty of the offence complained of. The acquittal, for instance, of the vendor who is covered by a warranty would not prove that the manufacturer, distributor or dealer has given a false warranty or committed any other offence. The prosecution must show by evidence adduced in the proceedings against the manufacturer, distributor or dealer and prove beyond doubt that he committed the offence charged. Nor would the conviction of the vendor *per se* be ground for acquitting the manufacturer, distributor or dealer for giving false warranty, for. the vendor might have further adu'terated the article after getting a false warranty. The real purpose of enacting s. 20A is to avoid, as far as possible, conflicting findings. If, in the prosecution instituted against the vendor, it is found that the vendor has sold the article of food in the same state as he purchased it and that while it was in his possession it was properly stored, and the vendor is acquitted, it would look rather ridiculous, if in the prosecution against the manufacturer, distributor or dealer, it is found on the evidence that he did not give a false warranty, but that the article was not stored properly whi'e it was in the possession of the vendor or that he did not sell the article in the same state as he purchased it. This being so, the object of the legislature in enacting the section will be frustrated if a Magistrate were to exercise his discretion improperly by failing to implead the manufacturer, distributor or dealer under s. 20A in a case where he should be impleaded. But that is no reason to hold that a separate prosecution against the manufacturer, distributor or dealer would be barred, if he is not impleaded under s. 20A, and tried along with the person who is alleged to have committed an offence under the Act. In order to avoid multiplicity of proceedings and conflict of findings it is imperative that the Magistrate should implead these persons under s. 20A whenever the conditions laid down in the section are satisfied. As I said, it is a far cry from this to say that if this is not done, the manufacturer, distributor or dealer would get an immunity from a separate prosecution.

The appellants then contended that the procedure in the joint trial will be more advantageous to the manufacturer, distributor or dealer,

A as the case may be, than a separate trial and, therefore, there could be discrimination if unguided discretion is given to an authority to choose the one or the other. The argument was that if the manufacturer, distributor or dealer is impleaded under s. 20A, he could avail himself of the provisions of s. 13(2) and request the Court to have the sample retained by the Food Inspector and production in Court sent to the Central Food Laboratory for analysis, but if he is tried B separately, he will be deprived of that advantage. Read literally, s. 13(2) would not enable the manufacturer, distributor or dealer to pray the Court to have the sample sent for analysis by the Central Food Laboratory even if he is impleaded under s. 20A and tried along with the vendor, for, that sub-section gives the liberty to move the court for that purpose only to the accused vendor and the complainant. But, even if it is assumed that the manufacturer, distributor or dealer is also C entitled to take advantage of the section and move the court to have the sample analysed by the Central Food Laboratory, we see no reason why, when he is separately tried, he should not have the sample retained by the Food Inspector and produced in Court sent for analysis by the Central Food Laboratory, if it is available and in a fit condition. The Magistrate may, under s. 20A, implead the manufacturer, distributor or dealer at any time in the course of the trial. At the time D he is impleaded, the sample produced in Court by the Food Inspector might not be in a fit condition to be sent for analysis to the Central Food Laboratory. It is, therefore, impossible to predicate in the abstract whether a joint trial would be more advantageous to the manufacturer, distributor or dealer than a separate trial.

E The appellant relied on the decision of this Court in *Northern India Gaterers Private Ltd. and Another* v. *State of Punjab and Another*(1) and contended that where two procedures are permissible, one a joint trial of the manufacturer, distributor or dealer with the vendor and the other a separate trial, and the one is more advantageous than the other, there will be scope for discrimination. We fail to understand the logic of the argument. In the above case the facts F were: the State of Punjab leased its premises to the appellant for running a hotel and when the lease expired, the appellant was called upon to hand over vacant possession. On the appellant failing to do so, the Collector issued a notice under s. 4 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959 requiring the appellant to show cause why an order of eviction should not be passed under s. 5. The appellant thereupon filed a writ petition G in the High Court contending that the Act violated article 14 of the Constitution in that it discriminated between the occupants of public premises and those of other premises and that it discriminated between the occupants of public premises *inter se* as the State could arbitrarily proceed against an occupant either under the Act or by way of suit. The High Court dismissed the petition holding that the proceeding under the Act is the exclusive remedy for eviction of unH authorised occupants of public premises, that there was a valid classification between the occupiers of public premises and those of private properties, and that as the Act was substitutive and not supplemental

(1) [1967] 3 S.C.R. 399.

there was no question of discrimination between the occupiers of public premises *inter se*. This Court held that s. 5 of the Act violated article 14 by providing two alternative remedies to the government and in leaving it to the unguided discretion of the Collector to resort to one or the other and to pick and choose some of those in occupation of public properties and premises for the application of the more drastic procedure under s. 5. The Court further held that discrimination would result if there are two available procedures, one more drastic or prejudicial to the party concerned than the other and which can be applied at the arbitrary will of the authority. A B

The appellants have not challenged the vires of s. 20A. That apart, the principle of the ruling has no application here. That principle can apply only when an unguided discretion is conferred upon an authority or person to choose between two procedures, one of which is more advantageous to the person concerned than the other. Here we do not think that any person has been vested with an unguided discretion to choose between two procedures, the one more advantageous to the appellants than the other. C

We see no substance in this appeal and we dismiss it.

G.C. *Appeal dismissed.*