

KASAMBHAI ARDUL REHMANBHAI SHAIKH

v.

STATE OF GUJARAT & ANR.

February 13, 1980

[P. N. BHAGWATI AND A. P. SEN, JJ.]

Prevention of Food Adulteration Act 1954, Sections 7 and 16—Plea-bargaining—Magistrate if competent to record conviction if accused pleads guilty.

Criminal Trial—Judgment—Cyclostyled form in which merely blanks filled by Magistrate—Such Disposal—Reprehensible policy.

Sentencing—Offences of food adulteration—Deterrent and punitive sentences—Necessity for.

The appellants were prosecuted for committing offences under section 16(1)(a)(i) read with section 7 of the Prevention of Food Adulteration Act, 1954. After some evidence was led on behalf of the prosecution, plea-bargaining took place between the prosecution, the accused and the Magistrate. The accused pleaded guilty which plea was accepted by the Magistrate. The accused were accordingly convicted and sentenced to undergo imprisonment till the rising of the Court and to pay a small fine.

The High Court initiated *suo motu* proceeding in revision. The accused appeared and challenged the convictions recorded against them, but the High Court did not go into the circumstances in which the plea of guilty was entered, enhanced the sentences imposed on them to three months' simple imprisonment and fine.

Allowing the appeals,

HELD : 1. A conviction based on the plea of guilty entered by the accused as a result of plea-bargaining cannot be sustained. [1041E]

2. The High Court was clearly in error in not setting aside the conviction and sending the case back to the Magistrate for trial in accordance with law, ignoring the plea of guilty entered by the appellants. [1041F]

3. The Magistrate trying an accused for a serious offence like adulteration must apply his mind to the evidence recorded before him and, on the facts as they emerge from the evidence, decide whether the accused is guilty or not. [1040B]

In the instant case the Magistrate had got a cyclostyled form of judgment in which merely blanks were filled in by him. This clearly indicates that the Magistrate was in the habit of encouraging plea-bargaining and letting off the accused lightly if there was a plea of guilty, enabling quick disposal without any effort. This was a highly reprehensible practice. The High Court had expressed strong disapproval of it. [1039H-1040A]

4. (i) It is highly regrettable that the prosecution as well as the Magistrate should have been a party to any plea-bargaining in a prosecution for adulteration involving the health and well-being of the community. Adulteration has

A assumed alarming proportions and it is essential to wipe it out ruthlessly and completely by bringing to book offenders responsible for adulteration resulting in ruination of the health of the people. The investigating agencies must intensify their efforts and catch hold of those who for private economic gain are prepared to jeopardize the health of the community. When such persons are arraigned before the Court and found guilty a deterrent and punitive sentence must be imposed upon them. [1039E-G]

B (ii) If it is possible to get away with a light sentence in respect of an offence of adulteration the anti-adulteration law will cease to have any meaning and validity. [1039H]

5. Administration of justice is a sacred task and partakes of the divine function. It is with the greatest sense of responsibility and anxiety that the judicial officer must discharge his judicial function, particularly when it concerns the liberty of a person. [1040C]

C 6. It would be contrary to public policy to allow a conviction to be recorded against an accused by inducing him to confess to a plea of guilty on an allurements being held out to him that if he enters a plea of guilty, he will be let off very lightly. Such a procedure would be clearly unreasonable, unfair and unjust and would be violative of Art. 21 of the Constitution. It would have the effect of polluting the pure fount of justice, because it might induce an innocent accused to plead guilty to suffer a light and inconsequential punishment rather than go through a long and arduous criminal trial. The judge also might be likely to be deflected from the path of duty to do justice and he might either convict an innocent accused by accepting the plea of guilty or let off a guilty accused with a light sentence, thus, subverting the process of law and frustrating the social objective and purpose of the anti-adulteration statute. This practice would also tend to encourage corruption and collusion and as a direct consequence, contribute to the lowering of the standard of justice. [1041B-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 93-94 of 1980.

F Appeals by special leave from the Judgment and order dated 30-1-1979 of the Gujarat High Court in Criminal Revision Application No. 306/78 and 305/78.

T. U. Mehta and *Vimal Dave* for the Appellant.

H. R. Khanna and *M. N. Shroff* for the Respondent.

G The following Judgments were delivered :

H BHAGWATI, J. This appeal by special leave is directed against a judgment of the Gujarat High Court in *suo motu* revision against an order passed by the Judicial Magistrate, First Class, Balasinor convicting the appellant of the offence under s. 16(1)(a)(i) read with s. 7 of the Prevention of Food Adulteration Act, 1954 and sentencing him to suffer simple imprisonment till the rising of the Court and to pay a fine of Rs. 125/- or in default to undergo simple imprisonment for-

a further period of 30 days. The appellant was prosecuted in the Court of the learned Magistrate for an offence of adulteration of turmeric powder punishable under s. 16(1)(a)(1) read with s. 7 of the Prevention of Food Adulteration Act, 1954.

It appears from the record that after some evidence was led on behalf of the prosecution, plea bargaining took place between the prosecution, the defence and the learned Magistrate and on the basis of an understanding arrived at between these three parties, the appellant pleaded guilty and the learned Magistrate accepting this plea of guilty, recorded a finding of conviction against the appellant and let off the appellant with a nominal sentence of imprisonment till the rising of the Court and a small fine. It is, of course true that there is no specific evidence to show that the plea for guilty was entered by the appellant as a result of plea bargaining, but two circumstances, viz., (1) that the appellant pleaded guilty, even though the sample was treated as cancelled by the public Analyst on account of its being broken and leaking and there was no evidence of the report of the public Analyst showing the sample as adulterated and (2) that the judgment of the learned Magistrate was given in a cyclostyled form, clearly lead to the inference that the plea of guilty was entered by the appellant in consequence of an assurance held out by the prosecution and acquiesced in by the learned Magistrate that he would be let off with a very light sentence. It is highly regrettable that the prosecution as well as the learned Magistrate should have been a party to any such plea bargaining in a prosecution for adulteration involving the health and well-being of the community. Unfortunately, in our country adulteration has assumed alarming proportions and it is absolutely essential to wipe it out ruthlessly and completely by bringing to book offenders responsible for adulteration resulting in ruination of the health of the people. The investigating agencies must intensify their efforts and catch hold of those who for some private economic gain are prepared to jeopardize the health of the community and indulge in mass murder and when such persons are arraigned before the Court and found guilty a really deterrent and punitive sentence must be imposed upon them. If it comes to be known that even in respect of an offence of adulteration, it is possible to get away with a light sentence, the anti-adulteration law will cease to have any meaning and validity. It will be mocked at by the people as a futile legislative exercise. Moreover, we find that here the learned Magistrate had got a cyclostyled form of judgment in which merely blanks were filled in by him and this is the clearest possible evidence that he was in the habit of encouraging plea bargaining and letting off the accused lightly if there was a plea of guilty, so that he may get quick disposal

- A** without any effort. This was a highly reprehensible practice and we are glad to note that the High Court has expressed strong disapproval of it. The Magistrate trying an accused for a serious offence like adulteration must apply his mind to the evidence recorded before him and, on the facts as they emerge from the evidence, decide whether the accused is guilty or not. It must always be remembered by every judicial officer that administration of justice is a sacred task and according to our hoary Indian tradition, it partakes of the divine function and it is with the greatest sense of responsibility and anxiety that the judicial officer must discharge his judicial function, particularly when it concerns the liberty of a person. The course followed by the learned Magistrate in the present case clearly showed that there was no application of mind by him to the case laid on behalf of the prosecution and he was a consenting party to the appellant being persuaded to enter the plea of guilty and, acting mechanically on the plea of guilty as extracted from the appellant, he appeased his insensitive conscience by recording a finding conviction against the appellant and let him off with a mere sentence of imprisonment till the rising of the Court and a nominal fine.

- The High Court on its attention being drawn to the Order passed by the learned Magistrate initiated *suo motu* proceeding in revision by issuing notice to the appellant to show cause why the sentence imposed on him should not be enhanced. The appellant appeared in answer to the notice and challenged the conviction recorded against him, but the High Court did not go into the circumstances in which the plea of guilty was entered by the appellant and relying on the plea of guilty proceeded on the basis that the appellant was rightly convicted and since the offence said to be established against the appellant, was with respect to an article of 'primary food' punishable under s. 16(1)(a) (i) of the Prevention of Food Adulteration Act, 1954, the High Court held that the appellant was liable to be sentenced to imprisonment for a minimum term of 3 months and a fine of not less than Rs. 500. The High Court accordingly enhanced the sentence imposed on the appellant to 3 months' simple imprisonment and a fine of Rs. 500 or in default, further simple imprisonment for 30 days. This order made by the High Court is challenged in the present appeal preferred by the appellant after obtaining special leave of this Court.

- Now, it does not appear from the record whether the entire prosecution evidence was completed before the learned Magistrate before the plea of guilty was entered on behalf of the appellant, but one thing is clear that the finding conviction recorded by the learned Magistrate

against the appellant was not based on the evidence led on behalf of the prosecution. The conviction of the appellant based solely on the plea of guilty entered by him and this confession of guilt was the result of plea of bargaining between the prosecution, the defence and the learned Magistrate. It is obvious that such conviction based on the plea of guilty entered by the appellant as a result of plea bargaining cannot be sustained. It is to our mind contrary to public policy to allow a conviction to be recorded against an accused by inducing him to confess to a plea of guilty on an allurement being held out to him that if he enters a plea of guilty, he will be let off very lightly. Such a procedure would be clearly unreasonable, unfair and unjust and would be violative of the new activist dimension of Art. 21 of the Constitution unfolded in *Maneka Gandhi's* case. It would have the effect of polluting the pure fount of justice, because it might induce an innocent accused to plead guilty to suffer a light and inconsequential punishment rather than go through a long and arduous criminal trial which, having regard to our combrous and unsatisfactory system of administration of justice, is not only long drawn out and ruinous in terms of time and money, but also uncertain and unpredictable in its result and the judge also might be likely to be deflected from the path of duty to do justice and he might either convict an innocent accused by accepting the plea of guilty or let off a guilty accused with a light sentence, thus, subverting the process of law and frustrating the social objective and purpose of the anti-adulteration statute. This practice would also tend to encourage corruption and collusion and as a direct consequence, contribute to the lowering of the standard of justice. There is no doubt in our mind that the conviction of an accused based on a plea of guilty entered by him as a result of plea-bargaining with the prosecution and the Magistrate must be held to be unconstitutional and illegal. The High Court should have therefore, set aside the conviction of the appellants and sent the case back to the learned Magistrate for trial in accordance with law, ignoring the plea of guilty entered by the appellant. The High Court was clearly in error in not doing so.

We accordingly allow the appeal, set aside the judgments of the High Court as also the Order of conviction and sentence recorded against the appellant by the learned Magistrate and remand the case to the learned Magistrate so that he may proceed with the case from the stage at which the appellant confessed to a plea of guilty. The learned trial Magistrate will ignore the plea of guilty entered by the appellant and proceed further with the case after giving an opportunity to the prosecution to lead such additional evidence as it thinks fit and

A then allowing the appellant to enter upon his defence and lead such evidence in defence as he thinks proper and then dispose of the case in accordance with law. The appellant will continue on the same bail on which he has been released by this Court by its Order dated 30th March, 1979.

B BHAGWATI, J. The facts giving arise to this appeal by special leave are almost identical with those of Criminal Appeal No. 93 of 1980 save and except that the appellant is different and for the same reasons as are given by us in our Judgment disposing of Criminal Appeal No. 93 of 1980, we allow the present appeal, set aside the judgment of the High Court as also the Order of Conviction and sentence recorded against the appellant by the learned Magistrate and remand the case to the learned Magistrate so that he may proceed with the case from the stage at which the appellant confessed to a plea of guilty. The learned trial Magistrate will ignore the plea of guilty entered by the appellant and proceed further with the case after giving an opportunity to the prosecution to lead such additional evidence as it thinks fit and then allowing the appellant to enter upon his defence and lead such evidence in defence as he thinks proper and then dispose of the case in accordance with law. The appellant will continue on the same bail on which he has been released by this Court by its Order dated 30th March, 1979.

D N.V.K.

Appeals allowed.

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