

A DELHI CLOTH AND GENERAL MILLS CO. LTD.

v.

STATE OF M.P. AND ORS.

SEPTEMBER 12, 1995

B [K. RAMASWAMY, B.P. JEEVAN REDDY
AND B.L. HANSARIA, JJ.]

Prevention of Food Adulteration Act, 1954/Code of Criminal Procedure, 1973 :

C *S.20-A/s. 319(3)—Prosecution of other persons than accused—Accused found selling adulterated vanaspati ghee—Trial—Evidence indicating that appellant was manufacturer of adulterated article—Issuance of summons to manufacturer—Held, Court is empowered to proceed against such manufacturer, distributor or dealer alongwith the person already before the Court, as if prosecution has initially been instituted against said manufacturer etc. under s.20 notwithstanding anything contained in s.319(3) of Code of Criminal Procedure.*

Doctrine of autrefois acquit—Significance.

E The appellant was a manufacturer of Vanaspati ghee. One person selling the Vanaspati ghee was prosecuted for an offence under s.16 of the Prevention of Food Adulteration Act, 1954 as the article of food was found to have been adulterated. When it was brought to the notice of the trial court that the appellant was the manufacturer of the adulterated article of food, the Magistrate issued summons to the appellant under s.20A of the Act. The appellant unsuccessfully challenged the said order before the Sessions Court as well as before the High Court. Aggrieved, the appellant filed the appeal by special leave.

G It was contended on behalf of the appellant that though the magistrate had power, on the date when the complaint was lodged before him, to issue summons to the manufacturer, but he could not proceed during the trial on the premise that the accused was only a dealer of the appellant; that there was no material that the accused was not a vendor, it could not be jointly tried. It was also contended that the accused being H a dealer of the appellant, s.20A of the Act had no application as the section

provides for trial of a person not being a dealer.

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Dismissing the appeal, this Court

HELD : 1.1. There was no embargo on the Magistrate during the trial of the offence to issue notice to the appellant manufacturer for holding joint trial. Section 20A of the Prevention of Food Adulteration Act, 1954 clearly provides that during the trial for any of the offences under the act alleged to have been committed by any person, when it comes to the notice of the Magistrate, from the evidence adduced, that the manufacturer, distributor or dealer of that article of food, which is the subject mater of adulteration, is also concerned with the offence, then the Court may proceed against such manufacturer, distributor or dealer as if prosecution has initially been instituted against him under section 20 of the Act. [571-B, 570-C]

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1.2. The Act advisedly made a person who sells adulterated article of food liable to be prosecuted for the offence of adulteration of the article of food. In view of the language of Section 20A of the Act, whatever is contained in sub-section (3) of Section 319 of Code of Criminal Procedure, 1973, would not stand in the way of the Magistrate to proceed at a trial against any person i.e. the original accused, and against others mentioned in Section 20A, Joint trial for the same offence is permitted. The object appears to be that in a case where common evidence discloses that the manufacturer, distributor or dealer is also concerned with the offence for which the prosecution was launched against a person from whom the article of food was purchased, to avoid multiplicity of prosecution and also keeping in view the doctrine of *autrefois acquit* the Legislature introduced s.20A to have joint trial. [570-C, E-G]

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1.3. The concept of vendor and vendee is known to civil law and passing of the title in the goods is alien to the prosecution for an offence under the Act. It cannot, therefore, be introduced in a trial for the offence under the Act. [570-B]

2. Section 20A of the Act has mentioned about trial of commission of the offence by any person; and if that person be not the manufacturer, distributor or dealer, s.20A permits trial of such manufacturer, distributor or dealer also, alongwith the person already before the court. So, the fact that the person being tried is a dealer would not make the section non-operational. [570-H, 571-A]

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A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 385 of 1980

From the Judgment and Order dated 22.5.75 of the Madhya Pradesh High Court in CrI. Revn. 175 of 1968.

B Ravindra Narain, Ashok, Sagar, O.P. Soni, for J.B.D. & Co. for the Appellant.

A.K. Chitale, Sakesh Kumar, Uma Nath Singh for the Respondents.

C The following Order of the Court was delivered :

By an order dated November 1, 1991 the matter was referred to a Bench of three Judges since an important question of law relating interpretation of s.20A of the Prevention of Food Adulteration Act, 1954 [for short, 'the act'] as amended by Act 49 of 1964 was raised.

D The admitted facts are that the appellant is manufacturer of Vanaspati ghee. The position not in dispute is that one Laxmi Narain resident of Jaura was found selling Vansaspati ghee. The Food Inspector had purchased the article of food of 1500 grams from Laxmi Narayan on payment of the price. On analysis by the Public Analyst as per his report, **E** Ext. P3, it was found to have been adulterated. In consequence, Laxmi Narain was prosecuted for an offence under s.16 of the Act.

The article was sold on March 24, 1964. On March 1, 1965 when it was brought to the notice of the trial court that the appellant is the manufacturer of the adulterated article of food, the learned Magistrate had **F** issued summons to the appellant under s.20A of the Act. He questioned the jurisdiction of the Magistrate to issue summons by filing a revision before the Sessions Court and also in the High Court. He was unsuccessful before both the courts below. Thus, this appeal by special leave.

G Learned counsel for the appellant candidly admitted that on march 24, 1964, i.e., the date on which the sample of the adulterated article of food was sold, the appellant-company could also be prosecuted for alleged adulteration of the article of food. But his contention is that during the course of the trial, it could not be proceeded against it. His emphasis is that the Magistrate has power, on the date when the complaint was lodged **H** before him, to issue summons to the manufacturer, but the Magistrate

could not proceed during the trial on the premise that the accused Laxmi Narain is only a dealer of the appellant and that there is no material that Laxmi Narain is a vendee on behalf of the appellant vendor; and as the latter is not a vendor, he could not be jointly tried. We find no force in this contention. A

The punishing Section 16(1) postulates that subject to the provisions of sub-section (1-A), if any person - B

"(a) whether by himself or by any other person on his behalf, imports into India or manufactures for sale, or stores, sells or distributes any article of food - C

(1) which is adulterated within the meaning of sub- clause (m) of clause (ia) of Section 2 or misbranded within the meaning of clause (ix) of that section or the sale of which is prohibited under any provision of this Act or any rule made thereunder or by an order of the food (Health) Authority;..... D

he shall, in addition to the penalty to which he may be liable under the provisions of Section 6, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years, and with fine which shall not be less than one thousand rupees; E

Section 20-A empowers the Court to implead the manufacturer etc. and provides as under :

"where at any time during the trial of any offence under the 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 also concerned with that offence, then, the court may, notwithstanding anything contained in sub-section (3) of s.319 of the Code of Criminal Procedure, 1973 (2 of 1974), or in s.20 proceed against him as though a prosecution had been instituted against him under s.20." F

(Emphasis supplied) G

A reading of Section 20-A clearly indicates that during the course of the trial for any of the offence under the Act alleged to have been H

- A committed by any person, if the evidence adduced before the Court discloses that the manufacturer, distributor or dealer is also concerned with that offence, then the Court has been empowered, notwithstanding anything contained in sub-section (3) of s.319 of the Code of Criminal procedure (for short, 'the Code') to treat as if the manufacturer, distributor or the dealer is being proceeded against under Section 20 of the Act, as
- B originally instituted thereunder. The concept of vendor and vendee is known to civil law and passing of the title in the goods is alien to the prosecution for an offence under the Act. It cannot, therefore, be introduced in a trial for the offence under the Act. The Act advisedly made a person who sells adulterated article of food liable to be prosecuted for the
- C offence of adulteration of the article of food. During the trial when it comes to the notice of the Magistrate, from the evidence adduced, that the manufacturer, distributor or dealer of that article of food, which is the subject matter of adulteration, is also concerned with the offence, then the court has been empowered to proceed against such manufacturer, distributor or dealer as if prosecution has initially been instituted against him
- D under Section 20 of the Act. In fact, for general offences, Section 319(1) of the Code empowers the court where during the course of enquiry or trial of an offence, if it appears from the evidence that any person not being accused has committed any offence for which such person could be tried together with the accused, to proceed against such person for the offence
- E which he appears to have committed. In view of the language of Section 20-A of the Act, whatever is contained in sub-section(3) of Section 319 of the Code would not stand in the way of the Magistrate to proceed at a trial against any person, i.e., the original accused and against others mentioned in Section 20-A. In other words, joint trial for the same offence is permitted.
- F The object appears to be that in a case where common evidence discloses that the manufacturer, distributor or dealer is also concerned with the offence for which the prosecution was launched against a person from whom the article of food was purchased, to avoid multiplicity of prosecution and also keeping in view the doctrine of *autrefois acquit* the Legislature introduced s.20A to have joint trial.
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The further contention that Laxmi Narayan being a dealer of the appellant, Section 20A has no application, as it speaks of trial of a person not being, *inter alia*, a dealer, has no merit, as the section has mentioned about trial of commission of the offence by any person; and, if that person

H be not the manufacturer, distributor or dealer, Section 20A permits trial

of such manufacturer, distributor or dealer also, along with the person already before the court. So, the fact that the person being tried is a dealer would not make the section non- operational. A

In these circumstances, we are of the view that there was no embargo on the Magistrate during the trial of the offence to issue notice to the appellant manufacturer for holding joint trial. B

The appeal is accordingly dismissed. We direct the Magistrate, 1st Class Jaura Distt. Morena, M.P., to proceed with the trial in Crl. Case No. 117/64, pending before him expeditiously since it is a long pending case.

R.P.

Appeal dismissed. C