

CRIMINAL REVISION.

Before Walmsley and Shams-ul-Huda JJ.

CORPORATION OF CALCUTTA

v.

•PAGLI.*

1919

May 23.

Tea—Tea or tea-dust, whether an article of food or drink—Calcutta Municipal Act (Beng. III of 1899), s. 495.

Tea or tea-dust is an article "of human food or drink" within the meaning of s. 495 of the Calcutta Municipal Act (Beng. III of 1899).

Hinde v. Allmond (1) explained and distinguished.

Definition of "food" in the Sale of Food and Drugs Act (38 & 39 Vic. c. 63), s. 2 as amended by 62 & 63 Vic. c. 51, s. 26, adopted.

Two persons named Pagli and Moonia were sent up for trial before the Municipal Magistrate on a charge, under s. 495 of the Calcutta Municipal Act, of having sold, at No. 60, Machua Bazar Street, to a Food Inspector, as tea-dust, a substance which on analysis was found not to contain any tea. The Magistrate without examining any witnesses acquitted the accused on the ground that tea or tea-dust was not within the scope of s. 495 of the Act, relying on *Hinde v. Allmond* (1).

The Municipal Corporation, thereupon, moved the High Court and obtained the present Rule.

Babu Manmatha Nath Mukerjee (with him *Babu Satindra Nath Mukerjee*), for the petitioner. The case of *Hinde v. Allmond* (1) was decided under the special rules of the Food Hoarding Order which did

* Criminal Revision No. 375 of 1919, against the order of N. N. Gupta, Municipal Magistrate of Calcutta, dated March 15, 1919.

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not include "drink," and its correctness has been questioned subsequently. Refers to the Adulteration of Food and Drink Act, 1860 (23 & 24 Vic. c. 84) and the definition of "*food*" in the Sale of Food and Drugs Act, 1875, (38 & 39 Vic. c. 63), s. 2. The definition was amended by s. 26 of the Act of 1899 (62 & 63 Vic. c. 51). Sections 30 and 31 of the Act of 1875 deal with tea which has, therefore, been treated as "*food*" under the Acts. "*Food*" thus includes "*drink*" as well, and is sufficiently wide to include tea. There is no definition in the Calcutta Municipal Act, but the above definition should be adopted.

WALMSLEY J. This is an application made on behalf of the Chairman of the Calcutta Corporation against an order passed by the Municipal Magistrate of Calcutta acquitting two persons of an offence under section 495 of the Calcutta Municipal Act. That section provides that no person shall sell to the prejudice of the purchaser any article of human food or drink which is not of the nature, substance or quality of the article demanded by such purchaser. It is alleged in this case that the accused persons sold to the Food Inspector as *tea-dust* some substance which, on analysis, was found not to contain any tea. When the case came on for trial the learned Magistrate, without examining the witnesses or the accused, acquitted the latter on the ground that *tea-dust* does not come within the purview of the words "article of human food or drink". He wrote a judgment which shows that he had in mind the words of the learned Judges who decided the case of *Hinde v. Allmond* (1). That judgment was passed under the very special rules of the Food Hoarding Order; and it was pointed out in the course of the judgment that the word "food" in that Order was not identical with

(1) (1917) 82 J. P. 151.

the description of the word "food" as given in the "Sale of Food and Drugs Act of 1875" because the word "drink" was omitted from the Order. The definition given in the Act of 1875 is that "food" shall include every article used for food or drink by man other than drugs or water; and when the Act was amended in 1899, an addition was made to this effect that "food" shall include also any article which ordinarily enters into or is used in the composition or preparation of food and shall include flavouring matters and condiments. It appears to me that the learned Magistrate has erred in seeking for guidance as to the meaning of the words "article of human food or drink" in a case that arose from a prosecution under the Food Hoarding Order. That Order was promulgated in very peculiar circumstances to achieve an object very different from that of Chapter XXXV of the Calcutta Municipal Act, and, as I have already mentioned, the words used in the Order are different from those of the Sale of Food and Drugs Act and of section 495.

If there is any difficulty in determining the true meaning of the words "article of human food or drink," I think that the definition given in the Sale of Foods and Drugs Act makes the meaning plain, and I hold that tea-dust comes within the scope of section 495 of the Calcutta Municipal Act. As it appears that no evidence has been given and the accused have not been examined, the case must be sent back to the lower Court to be tried with reference to the above remarks.

SHAMS-UL-HUDA J. I agree. •

Case remanded.

F. H. M.

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