

CRIMINAL REVISION.

Before *Suhrawardy J.*

RAKHALCHANDRA DATTA

v.

PURNACHANDRA GHOSH.*

1929

Nov. 27.

Food Adulteration—Mixed oil—Notice to the public—Bengal Food Adulteration Act (Beng. VI of 1919), ss. 5, 6, 7.

The articles mentioned in section 6 of the Bengal Food Adulteration Act are ordinarily articles of food and it is no defence to say that these articles can be adulterated and sold in the market with the publication of the fact that they are adulterated.

The Act is intended for the safety of the people and should be construed liberally.

RULE obtained by the accused.

This was a Rule obtained by Rakhachandra Datta, a shop-keeper within Jangipur Municipality, against a conviction under the Bengal Food Adulteration Act. Purnachandra Ghosh, the Sanitary Inspector of the municipality, went to his shop, on authority from the chairman and purchased a quantity of mustard oil, which Rakhach stored and sold in his shop among other articles of food. On analysis, that oil was found to be adulterated and Rakhach was prosecuted under the Bengal Food Adulteration Act. The defence was, it was notified to the public that the oil was a mixed oil to be used for lighting purpose. The magistrate convicted Rakhach and fined him Rs. 200. Against that, this Rule was obtained.

Mr. Sateendranath Mukherji and *Mr. Byomkesh Basu*, for the petitioner.

Mr. Siddheshwar Chakravarti, for the opposite party.

Mr. Aneelchandra Ray Chaudhuri, for the Crown.

*Criminal Revision, No. 910 of 1929, against the order of S. K. Sinha, Sessions Judge of Murshidabad, dated 7th June, 1929.

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SUHRAWARDY J. This Rule has been issued on two grounds: (1) that the elements necessary to constitute an offence under section 6(1) of the Bengal Food Adulteration Act (Bengal VI of 1919) have not been proved and (2) that as the mustard oil, the subject matter of the case, was sold to the Sanitary Inspector, not as mustard oil, but as mixed mill oil and as the signboards in the shop indicate that mixed mill oil for lighting purposes only is sold, the conviction under section 6 (1) of the Act is not sustainable. Both the grounds may be considered together.

The facts are that the Sanitary Inspector, on the authority from the chairman of the municipality, went to the shop of the accused and purchased a quantity of mustard oil, which he says was for human consumption. After his purchase, he divided the oil, according to the Act, into three parts, one of which was kept with the shop-keeper. It was found, on analysis, that the oil sold was adulterated mustard oil and the owner of the shop was prosecuted and fined Rs. 200. It has been found, by the trial court, that the oil was sold as mustard oil for human consumption and that the oil sold was adulterated. Reading section 5 and sections 6 and 7 of the Act together, it would appear that the articles enumerated in section 6 are presumed to be articles of food and, therefore, it has been made penal to sell any such article in an adulterated condition, the presumption being that it was sold for human consumption. This is clear, as, in section 5, the expression "articles of food" is used, whereas in section 6 there is no express provision that the articles mentioned in that section must be sold as articles of food. But the Act itself is for making provision for the prevention of adulteration of food and, therefore, the articles mentioned in section 6 are considered to be articles of food and the sale thereof in an adulterated condition is made punishable. Now, in this case, the facts sufficiently proved and found by the lower court are that the oil was sold by the petitioner to the complainant and that the oil was

found to be adulterated. The petitioner says that he has put up a signboard on his shop that he was selling adulterated mustard oil. With regard to this signboard, I am inclined to believe the Sanitary Inspector when he says that it was not there on the day of the occurrence, but it has been subsequently put up. But in my judgment, even if this signboard was on the shop, it will be no defence to say that he had notified to the public that he was selling adulterated food. The Food Adulteration Act makes it penal to sell adulterated articles. It does not excuse the offence on the ground that the purchaser knew that what he was purchasing was not pure food stuff. The Act was intended to protect the public from using adulterated articles and, therefore, it has made it penal to sell these adulterated articles to persons irrespective of the fact that the purchaser knew the article to be adulterated or otherwise. With regard to the articles mentioned in section 6, they are ordinarily articles of food and it is no defence to say that these articles can be adulterated and sold in the market with the publication of the fact that they are adulterated. Section 7 of the Act makes the storing of adulterated things penal. In this case, it is admitted that the accused sells in his shop *ghee*, flour (*âtâ*), *etc.*, which are sold for human consumption. He also sells mustard oil and there is no evidence and no allegation for what purpose the mustard oil, which is said to be adulterated, was sold in the shop, except what is stated on the signboard. On the other hand, there is evidence that mustard oil is purchased from his shop by people for consumption as an article of food. His own witness No. 2 says that, as no better stuff is available, he always purchases mustard oil for human consumption from the shop, though it was advertised as mixed oil. As I have said, it is no defence to say that because it was advertised as mixed oil, the seller, though he sells the article for human consumption, is entitled to plead that he had told the purchaser that it was not pure in defence in a prosecution under that Act. As the Act is intended for the safety of the

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people, in my judgment, it should be construed liberally. It is no defence to the accused that the adulterated oil is stored in his shop for some purpose other than for consumption as an article of human food. I cannot say that, even if he had taken that defence, it would have been a good answer. But it is clear that the adulterated mustard oil is kept in his shop for being sold to persons for consumption as an article of food. In the signboard, which, he says, he put up in his shop, it is said that mustard oil is sold for lighting purposes. But there is no evidence that any one purchases it for that purpose. As I understand, the signboard has come into prominence since this case. There is also evidence, as found by the magistrate, that the accused's shop supplies to the locality the oil at a wholesale rate to small shop-keepers, who sell it, by retail, to the inhabitants of the locality, for consumption as an article of food. The mischief, therefore, which is done by his selling adulterated oil in his shop is very great.

I am, accordingly, of opinion that, on the evidence in the case, the learned magistrate has come to a right decision and that the conviction must be sustained. This Rule is discharged.

N. G.

Rule discharged.