CRIMINAL REVISION.

Before Rankin C. J. and Patterson J.

PYARIMOHAN SAHA

v.

HARENDRANATH RAY.*

1929

Sept. 5.

Adulterated food—Sale of—Servant, liability of—Bengal Food Adulteration Act (Beng. VI of 1919), ss. 6, 10, 11—Calcutta Municipal Act (Beng. III of 1899), s. 495—Calcutta Municipal Act (Beng. III of 1923), s. 407—Sale of Food and Drugs Act, 1875 (38 & 39, Vict., c. 63), s. 6—Sale of Tea Act, 1922 (12 & 13 Geo. V., c. 29), Sch. cl. 6.

Section 6 of the Bengal Food Adulteration Act, 1919, does not make only the master or owner of the article sold guilty of an offence, but includes his servant.

The Act, in question, applies to the province of Bengal outside Calcutta. So far as Calcutta itself is concerned, the provisions against the adulteration of food were contained in section 495 of the Municipal Act of 1899 and, in the Calcutta Municipal Act of 1923, section 407, which contains provisions similar to those in the Act of 1919.

The first clause of section 11 speaks of " the seller or agent selling the article ;" therefore the agent or servant is within the prohibition of the words "no person shall sell."

Hotchin v. *Hindmarsh* (1) and *Brown* v. *Foot* (2) referred to.

CRIMINAL RULE obtained by the accused.

The accused was a servant of a firm of traders in Narayanganj, and on 25th January, 1929, the Sanitary Inspector of that municipality, while under suspension, purchased from the accused's master's firm a sample of mustard oil which turned out to be adulterated. The accused was, thereupon, tried and convicted under section 6 (*1*) of the Bengal Food Adulteration Act, 1919, and fined Rs. 150, though he maintained he was on leave on the date of sale and, in any event, being only the firm's servant, he was not liable and that a compulsory sale to the Health Officer was not a sale within the meaning of that Act. The learned Sessions Judge of Dacca having declined to

*Criminal Revision, No. 832 of 1929, against the order of N. G. Roy, Magistrate of Narainganj, Dacca, dated April 30, 1929.

(1) [1891] 2 Q. B. 181.

(2) (1892) 66 L. T. 649 ; 17 Cox. C. C. 509.

interfere, the accused moved the High Court and obtained this Rule.

Mr. Sureshchandra Talukdar and *Mr. Shyamaprasanna Deb*, for the petitioner.

Mr. Beerbhusan Datta, for the opposite party.

RANKIN C. J. The accused in this case has been convicted of an offence under clause (*1*) of section 6 of the Bengal Food Adulteration Act, 1919. The offence charged was committed on the 25th of January, 1929, and consisted in the accused having sold to a Health Officer a quantity of mustard oil which was not derived exclusively from mustard seed. The accused has been fined Rs. 150 and ordered to undergo two months' simple imprisonment in default of payment.

This Rule was issued on the grounds that clause I of section 6 of the Bengal Food Adulteration Act does not apply to the facts of the case, and that section 6 makes the master or owner of the article sold guilty of an offence but not the servant.

It is clear that the sale was made by the accused in his capacity of servant of a certain firm which used the name of one Jasodalal Ray Chaudhuri. Jasodalal is dead, but there is no question that the accused sold the mustard oil as a servant of the proprietors of the said firm and that he is a servant and not a partner therein.

The Act in question applies to the province of Bengal outside Calcutta and it is in the power of the Local Government to extend any of the sections of the Act to any local area outside Calcutta. The prosecution in this case was sanctioned by the Chairman of the Municipality of Narayanganj. So far as Calcutta itself is concerned, the provisions against the adulteration of food were contained in section 495 of the Municipal Act of 1899, and in the Calcutta Municipal Act of 1923 section 407 contains similar provisions to those which we are now concerned with in the Act of 1919.

1929

PYARIMOHAN SAHA v. HARENDRANATH RAY.

RANKIN C. J.

The contention of the accused is that the opening words of the first clause of section 6 of the Act of 1919 are designed to constitute the sale of mustard oil in contravention of the provisions of the section an offence on the part of the master or principal on whose behalf the sale is made, but that the servant or other person, selling on behalf of the principal, is not guilty of an offence by reason of his act. He contends that this section is not to be construed in the light of the interpretation put by English decisions upon similar, but somewhat different, words in section 6 of the Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), but is to be arrived at by the court upon a consideration of the terms of the Bengal Act by themselves. The material words are as follows :—

"No person shall directly or indirectly himself or "by any other person on his behalf sell, expose for sale "or manufacture or store for sale any of the following "articles, *etc.*" The accused's contention is that the phrase "himself or by any other person on his behalf" points to a principal who may either sell at his own hand and on his own account or by some other person on his behalf. This, it is said, is enforced by the use of the word "vendor" in clause (*3*) of the section.

On the other hand, it is contended for the prosecution that the words "directly or indirectly, "himself or by any other person on his behalf" cannot and are not intended to cut down the effect of the words "no person shall sell;" that the acts which are made offences by the section are physical acts; that the question of the party, who is responsible as a matter of contract to the purchaser, is irrelevant; that the servant in such a case as the present is a person who does the prohibited act himself, and that the effect of the words in a case like the present is to make both the servant and the master liable as offenders against the section. In other words, the contention of the prosecution is that the words, to which I have referred, elaborate and emphasize the prohibition against certain classes of acts being done at all, and

declare explicitly the meaning, which in *Brown* v. *Foot* (1) and *Hotchin* v. *Hindmarsh* (2), was put upon the words "no person shall sell" in section 6 of the (English) Sale of Food and Drugs Act of 1875.

No doubt only a master or principal is a person who has a choice of selling himself or by any other person on his behalf, and the contention of the defence, as the magistrate has in this case observed, at first sight looks like a sound view. It is also true that in *Hotchin's case* (2), T. W. Chitty arguing for the prosecution said "possibly if the statute had used "the term 'vendor' that might have been construed "strictly as meaning the person who has the property "in the article." Ordinarily one would not refer to a person as "himself selling" except in a case in which selling by a servant or agent was contemplated as a thing to be negatived.

The magistrate has argued, on general principles, that the legislature to effect its purpose must have intended by the words now under consideration to make the act of the servant an offence, because the provisions of the law as to abetment would be insufficient to enable the purpose of the prevention of adulteration to be effectively attained. This line of reasoning is certainly precarious. No doubt a desire to prevent the sale of adulterated articles may be attributed to the legislature, but it is a question of the correct meaning of the words used by the legislature, —whether it has thought fit to bring a servant within their scope. It is by no means inconceivable that an Indian legislature might consider it unfair or inadvisable to penalize the servant, and it is no part of the duty of the court to go beyond the immediate meaning of the words in question.

In my opinion, the real question for determination is whether or not there is sufficient in the words of the section to show that it is directed against the physical acts of selling, exposing for sale, *etc.* If

(1) (1892) 66 L. T. 649; 17 Cox. C. C. 509.

(2) [1891] 2 Q. B. 181.

1929

PYARIMOHAN SAHA v. HARENDRANATH RAY.

RANKIN C. J.

so, then, as Coleridge C. J. said in *Hotchin's case* (1), "A person who takes the article in his hand and "performs the physical act of transferring the "adulterated thing to the purchaser is a person who "sells within the section." As used in an Indian statute, I do not think that the word "vendor" throws any light upon this question, as it is common to speak of petty traders or hawkers as vendors.

The present case is one in which the Health Officer exercised his powers under the third clause of section 10, which says that "any person in possession or "exposing the same for sale shall be bound to sell such "quantity." The first clause of section 11 speaks of "the seller or agent selling the article." It appears to me, therefore, that the agent or servant is within the prohibition of the words "no person shall sell." The legislature is not contemplating a person, who has a choice to sell at his own hand or by any other person on his behalf. It is concerned to make the act of selling an act which is imputable both to the person with whose hand it is committed and to any other person, if such there be, on whose behalf it is committed. Precisely similar language will be found in the Sale of Tea Act, 1922 (12 & 13 Geo. V., c. 29) and that it is intended to hit the servant is shown clearly by clause 6 of the schedule thereto. The accused in this case is a person who himself sold and as such was, in my opinion, rightly convicted.

The Rule must, therefore, be discharged.

PATTERSON J. I agree.

Rule discharged.

G. S.

(1) [1891] 2 Q. B. 181.