CRIMINAL REVISION.

Before Patterson and Khundkar JJ.

1934

Aug. 27, 28, 29, 30.

SEWAL RAM AGARWALA

v.

EMPEROR.*

Food Adulteration—Sanitary Inspector, if empowered to take samples—Certificate of Public Analyst, when admissible—Report of the Director of Public Health, what it should be—Bengal Food Adulteration Act (Beng. VI of 1919), ss. 4, 5, 6, 11, 14, 21—Rules under Bengal Food Adulteration Act, r. 3.

Section 6 of the Bengal Food Adulteration Act is entirely distinct and self-contained and ought to be interpreted as it stands. It should not be read with section 5 of the Act. To secure a conviction under section 6 read with section 21, in the case of mustard oil, all that the prosecution has to prove is that the oil is not derived exclusively from mustard seed.

Under rule 3 of the Rules framed under the Act, the Sanitary Officers of the District Board have been empowered to act under sections 10 and 12 of the Act, in all municipalities which have no Sanitary Officers of their own, provided the District Board concerned gives its consent to their being so employed.

In considering the admissibility of the certificate of the Public Analyst under the special rule of evidence contained in section 14 of the Act without formal proof, it is immaterial whether the Sanitary Inspector, be he regarded as an official or as a private individual, obtained possession of the samples in strict accordance with the provisions of the Act or not. What is important is that the safeguards which the Act lays down in section 11 should be complied with.

The only means, which the Act provides for rebutting a presumption arising under section 4, is to have the triplicate samples sent to the Director of Public Health with a view to eliciting an independent opinion. In his report, the Director of Public Health should state at least what were the saponification and iodine values respectively according to the analysis made by him or under his supervision.

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The facts of the case were that, on the 7th May, 1933, one A. Sanyal, a Circle Sanitary Inspector of the District Board of Rangpur, went to the shop of the accused and purchased two samples of mustard

*Criminal Revision, Nos. 460 and 461 of 1934, against the order of P. C. De, Sessions Judge of Rangpur, dated March 6, 1934, confirming the order of K. C. Ganguli, Deputy Magistrate, First Class, of Gaibandha, dated Dec. 22, 1933.

oil. He divided each sample into three parts in the presence of the accused, sealed them with double seals, and gave one phial of each sample to the accused. Two phials, one of each sample, were sent to the Public Analyst of the district. Soon afterwards, an assistant sub-inspector of police, acting under the orders of the subdivisional officer, seized 457 tins of the mustard oil of the brands from which the samples had been taken. The tins were left with the accused on his furnishing security for the same. The Public Analyst granted two certificates of the analysis, giving the saponification and iodine values of the oil, and expressed the opinion that the mustard oil was adulterated. These were admitted in evidence without calling the Public Analyst as a witness. The defence prayed that the samples, together with others taken from the tins seized, might be sent to the Director of Public Health for analysis and opinion. With regard to the two samples taken by the Sanitary Inspector, the Director of Public Health reported that they were slightly adulterated but did not specify the saponification and iodine values. With regard to some of the samples from the tins seized, he said that they were slightly adulterated, and with regard to the others he said that they were entitled to get the benefit of the doubt. The accused then prayed that the Director of Public Health might be asked whether the adulteration was injurious to health, and its nature and exact proportion. The Director replied that, as the accused were being prosecuted under section 6 of the Bengal Food Adulteration Act, the questions raised by them were irrelevant. In the meantime, the Sanitary Inspector had taken formal permission from the Chairman of the Gaibandha Municipality, within which the shop was situated, to seize the samples under section 12 of the Act and to prosecute the accused under section 6. The two accused were convicted under section 6. Their appeals to the Sessions Judge of Rangpur were dismissed. They, thereupon, obtained the present Rules from the High Court.

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Santoshkumar Basu (with him *Parimal Mukherji*) for the petitioners. The first point that arises is whether the certificates given by the Public Analyst and the Director of Public Health were admissible in evidence under section 14 of the Act. The Sanitary Inspector was an employee of the District Board and not of the municipality. He therefore had no right within the municipal area to seize the samples under section 10 of the Act. The seizure being illegal, the submission for analysis was not in pursuance to the provisions of the Act and the special provisions of section 14 had no application and the two certificates, on which the case was based, were not admissible without calling the Analyst and the Director. The second point is that section 6 is controlled by section 5 of the Act and a conviction is not sustainable unless it is found that the adulteration is injurious to health. The petitioners repeatedly asked the court to request the Director to report whether the slight adulteration was of such a nature as to injure the health and the latter refused to give his opinion. His report does not even give the results of the analysis without which it is valueless and inadmissible. That is the only way in which the presumption raised by section 4 and rule 20 could be rebutted. In the United Provinces, where this stuff is produced, it has been passed as genuine. The Public Analyst's report shows that it does not go beyond the limits laid down by that Government. The Director in Bengal himself has given the benefit of the doubt with regard to some of the samples. The court was the ultimate judge in the matter and might have given the benefit of the doubt with regard to these samples if the Director had given the results of his analysis.

Anilchandra Ray Chaudhuri for the Crown was not called upon to discuss the question of admissibility of the certificates. It appears that throughout these proceedings everyone overlooked the latest notifications with regard to this subject. By rule 3 of the Rules framed under the Act and published in notification No. 1977P.H., dated the 24th July, 1930,

Sanitary Officers of the district board were empowered to act under sections 10 and 12 of the Act in any municipal area, where the municipality had no Sanitary Officers. With regard to the second contention, sections 5 and 6 are entirely independent of each other. The whole scheme of the Bengal Act shows that two classes of food are considered. One class is referred to in section 5 which may be adulterated and sold as such provided that the adulteration is not injurious to health. Section 6 contemplates a special class which cannot be sold in an adulterated condition however slight or non-injurious it might be. The United Provinces Act has only one class corresponding to that contemplated by section 5. So mustard oil, if adulterated with non-injurious substance, does not offend the United Provinces Act but it offends the Bengal Act. The U. P. standard, therefore, cannot afford any guide and is entirely irrelevant for the present considerations. That is the reason why the Director refused to answer the accused's question as to whether the adulteration was injurious to health. This was no element of the offence under section 6. The accused were all along under the impression that the case was governed by section 5 and wanted answers in that connection. If they were refused it was their fault. In any case, the full analysis of the Public Analyst is on record and the opinion of the Director that the sample was adulterated supports it and is sufficient for a conviction under section 6. There is nothing to rebut the presumption raised by section 4 and rule 20. The Government notification mentions wide range to avoid errors of experiment and if the maximum and minimum limits are exceeded, it is to be taken to be adulterated. The only way a rebuttal was attempted was by showing the U. P. standard which as already shown was based on an altogether different principle. The convictions should stand.

PATTERSON J. The facts of the cases to which these two Rules relate have been fully set forth in the judgment of the appellate court, and I do not think

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it necessary to recapitulate them here. The convictions against which these Rules are directed are under section 6 read with section 21 of the Bengal Food Adulteration Act of 1919, and relate to two samples of mustard oil which were purchased by the Sanitary Inspector of the district of Rangpur from a shop situated within the municipal limits of Gaibandha. Section 6 prohibits the sale of mustard oil which is not derived exclusively from mustard seed, but it was contended on behalf of the petitioners that this section should be read with section 5, which would have the effect of introducing other considerations. I am not prepared to accept this contention. Section 6 is in my opinion an entirely distinct and self-contained section, and ought to be interpreted as it stands. Its provisions are clear and all that the prosecution is required to establish in order to secure a conviction based on section 6 read with section 21 is that the two samples of mustard oil which were admittedly in the shop of petitioner No. 1 and which were admittedly sold to the Sanitary Inspector by petitioner No. 2 were *not* derived exclusively from mustard seed. This the prosecution has sought to do by tendering in evidence the report of the Public Analyst of the district of Rangpur. The admissibility of this report has been questioned on the ground that the samples in question were not obtained under any section of the Act, inasmuch as the Sanitary Inspector who purchased those samples had no jurisdiction within the limits of the Gaibandha Municipality. The trial and the appeal proceeded on the footing that the Sanitary Inspector had in fact no official status within the municipality, and the prosecution case in the courts below was that he ought to be regarded as having made the purchases in his private capacity, that is to say, under section 9 of the Act. In this court it has however been discovered that, by rule 3 of the Rules framed under the Act and published under Bengal Local Self-Government notification No. 1977P.H., dated the 24th July, 1930, the Sanitary Officers of the District Board have been empowered under sections 10 and 12 of the Act,

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in all municipalities which have no Sanitary Officers of their own, provided the District Board concerned gives its consent to their being so employed. It may be that this rule has the effect of empowering the Sanitary Inspector to make the purchases in question, but as his power to do so had all along been questioned by the defence, it was for the prosecution to prove that he had that power. This the prosecution has not attempted to do, and unless and until it is proved that the Gaibandha Municipality has no Sanitary Officer of its own, and that the District Board of Rangpur has consented to the employment of its Sanitary Inspector in discharging the functions of Health Officer within the limits of that municipality, it cannot be assumed that the Sanitary Inspector is in possession of the powers in question, and for the purposes of the present proceedings it must be held that he has not got those powers. A further contention raised on behalf of the petitioner in this connection is that by reason of the Sanitary Inspector not having been proved to possess the power referred to above, it cannot be held that the samples of mustard oil which he admittedly submitted to the District Analyst of Rangpur were *submitted for analysis under the Act*, and that the special rule of evidence contained in section 14, by which the Public Analyst's certificate is made admissible in evidence without formal proof, has no application. I am not prepared to accept this contention. It seems to me to be immaterial whether the Sanitary Inspector, be he regarded as an official or as a private individual, obtained possession of the samples in strict accordance with the provisions of the Act or not. What *is* important is that the safeguards which the Act lays down in section 11 should be complied with, and this appears to have been done. I therefore hold that the samples in question were submitted for analysis under the Act, and that the report of the Public Analyst is admissible in evidence. That report shows that the saponification and iodine values were 176·7 and 106·35, respectively, in one case, and 176·65 and

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106·70, respectively, in the other case, whereas the rules framed by Government under sections 4 and 20 of the Act lay down that the saponification and iodine values should not exceed 175 and 104, respectively. The excess in saponification and iodine values indicated above raises a presumption, under section 4 and under the rules framed under section 20, that the mustard oil in question is not genuine, by reason of the addition thereto of extraneous oil. The excess both in respect of saponification value and iodine value is, however, small, and the Public Analyst is of opinion that the adulteration (by which he apparently means merely the addition of extraneous oil) is slight, and this being so, it cannot be said that the presumption is a strong one. Having regard moreover to the fact that the samples were very small in bulk, the possibility of even slight errors in analysis leading to incorrect results is not one which can be completely ignored. The fact that in the United Provinces the maximum saponification and iodine values have been fixed at a higher figure, also indicates that in the opinion of the authorities in those provinces a larger margin of error should be allowed for than has been allowed for in this province. Having regard, however, to the differences between the Act and Rules which are in force in the United Provinces, and the Act and Rules which are in force in this province, and especially to the fact that in the United Provinces no attempt appears to have been made to lay down by statute that mustard oil shall be derived exclusively from mustard seed, as has been done in this province, I am not disposed, so far as the present cases are concerned, to attach any very great importance to the difference in standards referred to above. The cumulative effect of these considerations is that the statutory presumption referred to above is a very slight one and that probably very little evidence, if direct evidence were available, would be required to displace it. Now, it appears that, at the instance of the petitioners, the Director of Public Health was asked to report on the two triplicate samples of

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mustard oil which had been left in their custody under the provisions of section 11. His report, was, however, merely to the effect that the mustard oil contained in the two samples was slightly adulterated, no reasons being given in support of that opinion. The petitioner pressed for a detailed report from the Director of Public Health, but they were unable to obtain one, the Director of Public Health finally sending a reply to the effect that the further information required by the petitioners was irrelevant. It is true that some of the additional information which the petitioners sought to obtain from the Director of Public Health was irrelevant, but it was certainly reasonable on their part to expect him to state what were the saponification and iodine values respectively according to the analysis made by him or under his supervision, and whether in his opinion that result led to the conclusion that the samples of oil sent to him contained extraneous oil which had been added to the mustard oil. A number of samples taken from other tins of mustard oil in the possession of the petitioners were also sent to the Director for report, and in respect of those samples he submitted a fairly detailed report giving the saponification and iodine values, and stating his opinion with regard to each sample. Now in respect of several of these samples, although both the saponification and iodine values were in excess of the *maxima* prescribed by Government, the Director of Public Health gave as his opinion that those samples approximated to the standards of the Act, and might be given the benefit of the doubt. It has been contended on behalf of the petitioners that if the Director had been compelled to submit a further report on the lines indicated above, he might have expressed an opinion with regard to the two samples with which we are now concerned, to the effect that they too might be given the benefit of the doubt in view of the fact that the excess both in respect of the saponification value and the iodine value was slight. It is also possible that the

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saponification value and the iodine value, as ascertained by him, would have differed from the saponification and iodine values as ascertained by the Public Analyst of Rangpur. It is impossible to say anything very definite, but I do feel that the petitioners have a real grievance, inasmuch as the only means which the Act provides for rebutting a presumption arising under section 4 is to have the triplicate samples sent to the Director of Public Health with a view to eliciting an independent opinion, and inasmuch as their repeated requests for further details from the Director of Public Health were not complied with. In the appellate court too the petitioners made an attempt to obtain further information from the Director of Public Health by calling him as a witness, but this request was also refused. It might well be that if the Director of Public Health had furnished full details, or if he had been called and examined as a witness, the slight presumption arising under the Act from the report of the Public Analyst of Rangpur would have been rebutted.

In this view of the matter I am of opinion that the petitioners ought to have been given the benefit of the doubt, and that the orders of conviction and sentence passed on them in both cases ought to be set aside.

It further appears that at or about the time of taking the two samples in question, 457 tins of mustard oil were seized from the shop of the petitioners, and that the question of the disposal of those tins is still pending before the magistrate. The petitioners applied to the magistrate to have the tins returned to them, but the magistrate ordered that they should be detained pending the disposal of these two cases. That order was in my opinion an incorrect order, inasmuch as the question of the proper manner of disposing of these 457 tins did not in any way depend upon the result of these two cases, and by the Rules at present under consideration the District Magistrate has been called on to show cause

why those 457 tins of mustard oil should not be restored to the petitioners. The actual seizure of the tins in question appears to have been made by an assistant sub-inspector (who admittedly had no powers under the Act) but the Sanitary Inspector took charge of the tins at a later stage under cover of an order from the Chairman of the local municipality. It is quite certain that the order of the Chairman authorising the Sanitary Inspector to seize the tins was made without jurisdiction, at least so far as the provisions of the Bengal Food Adulteration Act are concerned, and, as has already been stated, there is nothing on the record to show that the Sanitary Inspector was empowered under sections 10 and 12 of the Act under the provisions of new Rule 3, that is to say, he was not empowered to do anything under the Act within the limits of the Gaibandha Municipality. It appears therefore that the 457 tins in question were not taken possession of under any of the provisions of the Bengal Food Adulteration Act, and having regard to the subsequent course of events as disclosed by the evidence in the two cases we have just been considering, I am of opinion that these 457 tins should be at once released and restored to the petitioners.

Both the Rules are accordingly made absolute in the above terms. The fines, if paid, will be refunded.

Rules absolute.

KHUNDKAR J. I agree.

A.C.R.C.