

## CRIMINAL REVISION.

Before Edgley J.

SACHI NANDAN PIRI

v.

CHAIRMAN, MIDNAPORE DISTRICT  
BOARD.\*

1939

Nov. 28.

**Adulteration**—*Storage for sale, What is—Possession, Meaning of—Bengal Food Adulteration Act (Ben. VI of 1919), ss. 6, 21.*

When a person is prosecuted for storing adulterated food for sale, it must ordinarily be proved affirmatively that such food is actually being stored. Such storage cannot be taken to include transit to a place of storage, unless the adulterated food in question is actually in the physical possession of a person to whom sub-s. (4) of s. 6 expressly applies.

“Possession” in sub-s. (4) of s. 6 must mean actual physical possession and cannot be extended to include constructive possession. Consequently, the possession of the carter of the accused during transit is not possession of the accused himself so as to raise the presumption under sub-s. (4) of s. 6.

*Ram Charit Ram Bhakat v. Chairman, Rajshahi District Board* (1) followed.

When a consignment of adulterated food is seized by a Sanitary Inspector under the provision of s. 12 of the Act during transit, an order of forfeiture passed by a Magistrate under s. 13 (2) is legal even though the owner cannot be prosecuted for the possession thereof.

It is unreasonable to expect the Sanitary Inspector to take a sample from each tin of a consignment and an order of forfeiture of all the tins of the same brand and forming part of one consignment as a result of the analysis of the sample from one tin is not improper.

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This was a Rule directed against a conviction and sentence under s. 6 read with s. 21 of the Bengal Food Adulteration Act and an order of forfeiture of the entire consignment of tins of mustard oil seized by a Sanitary Inspector and produced before the Court. The material facts of the case are fully set out in the judgment.

\*Criminal Revision, No. 924 of 1939, against the order of H. C. Sen, Deputy Magistrate of Midnapore, dated July 11, 1939.

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*Sudhansu Sekhar Mukherjee* for the petitioner. In this case the accused had been found guilty by reason of the presumption raised by s. 6 (4) of the Act. The goods were in transit and therefore not stored for sale. The possession of his carter could not be taken to be his possession within the meaning of that sub-section. *Ram Charit Ram Bhakat v. Chairman, Rajshahi District Board* (1). Further, the accused was called upon to answer a charge of sale, which took place next day, when he arrived on receipt of information, but he was convicted for storage for sale. The defence of the accused was that he would have returned the consignment, had he found the same to be adulterated on arrival at his shop. In any case, the forfeiture of the entire consignment was not legal when a sample from one tin only had been taken and analysed. *Benarasi Lal Marwari v. Chairman, Asansole Municipality* (2).

*Anil Chandra Ray Chaudhuri* and *Sailendra Nath Mitra (Sr.)* for the opposite party. The word used in sub-s. (4) of s. 6 is "possession" which has a definite meaning. It does not mean mere custody of a servant. There is a clear distinction between possession and custody in the eye of law. *Emperor v. Fateh Chand Agarwalla* (3). In this case, although the tins were in the custody of the carter, they were in the legal possession of the owner and so the presumption would arise. This aspect was not considered in the case of *Ram Charit Ram Bhakat v. Chairman, Rajshahi District Board* (1). In any case, with the arrival of the owner next morning the custody of the carter ceased and the goods passed into the possession of legal owner. In this respect, the present case is distinguishable from the case cited on behalf of the petitioner. Unless the accused assumed possession, he could not have

(1) I. L. R. [1938] 1 Cal. 420.

(2) (1938) 42 C. W. N. 731.

(3) (1916) I. L. R. 44 Cal. 477.

given a sample under s. 10 (2). The word storage includes goods actually in transit. *Williams v. Allen* (1). Beyond the mere statement of the accused, there is nothing to show that he ordered only genuine mustard oil or would have returned the consignment if found adulterated. It would have made no difference in this respect if the goods were seized the moment they were delivered into the godown of the accused. With regard to forfeiture, it cannot be expected that samples from every tin must be taken and analysed. The tins were of the same brand and formed part of the same consignment and the Magistrate was justified in forfeiting the lot. The case of *Benarasi Lal Marwari v. Chairman, Asansole Municipality* (2) has no bearing on the present question.

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*Nirmal Kumar Sen* for the Crown.

EDGLEY J. This Rule is directed against an order dated July 11, 1939, under which Mr. H. C. Sen, Deputy Magistrate of Midnapore, found the petitioner guilty under s. 6 read with s. 21 of the Bengal Food Adulteration Act (Ben. VI of 1919) and sentenced him to pay a fine of Rs. 100 or, in default, to undergo simple imprisonment for two months. By the same order, the learned Magistrate directed that twenty-five tins of mustard oil which had been seized by the Sanitary Inspector and produced before the Court should be declared forfeited under s. 13(2) of the Act.

The case for the prosecution was to the effect that a consignment of twenty-five tins of mustard oil was received at the Garbeta station and then loaded in a cart in order that the tins might be transmitted to the petitioner's shop at Kharkusum situated some ten miles from the Garbeta railway station. Delivery was taken of these goods at Garbeta on February 27, 1939. When the cart had proceeded a

(1) [1916] 1 K. B. 425.

(2) (1938) 42 C. W. N. 731.

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short distance from the station it was stopped by the local Sanitary Inspector who suspected that the tins contained adulterated mustard oil. The following day a sample of the oil was taken in the presence of the petitioner, who had been summoned by the Inspector for the purpose, and after analysis it was found that the oil was adulterated. The petitioner was thereupon placed on his trial under the relevant provisions of the Bengal Food Adulteration Act of 1919. His main defence was that the provisions of s. 6 of the Act were not applicable to this case as the goods were merely in transit to him and, if he had found on receipt of the consignment that the mustard oil had been adulterated, he would have returned the consignment to his consignor.

On behalf of the opposite party in this case it has been argued that the petitioner was rightly convicted by the learned Magistrate, inasmuch as it had been established that he was storing for sale the consignment of mustard oil, which was found to have been adulterated.

According to the admitted facts of the case, it appears that, at the time when the consignment was found by the Sanitary Inspector, it was merely in transit from the Garbeta railway station to the petitioner's shop at Kharkusum and it, therefore, follows that in the ordinary sense of the expression the goods in question were not being "stored for sale". It is, however, argued that, in view of the provisions of sub-s. (4) of s. 6 of the Act, it must be presumed that these goods were being stored for sale at the time when they were found by the Sanitary Inspector. This sub-section is to the effect that in any prosecution under s. 6—

the Court shall, unless and until the contrary is proved, presume that any of the articles specified in cls. (a), (b), (c), (d) and (e) of sub-s. (1), found in the possession of a person who is in the habit of manufacturing or storing like articles for sale has been manufactured or stored for sale by such person.

It is argued that, in the case with which we are now dealing, the goods were in the possession of the

petitioner's servant and were, therefore constructively in the possession of the petitioner and, this being the case, the presumption raised under sub-s. (4) of s. 6 must apply, in view of the facts which have been proved, I am, however, not prepared to accept this argument. In my view, in a case in which a person is prosecuted for storing adulterated food for sale, it must ordinarily be proved affirmatively that such food is actually being stored, and, in my opinion, such storage cannot be taken to include transit to a place of storage unless the adulterated food in question is actually in the physical possession of a person to whom sub-s. (4) of s. 6 expressly applies. In this respect, I am in agreement with the view expressed by Biswas J. in the case of *Ram Charit Ram Bhakat v. Chairman, Rajshahi District Board* (1), in which the learned Judge expressed the view that "possession" in sub-s. (4) must mean "actual physical possession" and that this word "must be given a strict interpretation and cannot be extended to include constructive "possession". In the case with which we are now dealing the consignment was found in the possession of the petitioner's carter. Such a person is obviously not one "who is in the habit of manufacturing or "storing like articles for sale", and, this being the case, the presumption raised by sub-s. (4) of s. 6 of the Act can have no application. It, therefore, follows that it has not been proved that the tins of mustard oil which were found by the Sanitary Inspector on February 27, 1939, and from which a sample was taken by him on the following day, were stored for sale within the meaning of s. 6(1) of the Act. Admittedly, there is no question in this case of selling, exposing for sale or manufacture for sale and, this being the case, the prosecution fails.

As regards that part of the order of the learned Magistrate, which relates to the forfeiture of the consignment of adulterated oil, the position is

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different. Although the Bengal Food Adulteration Act of 1919 contains no direct provision under which a person can be prosecuted in respect of adulterated food found in his possession while such food is in transit, there is nevertheless a clear provision to the effect that, if an authorised person has reason to believe such food to be adulterated, he may seize it in order that the same may be dealt with in accordance with the provisions of s. 13. In this particular case, the consignment was seized by the Sanitary Inspector under the provisions of s. 12 of the Act and the order with regard to the forfeiture of the consignment was passed by the Magistrate under s. 13(2) as it appeared to him on adequate materials that the food in question was adulterated. It is argued on behalf of the petitioner that this order was unreasonable in view of the fact that a sample had been taken from one tin only. It is, however, admitted that all the tins were of the same brand and formed part of one consignment. In circumstances of this sort I do not think that it would be reasonable to expect the Sanitary Inspector to take a sample from each tin and, in view of the report received by the Magistrate as a result of the analysis, I am of opinion that it was quite proper for him to make the forfeiture order with regard to the whole of the consignment.

The result, therefore, is that the Rule is made absolute, with regard to the conviction of the petitioner under s. 6 read with s. 21 of the Bengal Food Adulteration Act of 1919. The conviction is set aside and the fine, if already paid, will be refunded. The order of forfeiture under s. 13 (2) of the Act will stand.

*Rule absolute in part.*

A. C. R. C.