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Dua, J.

not based on the acquisition by sale. And then the argument also ignores that under clause (iv), it is further incumbent on the appellant to establish that the purchase relied upon is either recorded in the *jamabandi* or is supported by a valid deed. Neither of these two conditions are satisfied by the appellants, on the contrary the sale-deed was admittedly set aside by a competent Court.

On the view that I have taken of the matter, it is wholly unnecessary to refer to the decision of Harbans Singh, J. in *Kacharu, etc.* v. *Natha,* R.S.A. 384 of 1959 on which reliance has been placed for the contention that the entry regarding "*shamilat-deh*" in the revenue records must in order to be effective be shown to be correct and in accordance with actual facts.

Before parting with the case, it may be mentioned that the interpretation placed on the provisions of the Punjab Village Common Lands (Regulation) Act appears to me clearly to effectuate the legislative purpose and object of promoting the institution of Panchayats—a purpose intended to be served by this enactment.

For the foregoing reasons this appeal fails and is hereby dismissed. The parties are, however, left to bear their own costs in this appeal.

Tek Chand, J.

Tek Chand, J.—I agree.

B.R.T.

REVISIONAL CRIMINAL

Before D. Falshaw, C.J.

BHAGWAN DASS,—*Petitioner.*

versus

THE STATE,—*Respondent.*

Criminal Revision No. 123-D of 1961.

1962

Jan., 24th

Prevention of Food Adulteration Act (XXXVII of 1954)—Section 7—Employee of the manufacturer—Whether

guilty of the offence—Section 11—Sample—How to be taken.

Held, that the words 'No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute' in section 7 of the Prevention of Food Adulteration Act, 1954, indicate that the person who is guilty of an offence in case any of the provisions of the section are contravened is the principal and not his employee. The employee could only be convicted if it were shown that he was selling the aerated waters on his own behalf or that he was aware of the wrong labelling of the bottles, and even in the latter case he could only have been convicted if charged with abetment of the offence.

Held, that if the sample of food is taken from a bulk supply, the quantity taken must be sufficient to be divided into three sufficient portions for the proper quantity to be sent to the Public Analyst in accordance with the provisions of rule 22 which contains a table of the approximate quantity of various substances to be sent to the Public Analyst or the Director of the Central Food Laboratory. The sample to be given to the accused is solely for his own protection, and obviously is intended to enable him to have it analysed privately for the purpose of producing evidence at the trial, if necessary, to contradict the report of the Public Analyst, while the third sample is kept in reserve for the matter to be decided by the Director of the Central Food Laboratory in case either party in prosecution is not satisfied with the report of the Public Analyst. In these circumstances it is of the utmost importance to ensure that the three samples are of uniform quality. Otherwise the whole value of the check and counter-check is completely lost.

Petition for revision of the order of S. Jasmer Singh, Additional Sessions Judge, Delhi, dated the 4th November, 1960, modifying that of Shri S. K. Tyagi, Magistrate, Ist Class, Delhi, dated the 6th January, 1960, convicting the petitioner.

P. S. SAFEER, ADVOCATE, for the Appellant.

K. K. RAIZADA AND BISHAMBAR DAYAL, ADVOCATES, for the Respondents.

ORDER

Falshaw, C. J. FALSHAW, C.J.—This revision petition has been filed by Bhagwan Das, who was convicted by a Magistrate, under section 7(ii)/16 of the Prevention of Food Adulteration Act and sentenced to pay a fine of Rs. 2,000 or in default one year's rigorous imprisonment, the sentence being reduced in appeal to a fine of Rs. 700 or in default 3½ months' imprisonment.

The facts in this case are that on the 9th of May, 1958, G. P. Baweja, a Food Inspector of the Delhi Corporation, visited the shop of J. B. Bottling Co., on Desh Bandhu Gupta Road, at Delhi and purchased from the petitioner three bottles of the aerated water called 'Rose', which were treated as the three samples required to be taken under the Act, one being sent for analysis, one kept in reserve and one left with the accused.

The report of the Public Analyst regarding the contents of the bottle sent to him for analysis reads "Labelled J. B., but no declaration for saccharine. Fluorescence test for saccharine-positive." This was held to constitute an offence under the Act under section 2 (ix)(k) which deals with misbranding, and requires articles of food to be labelled in accordance with the rules, and rule 47 provides that 'saccharine may be added to any food if the container of such food is labelled with an Adhesive declaratory label, which shall be in the form given below.'

Although many points were contested in the Courts below the three main points urged in the revision petition were (i) that there could be no conviction based on such a vague and unsatisfactory report by the Public Analyst ; (ii) that the case of an employee is not covered by the opening words of section 7 "No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute—" and (iii) that the sample taken was not taken in accordance with the provisions of section 11(1).

Regarding first of these points it may be stated that it is not disputed that the firm of which the petitioner is an employee makes and distributes aerated waters in some of which saccharine is used as a sweetening element, while in others only some form of sugar and not saccharine is used. It is contended that the report of the Public Analyst is wholly vague and unsatisfactory as it does not give any indication whatever of the quantity of saccharine detected in the contents of the sample and reliance was placed on a decision of J. L. Kapur, J., and myself in *The State* v. *Shanti Parkash* (1), in which we held that in all the cases where food is analysed, the Analyst should indicate what is the extent of impurity and what the impurity is and merely stating that it is highly adulterated with extraneous vegetable matter is not sufficient for the purpose of determining the question of guilt or otherwise of the accused person. The substance in that case was turmeric. On the other hand it is contended that that case dealt with a wholly different matter, where the essence of the offence was adulteration with extraneous matter, whereas in the present case the essence of the offence is the omission to indicate on label on the bottle that saccharine was used. It is contended that if any saccharine at all was detected in the contents of the bottle, an offence was thereby committed, however, small the quantity was, as long as it was not indicated on a label that the contents included saccharine. On the whole I am inclined to uphold the contention of the respondent in this matter, though at the same time I must observe that it would be better if the report of the Analyst contained some indication of the quantity of saccharine in such cases, since if the quantity of saccharine indicated by the test is only slight, its presence may be due to an accident in the case of a firm which manufactures aerated waters some of which are sweetened with saccharine and others sweetened with sugar, it being possible for traces of saccharine to remain in a bottle which had not

(1) A.I.R. 1957 Punj. 56.

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properly been washed before being filled with liquid sweetened with sugar.

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There appears, however, to be more force in the other two points urged on behalf of the petitioner. *Prima facie* the words 'No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute' appear to indicate that the person who is guilty of an offence in case any of the provisions of the section are contravened is the principal, which in this case would be the company which employs the petitioner and manufactures and sells aerated waters. There is undoubtedly some conflict of opinion on this point. In *re*: *S. Moses and another* (2), Panchapakesa Ayyar and Basheer Ahmad Sayeed, JJ., after considering the case-law on the point held that sections 7 and 16 of the Act will not primarily apply to the servant, the secondary seller of adulterated food, unless he sold it for his own benefit, and that the servant selling the food on behalf of his master can only be made liable for aid or abetment of the offence on proof of guilty knowledge express or implied. It seems that in that case both the employer and the servant were prosecuted and the servant was acquitted in revision in the absence of any proof of guilty knowledge.

Similarly in *State* v. *Kuncha and others* (3), T. K. Joseph and Velu Pillai, JJ., reached the conclusion summed up in the head-note as follows:—

> "The expression 'himself or by any person on his behalf' in sections 7 and 16(1) of the Act must imply that the person contemplated is the master or the principal and not the servant. When a servant effects a sale, he does so almost invariably on his master's behalf and seldom, if ever, himself sells. If it was intended to prohibit a servant from

(2) A.I.R. 1959 Mad. 185.
(3) A.I.R. 1960 Kerala 13.

effecting a sale of adulterated food on behalf of his master and to render him liable therefor, it was only necessary for the Legislature to insert the words 'or on behalf of another' after the words 'by any person on his behalf' occurring in both sections. On a plain reading, it is quite clear, that it is only the person who can be deemed to sell himself, or by another on his behalf, who is interdicted from selling by section 7 and who is made punishable by section 16(1) of the Act. No absolute liability can be fastended on a servant under section 16(1) read with section 7 of the Act."

On the other hand reliance was placed on the decision of Rankin, C.J., and Patterson, J., in *Peary Mohan Saha* v. *Harendra Nath Roy* (4), in which it was held that section 6(1) of the Bengal Food Adulteration Act of 1919 applies not only to master or owner of the adulterated article sold, but also the servant or agent who sells such article. It appears, however, that the material words of the Act were not quite identical since they read '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.....'. In interpreting the present Act, K. S. Hegde and Ahmed Ali Khan, JJ, in *State of Mysore* v. *Udipi Co-operative Milk Society, Ltd., and another* (5), held a servant to be liable in a case where the servant was prosecuted along with the employer, but in doing so they brought the case of the servant under the word 'distribute' contained in the opening words of section 7, and with the utmost respect, I do not consider that this is correct. In my opinion the word 'distribute' is not to be treated in any way differently from the words 'manufacture for sale, or store, sell' and the material words which have to be interpreted on this point are simply the

(4) A.I.R 1930 Cal. 295.
5) A.I.R. 1960 Mysore 80.

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words 'no person shall himself or by any person on his behalf'.

Falshaw, C. J.

On the whole I am of the opinion that a correct view has been expressed by the learned Judges of the Madras and Kerala High Courts and therefore hold that the present petitioner could only have been convicted either if it were shown that he was selling the aerated waters on his own behalf or that he was aware of the wrong labelling of the bottles, and even in the latter case he could only have been convicted if charged with abetment of the offence.

The last point raised is one on which no authority appears to exist. Section 11 deals with the procedure to be followed by Food Inspectors and the relevant portions read—

> "(1) When a Food Inspector takes a sample of food for analysis, he shall,—
>
> (a).....
>
> (b) except in special cases provided by rules under this Act, separate the sample then and there into three parts and mark and seal or fasten up each part in such a manner as its nature permits; and
>
> (c) (i) deliver one of the parts to the person from whom the sample has been taken;
>
> (ii) send another part for analysis to the Public Analyst; and
>
> (iii) retain the third part for production in case any legal proceedings are taken or for analysis by the Director of Central Food Laboratory, under sub-section (2) of section 13, as the case may be."

Sub-section (2) of section 13 provides that in case of a prosecution under the Act, either the accused or the complainant may apply to the Court for sending of the third sample to the

Director of the Central Food Laboratory, and sub-section (3), provides that the certificate issued by the Director, under sub-section (2) shall supersede the report given by the Public Analyst, under sub-section (1). In other words, in case either party has recourse to the analysis of the third sample by the Director of the Central Food Laboratory, the analytical report thus received will be final.

Now in the present case, as I have said above, the Food Inspector purchased three separate bottles of aerated water, each said to contain 12 oz. and apparently one of these bottles was sent to the Public Analyst, the other two being dealt with according to the provisions of section 11(1). It appears to me that this is clearly an improper and illegal manner of obtaining the sample since obviously the contents of three separate and distinct bottles may not be uniform. The whole idea of prescribing this elaborate method of taking and dividing up the sample is to have a check and counter-check, on the report of the Public Analyst, and the clear intention is that if the sample of food taken is from a bulk supply, the quantity taken must be sufficient to be divided into three sufficient portions, for the proper quantity to be sent to the Public Analyst in accordance with the provisions of rule 22 which contains a table of the approximate quantity of various substances to be sent to the Public Analyst, or the Director of the Central Food Laboratory. The sample to be given to the accused is solely for his own protection, and obviously is intended to enable him to have it analysed privately for the purpose of producing evidence at the trial, if necessary, to contradict the report of the Public Analyst, while the third sample is kept in reserve for the matter to be decided by the Director of the Central Food Laboratory, in case either party in prosecution is not satisfied with the report of the Public Analyst.

In these circumstances it is of the utmost importance, to ensure that the three samples are of

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uniform quality. Otherwise the whole value of the check and counter-check is completely lost.

It is not in dispute that the rules framed under the Act, do not provide for any special cases as mentioned in section 11(1)(b), but this is clearly an omission which requires to be rectified without delay. Obviously it is necessary to make some provisions for dealing with articles of food which are packaged in quantities too small to be divided into three parts so that each part will provide the minimum required for analysis in accordance with the provisions of rule 22. In this table aerated water appears at No. 15 and the approximate quantity to be supplied for analysis is there stated to be 20 oz. This figure was apparently substituted for the figure 12 ozs. by a notification, dated the 9th of December, 1958. This rule appears to be almost impossible to comply with properly as regards aerated waters which are not ordinarily sold in bottles containing more than 12 ozs. each and often as in the case of Coca Cola, less and thus the minimum requirement amounts to the contents of more than one ordinary bottle. The sooner this omission in the rules is remedied the better it will be for all concerned.

As matters stand I am of the opinion that the prosecution must fail in this case because the sample was not taken in accordance with the provisions of section 11(1). The result is that I accept the revision petition and acquit the petitioner whose fine, if paid, is to be refunded.

B.R.T.

APPELLATE CIVIL

Before D. Falshaw, C.J.

CHARAN DASS,—*Appellant.*

versus

MOHAN LAL GOELA,—*Respondent.*

Execution First Appeal No. 69-D of 1959.

1962

Jan., 25th

Delhi and Ajmer Rent Control Act (XXXVIII of 1952)—Section 33—Disputes between landlords and tenants under the Act—Whether can be referred to arbitration.