MURLIDHAR MEGHRAJ LOYA ETC.

v.

STATE OF MAHARASHTRA ETC.

July 19, 1976

[V. R. KRISHNA IYER AND P. K. GOSWAMI, JJ.]

Prevention of Food Adulteration Art, 1954—*S.* 16, *proviso—Scope of. Accused pleaded guilty—If lesser sentence could be awarded.*

An analysis of a sample of *khurasani* oil from the appellants' mill collected by the Food Inspector showed 30% groundnut oil content amounting to contravention of r. 44(a) of the Rules which prohibits sale of a mixture of two or more edible oils as an edible oil. The appellants were charged with an offence under s. 2(i) of the Act read with ss. 7 and 16(1)(a) and r. 44(a). The appellants having pleaded guilty, each of them was sentenced to pay a small fine. On revision, the High Court converted the offence into one under s. 2(i)(a) read with s. 16(1) and enhanced the sentence to a minimum of six months imprisonment and fine of rupees one thousand on the ground that the offence committed by them fell within s. 16(1)(a) and did not fall within the proviso to that section.

On appeal to this Court it was contended that even assuming s. 2(i)(a) is all comprehensive it must be read as the genus and thereafter sub-clauses (b) to (e) fall under two broad categories namely adulteration with injurious substances and adulteration with innocent additions or the substance sold merely violates a standard or degree of purity prescribed and in this case the offence would fall under the non-injurious type covered by s. 2(i)(l).

Dismissing the appeal,

HELD : 1. (a) Sub-clause (a) of s. 2(1) has a wide sweep. There causes be any doubt that if the article asked for is 100% *khurasani* oil and the article sold is 70% *khurasani* oil and 30% groundnut oil, the supply 'is not of the nature, substance and quality which it purports or is represented to be'. [4 E]

(b) It is not possible to invoke the proviso to s. 16(1) and the High Court is legally right in its conversion of the provision for conviction and enhancement of the sentence. Though s. 2(i)(a) is read speciously and if the facts alleged are accommodated by the definition of adulteration under that sub-clause, s. 16(l) is attracted. The first proviso to s. 16(l) will be attracted if and only if s. 2(i)(1) applies. [4 F-G]

In the present case the facts disclose that the offence is both under s. 2(i)(a) and under s. 7(v) for breach of r. 44(e). Section 2(i)(l) is repelled on the facts and this is not a case where either s. 2(i)(1) or r. A17.12 applies.

2.(a) The proviso cannot apply in extenuation and the High Court was right in convicting the appellants. Judicial compassion can play upon the situation only if the offence is under s. 16(1)(a)(i) and the adulteration is one under s. 2(i)(l). The proviso applies if the offence is under cl. (a)(ii), that is to say, the offence is not one of adulteration but is made up of a contravention of the other provisions of the Act or of any rule made thereunder. Since in this case the offence falls under s. 2(i)(a) proviso (ii) has no application. [5 E-F]

(b) The judicial jurisdiction to soften the sentence arises if the offence of adulteration falls only under s. 2(i)(l). This case does not fall under this sub-clause. [5 G]

[The Court drew attention to (a) the propriety of accepting by the prosecution and the Courts the accused's plea of guilty of a lesser offence in dangerous economic crimes and food offences and (b) in view of the fact that a substantial number of cases of the kind were withdrawn by the Government because

A invariably groundnut oil is observed in *Khurasani* oil, the Government may consider whether in the circumstances of this case it is not a matter for exercise of its commutation powers].

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 314-315 of 1976.

B Appeals by special leave from the Judgment and order dated 5-4-1975 of the Bombay High Court in Criminal Revision Appln. No. 1115/73.

M. C. Bhandare, (Mrs.) Sunanda Bhandare, M. S. Narasimhan, A. K. Mathur and *A. K. Sharma,* for the Appellants.

C *M. N. Phadke* and *M. N. Shroff,* for the Respondents.

The Judgment of the Court was delivered by

KRISHNA IYER, J.—Judicial fluctuations in sentencing and societal seriousness in punishing have combined to persuade Parliament to prescribe inflexible, judge-proof, sentencing minima in the Food Adulteration law. This deprivatory punitive strategy sometimes inflicts D harsher-than-deserved compulsory imprisonment on lighter offenders, the situation being beyond judicial discretion even if prosecution and accused consent to an ameliorative course. The two appeals, by special leave, partially illustrate this proposition. Khurasani oil is an edible oil extracted by crushing oil seeds in mills. Groundnut oil, also edible, is expressed likewise. A firm by name Balmukand Hiralal Loya & Co., in a minor town in Maharashtra, E runs an oil mill where Khurasani oil and groundnut oil are manufactured by the firm. Sometimes they crush oil seeds for others on hire who pay milling charges.

The appellants in Criminal Appeal No. 314 are the managing partner and the manager of the mill and the appellant in Criminal F Appeal No. 315 is the operator of the expeller in the mill who actually sold the offending commodity. On February 16, 1972 the Food Inspector of Bhagur Municipality walked into the sales section of the Mill, asked for 375 grams of khurasani oil from accused no. 8, appellant in Criminal Appeal No. 315. The quantity required was supplied and, thereafter, the Food Inspector went through the statutory exercises preparatory to an analysis by the Public Analyst. After G receiving the report of the Analyst to the effect that the sample of khurasani oil sent for analysis contained 30% of groundnut oil which amounted to a contravention of rule 44(e) of the Prevention of Food Adulteration Rules (for short, the rules), a complaint was lodged for selling adulterated food within the meaning of s. 2(i) of the Prevention of Food Adulteration Act (hereinafter called the Act) read with ss. 7(1) and 16 (1)(a) and r.44(e). Evidence H was led to make out a prima facie case. The accused were questioned under s. 342 Cr.P.C., and the appellants confidently pleaded guilty to the charge whereupon the trial Magistrate, perhaps agreeably to expectations, sentenced them each to a piffling fine of

Rs. 250. Although the whole process in court is strongly suggestive of a tripartite consensual arrangement and reminds one of plea-bargaining procedures in the United States of America, the State Government appears to have taken a serious view of the matter, outraged as it was by the Magistrate's adroit avoidance of those penal provisions which obligate him to inflict a minimum prison sentence, viz., s. 2(i)(a) and s. 16(1) with a view to apply the proviso to s. 16(1). This is, at best, a conjecture about the Magistrate and might as well be imputed to the prosecutor and the food inspector. However, the State filed a revision to the High Court against the illegal and ultra-lenient impost. The revisional Judge converted the offence into one under s. 2(i)(a) read with s. 16(1) and enhanced the sentence to the minimum of six months and Rs. 1,000 by way of fine on the ground that the offence committed by the accused squarely fell within s. 16(1)(a) and did not fall within the proviso of that provision which vests a guarded discretion in the Court to soften the sentence to special cases. The appellants, shocked by this drastic reversal of fortune at the High Court's hands, have sought restoration of the Magistrate's conviction and sentence. If this aggravated conviction is correct, the enhanced punishment is inescapable.

The circumstances leading up to and constituting the offence have been briefly set out already and the divergence between the trial court and the High Court turns on the legal inferance to be drawn from the factual matrix. Has there been adulteration of food, in the sense imputed to that expression by s. 2(i)(a)? Assuming it falls under s. 2(i)(1) of the definition, does that factor exclude it from s. 2(i)(a)? Even if s. 2(i)(a) does apply, is the benigrant proviso to s. 16(1) attracted on the score that the crime in this case constitutes a violation of r. 44(e) prescribing minimum standards? These questions are crucial to the submission made by Shri Bhandare for the appellants, his argument being that the scheme of s.2 is to erect separate compartments for the many types of adulteration so that if a food article is adulterated within the meaning of s.2(i)(1) more appropriately, it falls outside the ambit of s.2(i)(a). Otherwise, he argues, there is no point in itemising the various sub-divisions even though he concedes that marginally there may be overlapping among the sub-clauses. He further contends that even assuming that s.2(i)(a) is all-comprehensive, it must be read as the genus and thereafter sub-clauses (b) to (l) fall under two broad categories, viz., adulteration where injurious substances have been admixed and adulteration where innocent additions have been made or the substances sold merely violates a standard or degree of purity prescribed. If there were force in this submission, the culpa, according to counsel, could reasonably fall under the non-injurious type of adulteration covered by s.2(i)(l). The statute, says Shri Bhandare, sensibly dichotomises the sentence and invests a discretion in the court in the second category to reduce the sentence below the minimum stipulated, if special reasons exist for such clemency. Of course, counsel concedes that if the adulteration is of the injurious brand, judicial sympathy is statutorily supplanted.

A This, he reasons, fits into and explains the scheme of s.16 which is a penal provision with dual limbs.

We will examine the validity of this interpretative dissection. Indeed, if this somewhat strained argument fails, everything fails because, otherwise, the appellants have glibly convicted themselves, B out of their own mouth, by an unsually obliging 'yes' to every material question under s.342 Cr. P. Code. Thus, on the merits, the sole question is about the proper offence made out on the facts admitted. This, in turn, depends on the acceptability of the interpretative dexterity displayed by counsel for the appellants.

It is trite that the social mission of Food Laws should inform C the interpretative process so that the legal blow may fall on every adulterator. Any narrow and pedantic, literal and lexical construction likely to leave loopholes for this dangerous criminal tribe to sneak out of the meshes of the law should be discouraged. For the new criminal jurisprudence must depart from the old canons, which make indulgent presumptions and favoured constructions benefiting accused persons and defeating criminal statutes calculated to protect D the public health and the nation's wealth. This humanist approach and cute construction persuades us to reject Shri Bhandare's analysis of s.2(1). Sub-clause (a) of s.2(i) has a wide sweep and loyalty to the intendment of the statute forbids truncating its ambit. There cannot be any doubt that if the article asked for is 100% khurasani oil and the article sold is 70% khurasani oil and 30% groundnut oil, the supply 'is not of the nature, substance or quality which it E purports or is represented to be.' The suggestion that there is no formal evidence of representation or prejudice as stated in the section does not merit consideration being a quibble over a trifle.

If we read s.2(i)(a) spaciously and if the facts alleged are accommodated by the definition of 'adulteration' under that sub-clause, s.16(1) is attracted. The first proviso to s.16(1) will be attracted F if and only if s.2(i)(1) applies. In the present case the facts disclose that the offence is both under s.2(i)(a) and under s. 7(v) for breach of r.44(e). Section 2(i)(1) is repelled on the facts and it is obvious that this is not a case where either s.2(i)(1) or r.A 17.12 urged by Shri Bhandare applies. In this view it is not possible to invoke the amelioratory proviso to s.16(1) and the High Court is legally right in its conversion of the provision for conviction G and enhancement of the sentence.

We unhesitatingly hold that if s.2(i)(a) adequately fits in, adulteration under that provision must be found.

Once this position is made plain, the penalty that the appellants must suffer is fool-proof. Section 16 lays down the penalties and H classifies them. We are particularly concerned with s.16(1) of the Act which itself clubs together many categories out of which we have to pick out only two for the purposes of this case, viz., (i) sale of any article of food which is adulterated; and (ii) sale of any article of

food other than one which is adulterated—'in contravention of any of the provisions of this Act or of any rule made thereunder'. Ordinarily, both these clauses of offences are punishable with the minimum prescribed 'of not less than six months' imprisonment, together with fine which shall not be less than Rs. 1,000/-'. However, there is a kindly proviso which confers on the court a power to be exercised for any adequate and special reasons to be mentioned in the judgment whereby a sentence of imprisonment for a lesser term than six months or of fine smaller than Rs. 1,000/- or of both may be imposed, but this more moderate punitive net is conditioned by the proviso itself. We may read the proviso :

"Provided that—

(i) if the offence is under sub-clause (i) of clause (a) and is with respect to an article of food which is adulterated under sub-clause (1) of clause (i) of sec. 2 or misbranded under sub-clause (k) of clause (ix) of that section; or

(ii) if the offence is under sub-clause (ii) of clause (a).

the court may for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a terms of less than six months or of fine of less than one thousand rupees or of both imprisonment for a term of less than six months and fine of less than one thousand rupees."

Judicial compassion can play upon the situation only if the offence is under sub-cl. (i) of cl. (a) of s.16(1) and the adulteration is one which falls under sub-cl. (1) of cl. (i) of s.2. Secondly, the proviso also applies if the offence is under sub-cl. (ii) of cl. (a), that is to say, the offence is not one of adulteration but is made up of a contravention of any of the other provisions of the Act or of any rule made thereunder. In the present case we have already found that the accused is guilty of an offence of adulteration of food under s.2(i)(a). Therefore, proviso (ii) is out. Proviso (i) will be attracted, according to Shri Bhandare, if s.2(i)(1) applies to the species of adulteration committed. In our view, the only sensible understanding of proviso (i) is that judicial jurisdiction to soften the sentence arises if the offence of adulteration falls only under sub-cl. (1) of cl. (i) of s.2 and we have held that it does not. We cannot but deplore the clumsy draftsmanship displayed in a statute which affects the common man in his daily bread. It is unfortunate that easy comprehensibility and simplicity for the laity are discarded sometimes through oversophisticated scholarship in the art of drawing up legislative bills. It cannot be overstressed that a new orientation for drafting methodology adopting directness of language and avoiding involved reference and obscurity is overdue. Be that as it may, in the present case s.2(i)(a) applies and s.16(1)(a) has been breached. Therefore the proviso cannot be applied in extenuation and the conviction of the High Court has to be upheld.

A The possibility of long argument in a case where the accused has pleaded guilty arises because the provision lends itself to adroit exercises. The court has to look at the interpretative problem in the social setting of the statute, visualising the rough and tumble of the market place, the finesse with which clever victuallers fob off adulterated edibles and gullible buyers goofily fall victim. Viewed this way, chasing recondite semantics or niceties of classification or chopping of logic B has no scope for play.

The appeals must fail, without more. But we have to take note of a few circumstances of significance brought to our notice by counsel for the appellant with which the State's counsel could not express serious disagreement, although he made no concessions.

C We now proceed to refer to these factors which do not deflect us from confirming the conviction. The curtain has been drawn thereon.

To begin with, we are free to confess to a hunch that the appellants had hastened with their pleas of guilty hopefully, induced by an informal, tripartite understanding of light sentence in lieu of *nolo contendere* stance. Many economic offenders resort to practices the D American call 'plea bargaining', 'plea negotiation', 'trading out' and 'compromise in criminal cases' and the trial magistrate drowned by a docket burden nods assent to the *sub rosa* ante-room settlement. The business-man culprit, confronted by a sure prospect of the agony and ignominy of tenancy of a prison cell, 'trades out' of the situation, the bargain being a plea of guilt, coupled with a promise of 'no jail'. These advance arrangements please everyone E except the distant victim, the silent society. The prosecutor is relieved of the long process of proof, legal technicalities and long arguments, punctuated by revisional excursions to higher courts, the court sighs relief that its ordeal, surrounded by a crowd of papers and persons, is avoided by one case less and the accused is happy that even if legalistic battles might have held out some astrological hope of abstract acquittal in the expensive hierarchy of the justice-system he is free F early in the day to pursue his old professions. It is idle to speculate on the virtue of negotiated settlements of criminal cases, as obtains in the United States but in our jurisdiction, especially in the area of dangerous economic crimes and food offences, this practice intrudes on society's interests by opposing society's decision expressed through pre-determined legislative fixation of minimum sentences and by subtly subverting the mandate of the law. The jurists across the Atlantic G partly condemn the bad odour of purchased pleas of guilt and partly justify it philosophically as a sentence concession to a defendant who has, by his plea 'aided in ensuring the prompt and certain application of correctional measures to him',

> "In civil cases we find compromises actually encouraged as a more satisfactory method of settling disputes between H individuals than an actual trial. However, if the dispute ... finds itself in the field of criminal law, "Law Enforcement" repudiates the idea of compromise as immoral, or at best a necessary evil. The "State" can never compromise. It must

enforce the law." Therefore open methods of compromise are impossible." A

(Arnold, Law Enforcement—An Attempt at Social Dissection, 42 Yale L.J. 1, 19 (1932).

We have no sanction, except surreptitious practice in some courts, for 'trading out' of punitive severity although this aspect of the criminal system deserves Indian jurists' consideration. The sole relevance of this digression in this judgment is to highlight the fact that the appellants perhaps acted on an expectation which came to pass at the trial level but was reversed at the appellate level and this touch of 'immorality' in the harsh morality of the punishment is a factor counsel wants us to take note of. But we can do nothing about it when the minimum is set by the statute, except to state that the State must do its duty by justice to the citizen and relieve over-worked courts by more judicial agencies and streamlined procedures instead of leaving the uninformed public blindly to censure delayed disposals. B C

One real reason for long litigation is inaction or ineffective action of the legislature. All knowledgeable law-men may concede that the procedures in municipal and higher courts are ossified to the point, priced to the level, and slow to the degree where they cannot flexibly assist disputants in early resolution of their everyday disputes. This, we hope, will change and the source of the evil eliminated. D

The next draft on the court's commisseration, made by counsel, is based on the milling operation realities surrounding the commission of the crime. It is asserted by the appellant's advocate—and not seriously controverted by his opponent that the small town milling practice is multi-purpose, in the sense that whoever brings any edible oil-seed for extraction of oil gets it done so that ground-nut crushing may be followed by Khurasani seed or some other oil seed may chance to take turns by rotation. Even the miller's own oil seeds may be sometimes khurasani, at other times, some other. This process may result in the residue of one getting mixed up with the next. May be, innocently some groundnut oil, in the present case, got into the khurasani oil by the same expeller handling both. Even so, the presence of 30% groundnut oil is, perhaps, too high an admixture to be explained away this easy way. While we appreciate the situation we must adhere to the provision. Where the law lays down an absolute liability, *alibis* cancelling *mens rea* are out of bounds. E F

The last plea, urged *ex mesericordium,* ameliorative in appeal and unavailing against conviction, is that actually groundnut oil costs more and so profit motive stands negatived, that the mixture of these edible oils, though technically forbidden, is in fact non-injurious and a terrifying term of six months' rigorous imprisonment is unjust. The facts are probably right but *ex necessitae legis* the court has to inflict the heavy minimum sentence. While in stray cases a jail term even in a trivial food offence may look harsh, Parliament, in its wider wisdom, and having regard to social defence in a sensitive area standardised the sentence by insisting on a minimum, ignoring exceptional G H

cases where leniency is needed. Individual hardships deserving of lighter sentence are sometimes exploited by counsel's persuasion and judicial horror to secure for democrate offenders milder punishments. It is worthy of note though that in the present case the mixing of the two oils is a motiveless act. May be. And the circumstances abovementioned add up to a plea for paring down the sentence and Shri Bhandare, for the appellants, sought to wheedle us into lending credence to these circumstances and bring down the offence to a lesser one. Logically and sociologically and, above all, legally, such a course is impermissible. Nevertheless, there is one circumstance which has impressed us not to the extent of undoing the sentence imposed by the High Court but of drawing the attention of the top executive to what may justly be done by way of remission of sentence. The appellants have sworn an affidavit in this Court stating that khurasani oil is the same as nigar-seed oil. This is backed by a certificate from the Maharashtra Chamber of Commerce and is evidently correct. What is more important is that the appellants, when surprised by a modification of their sentence to a heavier one for what they thought was undeserving, moved in the matter of cases generally of adulteration of khurasani oil with groundnut oil. They drew the attention of the authorities to punishment of innocents and it appears that the State Government was satisfied about this grievance and has since withdrawn a substantial number of cases against dealers of khurasani oil whose sales were contaminated with presence of groundnut oil. The affidavit on behalf of the appellants states :

> "I further say that various cases filed by the respondents against the dealers of khurasani oil are now being withdrawn as invariably groundnut oil is observed in khurasani oil. I crave leave to refer to and rely on the Journal of Maharashtra Chamber Patrika dated 21st September, 1975, when produced."

Probably, had the present case survived till the government took action, it might have been withdrawn. Moreover, there are circumstances suggesting of innocent admixture although it is beyond us to pronounce definitely on this aspect and it is not for us to enquire into the matter when s.16(1) is clear and the sentence is legal. Nevertheless, it may be appropriate for government to consider whether in the circumstances of this case—and in the light of the observations made by us in this judgment—it is not a matter for exercise of commutation powers. Sentencing policy has a punitive and a correctional role and we are sure that what is the meed of the appellants will be meted out to them if they deserve any activist administrative empathy at all.

We accordingly dismiss the appeals.

P.B.R. *Appeals dismissed.*