

1960
 —
Haji Aziz
 v.
Commissioner of
Income Tax
 —
Kapur J.

that a penalty paid for an infraction of the law, even though it may involve no personal liability in the sense of a fine imposed for an offence committed, is wholly and exclusively laid for the business in the sense as those words are used in the cases that have been discussed above. In our opinion, no expense which is paid by way of penalty for a breach of the law can be said to be an amount wholly and exclusively laid for the purpose of the business. The distinction sought to be drawn between a personal liability and a liability of the kind now before us is not sustainable because anything done which is an infraction of the law and is visited with a penalty cannot on grounds of public policy be said to be a commercial expense for the purpose of a business or a disbursement made for the purposes of earning the profits of such business.

In our opinion the High Court rightly held that the amount claimed was not deductible and we therefore dismiss this appeal with costs.

Appeal dismissed.

1960
 —
 November 24.

M/S. MADAN MOHAN DAMMA MAL LTD.
 AND ANR.

v.

THE STATE OF WEST BENGAL AND ANR.

(JAFER IMAM, A. K. SARKAR and RAGHUBAR
 DAYAL, JJ.)

Food Adulteration—Storing adulterated oil for sale—Presumption, rebuttal of—Calcutta Municipal Act, 1951 (W.B. XXXIII of 1951), s. 462.

The first appellant No. 1 sent a consignment of mustard oil in a tank wagon from Firozabad, U. P. to itself at Calcutta where it took delivery of the wagon from the railway authorities. The Food Inspector took samples of the oil from the wagon which on analysis were found to be adulterated. The appellants were prosecuted under s. 462 of the Calcutta Municipal Act, 1951, for storing adulterated mustard oil for sale. The

1960

—
*M/s. Madan
 Mohan Damma
 Mal Ltd.,
 & Another*
 v.

*The State of West
 Bengal & Another*

appellants contended that the presumption under sub-s. (4) of s. 462 that the mustard oil was stored for sale was rebutted in view of certain arrangements between the U. P. Oil Millers Association and the Deputy Commissioner of Police and of a letter written by the appellants to the Association asking that a sample may be taken and tested so that the appellants "may take the delivery of oil only if it is found pure on analysis."

Held, that this was not sufficient to rebut the presumption that the oil was stored for sale. The letter did not say that the oil would not be sold; it was not stated as to what would be done if the oil was found to be impure. There was no arrangement between the Association and the Corporation which was the sole authority to take action. The arrangement and the letter were a device to make detection difficult.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 118 of 1959.

Appeal by special leave from the judgment and order dated July 2, 1957, of the Calcutta High Court in Criminal Appeal No. 101 of 1956 arising out of the judgment and order dated January 16, 1956, of the Second Court of the Municipal Magistrate, Calcutta, in case No. 208B of 1955.

C. B. Aggarwala, B. B. Tawakley and B. P. Maheshwari, for the appellant.

Nalin Chandra Bannerjee, Sunil K. Basu, S. N. Mukherjee for *P. K. Bose*, for the respondent No. 2.

1960. November 24. The Judgment of the Court was delivered by

RAGHUBAR DAYAL, J.—This is an appeal by special leave against the order of the Calcutta High Court affirming the conviction of the appellants Messrs. Madan Mohan Damma Mal Ltd., and Om Prokash Manglik, its Manager, under s. 462 of the Calcutta Municipal Act, 1951 (W. B. XXXIII of 1951) hereinafter called the Act.

*Raghubar
 Dayal, J.*

The facts leading to this appeal are that Messrs. Madan Mohan Damma Mal Ltd., (hereinafter called appellant No. 1) sent a consignment of mustard oil, about 499 maunds in weight, from Firozabad, the place of manufacture, to itself, at Calcutta, on December 25, 1954, in tank wagon No. 75612. This wagon was placed at the Pathuriaghat siding at Calcutta at

1960

—
*M/s. Madan
Mohan Damma
Mal Ltd.,
& Another*
v.
*The State of West
Bengal & Another*

—
*Raghubar
Dayal, J.*

about 8.45 a.m., on January 3, 1955. Dr. Nityananda Bagui, Food Inspector of the Calcutta Corporation, accompanied by certain police officers, went to that siding and took three samples of mustard oil contained in this wagon, after arranging with Om Prokash Manglik, appellant No. 2, who was found near the wagon, the purchase of 12 ounces of oil for annas eight. He took the sample of oil in three phials. They were properly sealed. One of them was given to appellant No. 2. The other two were kept by Dr. Bagui. He sent one of them to the Public Analyst for examination, the same day. Ashit Ranjan Sen, the Public Analyst, examined the oil contained in that phial on January 3, 1955, but could not come to any positive opinion about its purity. Dr. Bagui, however, seized the tank wagon that evening, sealed it with the Corporation's seal and left it in the custody of appellant No. 2. The oil in the tank was allowed to be removed to the godown of the appellants on January 6, 1955. The lock of the godown was then sealed with the seal of the Corporation. Mr. Sen reported on January 4, 1955, that the oil was adulterated. He sent a detailed report about the result of the examination on January 24, 1955. On receipt of the report about the mustard oil being adulterated, Dr. Bagui filed a complaint against the appellants on February 4, 1955, with respect to their selling and keeping for sale mustard oil, a sample of which was found on analysis to be mustard oil which was adulterated with groundnut oil.

During the course of the trial, the trial Court, on an application on behalf of the appellants, ordered the despatch of the third sample phial of the oil in the custody of the Corporation's Health Officer, to the Director of Health Services, Government of West Bengal, for analysis and report. This sample was analysed by Dulal Chandra Dey, Court Witness no. 1, and found to be adulterated with groundnut oil. The report of the Analyst was, however, sent to the Court under the signature of Dr. S. K. Chatterjee, D. W. 2, Deputy Director of Health Services, Government of West Bengal.

The appellants appear to have sent the sample of oil in their possession to Om Prakash, Oil Expert to the U.P. Government, who reported on July 27, 1955, that the sample 'conforms to Agmark Specification for Mustard Oil and is considered to be free from adulterants such as sesame, groundnut and linseed oil'. This report, however, has not been proved.

The Deputy Commissioner of Police, Enforcement Branch, Calcutta, sent a sample of mustard oil on January 10, 1955, to the Public Analyst, Food & Water, West Bengal Public Health Laboratory. Sri S. N. Mitra, D. W. 7, examined this sample and reported, on the basis of its saponification value to be 173.3, and iodine value to be 105, that the sample approximated to the standards of genuine mustard oil. This report does not establish that the sample was of pure mustard oil. Sri Mitra's reply to the query from the Deputy Commissioner of Police for clarification, makes this very clear. It is:

"But, unless conclusive evidence of the presence of a foreign oil, corroborated in some instances by the figures of the usual oil contents, is obtained, the sample is not and cannot be declared adulterated. In the present case the sample of mustard oil has already been examined exhaustively and has been certified as 'approximating to standards' but not as genuine. The legal implication of the expression is that the sample will have the benefit of doubt."

Further, there is no good evidence on the record to establish that the sample sent to Sri Mitra was a sample from the appellants' tank wagon.

Dr. Bagui does not depose about the police people taking a sample of oil. He was not questioned about the police taking any sample of the oil. There seems to be no good reason for the police taking a sample of oil for the purpose of analysis and finding out whether the mustard oil was pure or not. The case put to Dr. Bagui during his cross-examination, on behalf of the appellants, appears to have been that he himself had taken four samples of the mustard oil in question and that one of those samples was sent to the Enforcement Branch. Dr. Bagui denied that he had taken

1960

—
M/s. Madan
Mohan Damma
Mal Ltd.,—
& Another
v.
The State of West
Bengal & Another

—
Raghubar
Dayal, J.

1960

*M/s. Madan
Mohan Damma
Mal Ltd.,
& Another*
v.
*The State of West
Bengal & Another*

*Raghubar
Dayal, J.*

four samples of the mustard oil, His statement is fully corroborated by the statement of Kalidas Ganguli, Sub-Inspector, Calcutta Enforcement Branch, Police Department, who had accompanied Dr. Bagui on the occasion. He stated that the Corporation Food Inspector took three samples and the police took the one sample which was sealed with the Corporation seal. We are not satisfied that the police actually took one sample of the oil and had it sealed with the Corporation seal as deposed to by Kalidas Ganguli.

The Courts below found on the evidence that the mustard oil in the appellants' tank wagon was adulterated with groundnut oil, that the appellants were in possession of that oil and had stored that oil for sale, in view of the presumption arising under sub-s. (4) of s. 462 of the Act, and which had not been rebutted on behalf of the appellants. Learned counsel for the appellants has questioned the correctness of these findings.

We have considered the evidence in connection with the analysis of the samples of mustard oil by the Chemists. Ashit Ranjan Sen, P.W. 2, Public Analyst, who examined the first sample sent by Dr. Bagui on January 3-4, 1955, found it adulterated, on the basis of the data that the B. R. Index at 40° C was 60.4 and the Bellier's test for groundnut oil was positive inasmuch as it gave turbidity at 28°C. Court Witness no. 1, Dulal Chand Dey, who actually analysed the sample sent by the Court, also found it adulterated, on the basis of his obtaining the saponification value to be 175.5, iodine value to be 106.8 and the appearance of turbidity at 27°C. He also found indication of the presence of a small amount of linseed oil. The correctness of his opinion on these data is admitted by Sri Mitra, D.W. 7. In these circumstances, the finding of the Courts below that the mustard oil in the appellants' tank wagon was adulterated is correct. It is not established that the sample of mustard oil sent to Sri Mitra by the Deputy Commissioner of the Enforcement Branch contained mustard oil from this tank wagon. The opinion of Sri Mitra about the nature of that sample therefore does not go against the opinion

of Sri Sen and Sri Dey that the mustard oil analysed by them was adulterated with groundnut oil.

The other contention for the appellants is that they were not in possession of the oil when the sample of mustard oil was taken by Dr. Bagui and that therefore no presumption under sub-s. (4) of s. 462 of the Act can be raised against them for holding that the oil was stored for sale. It appears from the judgment of the High Court under appeal that it was not disputed at the hearing before it that the appellants were in possession of the mustard oil whose sample had been taken. On the evidence on the record we are of opinion that they were in possession of the mustard oil. The consignment of oil was from the manufacturing firm, appellant no. 1, to itself at Calcutta. Its manager, appellant no. 2, took delivery of the wagon from the railway authorities on January 3, 1955. There is no direct evidence to the effect that such delivery was taken prior to Dr. Bagui's taking sample of the mustard oil. But the circumstances, in our opinion, conclusively establish that appellant no. 2 had taken delivery of the wagon prior to Dr. Bagui's visit and taking samples of oil from the wagon. Appellant no. 2 is not expected to and could not have got the wagon opened for the purpose of taking samples of oil, if he had not taken delivery of the wagon from the railway authorities. The railway authorities themselves would have seen to it that nobody tampers with the contents of the wagon in its charge. Appellant no. 2 must have therefore paid the freight for the wagon prior to Dr. Bagui's visit and thus obtained delivery of the wagon. It was thereafter that he got control over the wagon and was in a position to take out oil from it or to permit anyone else to take out oil. We therefore hold that the appellants were in possession of the oil in the tank wagon when Dr. Bagui took samples of the oil from it.

The main contention, however, for the appellants is that the presumption that the mustard oil was stored for sale by the appellants, under sub-s. (4) of s. 462 of the Act, is rebuttable and has been fully rebutted in view of certain arrangements between the

1960

*M/s. Madan
Mohan Damma
Mal Ltd.
& Another*

*v.
The State of West
Bengal & Another*

*Raghubar
Dayal J.*

1960

*M/s. Madan
Mohan Damma
Mal Ltd.
& Another
v.
The State of West
Bengal & Another*

*Raghubar
Dayal J.*

U. P. Oil Millers Association and the Deputy Commissioner of Police, Enforcement Branch, and the letter of the appellants to the Secretary of the Association (Exhibit R) on January 3, 1955. We have considered the various documents which have been referred to in support of the arrangement between the Association and the Deputy Commissioner, Enforcement Branch, but do not find therein anything which would restrain legally the appellants from selling the oil even if it is found to be adulterated. The proceedings of the meeting of the U. P. Oil Millers Association held on June 9, 1954, and attended by the Deputy Commissioner and Assistant Commissioner of the Enforcement Branch show that no such agreement has been arrived at. Even the suggestion of the Deputy Commissioner that all the members of the Association should write to their respective mills that all the quantity of oil which would be imported should at first be passed and then made delivery of, was not fully accepted, the members simply stating that they always and invariably imported pure mustard oil. It was, however, decided that the samples of oil be taken from the next morning, i.e., June 10, 1954. We however find that in November 1954 the U. P. Oil Millers Association wrote to appellant no. 1 that according to the decision of the Deputy Commissioner of Police, Enforcement Branch, every application to draw sample and test it should be accompanied by a certificate signed by the Chemist or the Manager or the Proprietor of the Mills to the effect that the mustard oil in the tank wagon was pure mustard oil free from Argemoni, linseed or any other adulteration, and that in February 1955 and April 1955, the Deputy Commissioner of Police, Enforcement Branch had to remind the U. P. Oil Millers Association that it should advise all its members that whenever they indent any mustard oil from outside Bengal, they would see that the railway receipts be accompanied by a clear certificate of examination from the Chemist of the factory who examined the same. Such directions from the Deputy Commissioner of Police, Enforcement Branch, do not appear to have

had any great effect, as the consignment of oil received by the appellants was without any such certificate. Mahendra Kumar Gupta, D.W. 1, Chemist of the appellants' mill, deposed however that he had taken the sample of the oil sent in that wagon and found it to be genuine mustard oil, free from any adulteration. Any such certificate about the purity of the mustard oil sent is not proved to have accompanied the railway receipt and to have been shown or made over to Dr. Bagui, or to the Police Officers who had accompanied him at the time. Letter Exhibit R was sent on behalf of appellant no. 1 to the Secretary of the U. P. Oil Millers Association at 10 a.m., on January 3, 1955. The letter said:

"Please arrange for sample and test through the proper authorities concerned, so that we may take the delivery of oil only if it is found pure on analysis."

Any such statement can hardly be sufficient to rebut the presumption that the oil which was consigned by appellant no. 1 to itself at Calcutta was stored for sale. The letter itself does not say that the oil will not be sold. It simply says that they may take the delivery of the oil only if it is found pure on analysis. What would be done to the oil if it is found to be impure, is not stated. The Association was not in any arrangement with the Corporation which had the sole authority to take action with respect to the adulterated mustard oil. The Enforcement Branch of the Police had nothing to do with it. In the circumstances, all the so-called arrangement with the Enforcement Branch of the Police and the consequent letters, similar to letter Exhibit R, seem to be a subtle device to make things difficult for the proper authorities responsible to see that mustard oil fit for sale be pure.

It is obvious in this case itself, how this sort of arrangement has provided an occasion for the coming into existence of the alleged fourth sample of mustard oil from the appellants' tank wagon and the non-committal report about its purity. We are therefore of opinion that this letter Exhibit R, or the arrangement which led to such communication, does not establish

1960

*M/s. Madan
Mohan Damma
Mal Ltd.
& Another*

v.

*The State of West
Bengal & Another*

*Raghubar
Dayal J.*

1960

*M/s. Madan
Mohan Damma
Mal Ltd.*

& Another

v.

*The State of West
Bengal & Another*

Raghubar

Dayal J.

that the mustard oil in the wagon which will be otherwise presumed to be stored for sale by the appellants, was not stored for sale.

We are therefore of opinion that the conviction of the appellants of the offence under s. 462 of the Act is correct. The appeal therefore stands dismissed.

Appeal dismissed.

1960

November 25.

THE STATE OF UTTAR PRADESH & OTHERS

v.

AJODHYA PRASAD

(P. B. GAJENDRAGADKAR, A. K. SARKAR,
K. SUBBA RAO, K. N. WANCHOO and
J. R. MUDHOLKAR, JJ.)

Public Servant—Complaint of taking bribes against Police Officer—Magisterial enquiry into complaints—Departmental trial—Validity of—Police Act, 1861 (V of 1861), s. 7—U. P. Police Regulations, paras. 486, 489.

The respondent was posted as officer incharge of a police station when complaints were received by the District Magistrate that the respondent was receiving bribes. The District Magistrate got an enquiry made by the Sub-Divisional Magistrate and forwarded the report together with his own endorsement to the Superintendent of Police. The respondent was forced to go on 2 months leave and was reverted to his substantive post of Head Constable, but later he was promoted to the rank of officiating Sub-Inspector and posted at another police station. Meanwhile on further complaints an investigation was made and it was reported that the respondent was a habitual bribe taker. He was charged under s. 7 Police Act for 9 charges of bribery and after departmental trial was dismissed by the Superintendent of Police. He filed a Writ Petition before the High Court challenging the order of dismissal *inter alia* on the ground that the offences charged being cognizable offences the Superintendent of Police had no jurisdiction to hold the departmental trial without first complying with the provisions of para. 486(1) of the U. P. Police Regulations. The High Court accepted this contention and quashed the order of dismissal.