

APPELLATE CRIMINAL

Before S. S. Sandhawalia and D. S. Tewatia, JJ.

MUNICIPAL COMMITTEE, AMRITSAR,—Appellant.

versus

JASWINDER SINGH,—Respondent.

Criminal Appeal No. 303 of 1970.

July 27, 1971.

Prevention of Food Adulteration Act (XXXVII of 1954)—Section 16(1) (a) (ii)—Prevention of Food Adulteration Rules (1955)—Rules A.05.15, A.17.06 and A.23—“Torina oil”—Whether falls within the definition of ‘mustard oil’ in Rule A.17.06.

Held, that a perusal of the definition of ‘mustard oil’ in Rule A.17.06 of Prevention of Food Adulteration Rules, 1955, shows that it is an oil extracted from mustard seeds belonging to the *compestris*, *juncea* or *napus* varieties of *Brassica*. A reference to the definition of the word ‘mustard’ in Rule A.05.15 of the Rules makes it clear that ‘Torina seed’ belongs to the *compestris* variety of *Brassica* and hence the oil extracted from the seeds of the aforesaid variety of *Brassica* positively falls within the definition of the ‘Mustard oil’ given in the aforesaid rule. For considering the definition of ‘mustard oil’, the definition of ‘mustard seed’ given in Rule A.23 cannot be impaired. The definition of ‘mustard oil’ in Rule A.17.06 is self contained and its interpretation is to be confined to that rule only. Moreover, the definition of ‘mustard seed’ in Rule A.23 also includes the seeds of *compestris* varieties of *Brassica* to which species ‘Torina’ variety of *Brassica* also belongs, because this definition includes not only the seeds of *Brassica nigra* and *Brassica juncea* but it also includes the seeds of allied cultivated varieties of the seeds belonging to the natural order cruciferae and to the genus *Sinapis* of *Brassica*. ‘Torina’ undisputably belongs to one such cultivated variety of *Brassica*. (Paras 10, 11 and 12)

Appeal from the order of Shri G. L. Chopra, Judicial Magistrate First Class, Amritsar dated 21st August, 1969 acquitting the respondent.

ROOP CHAND CHAUDHRY, ADVOCATE, for the appellant.

M. R. CHHIBBER, ADVOCATE, for the respondent.

JUDGMENT

TEWATIA, J.—These are six Criminal Appeals Nos. 54, 55, 148, 149, 164 and 303 of 1970 filed at the instance of the Municipal Committee, Amritsar. In all except Criminal Appeal No. 55 of 1970 the orders of acquittal are passed by the Judicial Magistrate 1st Class, Amritsar. In Criminal Appeal No. 55 of 1970, the order of acquittal is that of the Additional Sessions Judge, Amritsar, dated 3rd July, 1969. In

all the aforesaid criminal appeals a common question of law is involved and hence we propose to decide all of them by this judgment.

(2) The respondents in all the appeals, except in Criminal Appeal No. 55 of 1970, were acquitted by the Judicial Magistrate 1st Class, Amritsar, while in Criminal Appeal No. 55 of 1970 the respondent was convicted by the trial Court, but was acquitted by the learned Additional Sessions Judge, Amritsar,—*vide* his judgment dated 3rd July, 1969. However, in Criminal Appeal No. 149 of 1970, the learned Judicial Magistrate 1st Class, Amritsar, found the respondent guilty under section 16(1)(a)(ii) of the Prevention of Food Adulteration Act and accordingly convicted him, but having regard to the nature of the offence proved on a technical ground, he took a lenient view in the matter of sentence and fined Sikandar Lal, respondent Rs. 200 and imprisonment till the rising of the Court. In default of payment of fine, he ordered the respondent to undergo further rigorous imprisonment for two months. Half of the fine, if realised, was also ordered to be paid to the present appellant. The other respondent Darshan Lal was, however, acquitted.

(3) It may be stated here that the respondents (in all the six appeals) have been acquitted on a technical and legal plea that Toria oil, at the time when the samples of the said oil were purchased by the Food Inspector from their shops in accordance with the provisions of law, did not come within the purview of the Prevention of Food Adulteration Act (Act 37 of 1954), hereinafter called the Act, and that it can neither be considered an edible oil in terms of the Act and the Rules made thereunder called the Prevention of Food Adulteration Rules, 1955, hereinafter referred to as the Rules, nor is it necessary for Toria oil found in possession of the respondents to conform to any standard.

(4) The plea prevailed, in all the cases, with the Courts below and hence these appeals to this Court.

(6) Mr. Roop Chand learned counsel for the appellants, has Chhibber appears for the respondents in all the appeals before us.

(6) Mr. Roop Chand, learned counsel for the appellants, has urged that 'Toria oil' falls within the definition of 'mustard oil' in terms of the Act and the Rules and it necessarily falls within the

purview thereof. While, on the contrary, Mr. M. R. Chhibber, learned counsel for the respondents, has urged that previous to 24th August, 1969, 'Torina' was not included in the category of 'edible oil' and hence no standard stood prescribed for it in the Act and the Rules.

(7) The learned counsel for the respondents has conceded before us that the samples purchased by the Food Inspector from their shops do not measure up to the standard laid down in the Act and the Rules and once it is found that 'Torina oil' stood included in the definition of 'mustard oil' at the time when the samples were taken, then violation of the provisions of section 16(1)(a)(i) of the Act stands established.

(8) To appreciate the question posed for consideration in this case, it will be profitable to notice the relevant provisions of the Rules which were made under the provisions of section 23 of the Act.

(9) Rule A. 17.06 in Appendix 'B' to the Rule defines the 'mustard oil' as under—

"A. 17.06. 'mustard oil' (Sarson-ka-tel) means oil expressed from clean and sound mustard seeds, belonging to the *compestris*, *juncea* or *napus* varieties of *Brassica*. It shall be clear, free from rancidity, suspended or foreign matter, separated water, added colouring or flavouring substances or mineral oil. It shall conform to the following standards:

- (a) Butyro-refractometer reading at 40°C—58.0 to 60.5.
- (b) Saponification value—168 to 176.
- (c) Iodine value—96 to 108.
- (d) Unsaponifiable matter—Not more than 1.2 per cent.
- (e) Free fatty acid as Oleic acid—Not more than 3.0 per cent.
- (f) Bellier test (turbidity temperature-Acetic acid method).—
Not more than 26.5°C.

The test for argemone oil should be negative."

(10) 'Mustard' is defined in rule A. 05.15 as under—

"A 05.15 'Mustard' (Rai, Sarson) Whole means the dried seeds of *Brassica alba* (L.) Boiss. (Safed rai). *Brassica compestris* L. var. *dichotoma* (Kali Sarson). *Brassica Compestris*

L. var. yellow Sarson, Syn. Brassica compestris L. var. glauca (Pili Sarson), Brassica compestris L. var. toria (Toria), Brassica Juncea (L.) Coss. et. Czern. (Rai Lotni) and Brassica nigra (L.) Koch (Benarasi rai). The proportion of extraneous matter which includes, dust, dirt, stones, lumps of earth, chaff, stem, straw, edible foodgrains, edible oil seeds of any other variety or any other impurity shall not exceed 7.0 per cent weight. It shall be free from seeds of argemone mexicana Linn."

Previous to the notification No. G.S.R. 1533, dated the 8th July, 1968, 'mustard' was defined in rule A. 23 of Appendix 'D' as follows:

"A. 23. 'Mustard seed' means the dried, ripe seed of Brassica Nigra, Brassica Juncea and other allied cultivated varieties of the species belonging to the natural order Cruciferae and to the genus Sinapis or Brassica. The common species are black or brown mustard (B. nigra), Brown or serepta mustard (B. besseriana), white or yellow mustard (B. alba) and Indian mustard (B. juncea).

It shall not contain—

- (a) more than 5 per cent of foreign organic matter and deteriorated or other seeds, and shall be free from insect pests. It shall be free from argemone seeds;
- (b) more than 5 per cent of total ash;
- (c) more than 1.5 per cent of ash insoluble in hydrochloric acid ;
- (d) less than 0.6 per cent of volatile essential oil."

A perusal of the definition of 'mustard oil' would show that it is an oil extracted from mustard seeds belonging to the compestris, juncea or napus varieties of Brassica. Now the question that falls for consideration is as to which variety of Brassica the 'Toria seed' owes its origin. A reference to the definition of the word 'mustard' given in Rule A. 05.15 above would make it clear that 'Toria seed' belongs to the compestris variety of Brassica and hence the oil extracted from the seeds of the aforesaid variety of Brassica would positively fall within the definition of the 'Mustard oil' given in the aforesaid rule.

(11) However, the line of argument followed and accepted by the Courts below has been that 'mustard seed', as defined in rule

Municipal Committee, Amritsar v. Jaswinder Singh (Tewatia, J.)

A. 23 previous to its omission by the notification of the 8th of July, 1968, and its substitution by rule A. 05. 15, did not include within its compass the seeds of compestris variety of Brassica and hence 'mustard seeds' mentioned in rule A. 17. 06 refer to the 'mustard seeds' as defined in rule A. 23 and since this rule does not make any reference to the seed of compestris variety of Brassica, so the oil extracted from that seed would not fall within the definition of 'mustard oil' as defined in rule A. 17.06.

(12) In our view, the basic fallacy in the aforesaid argument advanced before the Courts below and repeated before us is two-fold—

- (1) that while considering the definition of 'mustard oil' the respondents tried to import in it the definition of 'mustard seeds' given in rule A. 23. It would have become necessary to do so if 'mustard oil' had been defined in the relevant rule as the oil expressed or extracted from 'mustard seed' as defined in rule A. 23, but the framers of the Rules did not do so and they, in this definition, expressly provided that the oil extracted from the seeds of various varieties of Brassica, including the compestris, will be considered as 'mustard oil' and the seeds in question will be considered 'mustard seeds' for the purpose of the definition of 'mustard oil'. The definition of 'mustard oil' being self-contained, so to know as to what is 'mustard oil', one has to confine oneself only to the examination of the definition of 'mustard oil' in rule A. 17.06, and
- (2) that, in the alternative, even if it is assumed for the sake of argument that the word 'mustard' mentioned in rule A. 17.06 is to be taken to mean as defined in un-amended rule A. 23, in our view, it would not alter the position, because, as we look at it, the definition of 'mustard seed' as given in rule A. 23 also includes the seeds of compestris varieties of Brassica to which species 'Torica' variety of Brassica also belongs. The reason for our saying so is that rule A. 23 includes in the definition of the word 'mustard' not only the seeds of Brassica nigra and Brassica juncea but it also includes the seeds of allied cultivated varieties of the seeds belonging to the natural order cruciferae and to the genus Sinapis or Brassica. 'Torica'

undisputably belongs to one such cultivated variety of Brassica.

In this view of the matter, we hold that the Courts below have not correctly read rule A. 23 and it is this fact that led them to hold that prior to the amendment of rule A.15.05 by notification in question, neither 'Torina seeds' nor 'Torina oil' was covered by the Act and the Rules.

(13) Yet another argument that found favour with the Courts below was that if 'Torina oil' was covered by the definition of 'mustard oil' as given in the aforesaid rule, then where was the necessity to enlarge the definition of 'mustard' by including therein the compestris variety of Brassica by notification, dated 8th of July, 1968. So it was argued that it only meant this that earlier 'Torina seed', and hence 'Torina oil' was not included in the definition of 'mustard oil', and since later on it was considered necessary to do so, it was done by altering the definition of 'mustard'.

(14) We are unable to accept this argument. The alternation in the definition of 'mustard' carried out by the said notification must, of necessity, have been intended to remove the confusion created by the non-mention of compestris variety of Brassica in clear terms in the definition of 'mustard' and further to obviate the necessity of referring to the text-books on Botany to find out the other allied-cultivated varieties of Brassica. Hence we are firmly of the opinion that 'Torina oil' does answer to the definition of 'mustard oil' and falls within the purview of the Act and the Rules.

(15) As for the second charge under section 16(1)(a) (ii) of the Act, the learned counsel for the appellant did not press the same before us.

(16) For the reasons stated above, we allow the Criminal Appeals Nos. 54, 55, 148, 164 and 303 of 1970 and finding the respondents there guilty of the offence under section 16(1)(a)(i) of the Act, convict them and sentence each one of them to six months' rigorous imprisonment with a fine of Rs. 1,000 and in default of payment of fine to further rigorous imprisonment for two months.

(17) As far as Criminal Appeal No. 149 of 1970 is concerned, the same is accepted insofar as it relates to the acquittal of Sikander Lal,

Mohinder Kaur v. Major Singh (Pandit, J.)

respondent and finding him guilty, for the above stated reasons, of the offence under section 16(1)(a)(i) of the Act, we convict him and sentence him to six months' rigorous imprisonment with a fine of Rs. 1,000 and in default of payment of fine to further rigorous imprisonment for two months. However, in the absence of any appeal against his conviction under section 16(1)(a)(ii) of the Act, the sentence awarded to him by the Court below stands. So far as the other respondent Darshan Lal, in this appeal is concerned, we are satisfied that he was rightly acquitted by the Court below, as no case was proved against him that he was a partner of the Firm Sikandar Lal-Darshan Lal and that Sikander Lal, respondent, had committed the offence in connivance with Darshan Lal. Thus Criminal Appeal No. 149 of 1970 stands dismissed in so far as it relates to Darshan Lal, respondent.

S. S. SANDHAWALIA, J.—I agree.

N. K S.

LETTERS PATENT APPEAL

Before Prem Chand Pandit and Gopal Singh, JJ.

MOHINDER KAUR,—Appellant.

versus

MAJOR SINGH,—Respondent.

Letters Patent Appeal No. 35 of 1970.

July 28, 1971.

Hindu Marriage Act (XXV of 1955)—Sections 5(iii), 9, 10, 11 and 13—Contravention of section 5(iii)—Whether can be pleaded in defence to a petition for restitution of conjugal rights.

Held, that contravention of section 5(iii) of the Hindu Marriage Act, 1955, cannot be pleaded in defence to a petition for restitution of conjugal rights, because it is not a ground for judicial separation or for nullity of marriage or for divorce. The infringement of section 5(iii) of the Act does