

Usman Ali Khan Vs. State

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Court : Allahabad

Decided On : Dec-05-1963

Reported in : AIR1965All39; 1965CriLJ3

Judge : M.H. Beg, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 2(13), 7 and 10(1)

Appeal No. : Criminal Revn. No. 463 of 1963

Appellant : Usman Ali Khan

Respondent : State

Advocate for Def. : Asst. Govt. Adv.

Advocate for Pet/Ap. : B.C. Saxena, Adv.

Disposition : Revision application dismissed

Judgement :

ORDER

M.H. Beg, J.

1. This is a revision application against a conviction under Section 7(16) of the Prevention of Food Adulteration Act. The applicant was fined Rs. 300/- and, in default, sentenced to undergo three months' rigorous imprisonment by a learned

Magistrate of Bareilly. The conviction and the sentence were maintained on appeal by an Additional Sessions Judge of Bareilly.

2. The prosecution case, which has been believed by both the courts below, was that the applicant was exposing buffalo milk for sale, and that a Food Inspector took a sample of that milk on payment of its price to the applicant and then sent it to the Public Analyst. The milk was found to be adulterated. Consequently, the applicant was prosecuted and convicted. The courts below found that the Food Inspector had paid nine annas as the price of the milk sold by the applicant to him as a sample. The milk, taken as a sample, was divided into three portions, each sealed in a Phial which was labelled. One of the phials was handed over to the applicant, who acknowledged it by giving a receipt. The report of the Public Analyst was also duly proved showing that the milk was adulterated.

3. It was argued before me that the Food Inspector had power under Section 10(1)(a)(i) to take sample only from a person selling an article of food. It was also argued that there is no evidence that the buffalo's milk, alleged to have been sold by the applicant, was intended for sale. It was urged that the case of the applicant was almost identical with the case of the accused in *Public Prosecutor v. K. Reddiar*, AIR 1959 Mad 333. In that case, the defence of the accused was that he was taking the milk to the hotel of his brother from the house of his brother, who used to keep buffaloes, and it was to be used for the purpose of making coffee for his brother's customers at the hotel. In other words, the accused in that case pleaded that he was merely a person executing an errand for his brother, and that he was not selling and did not intend to sell any milk to the Inspector or to anybody else. It was also held there by the trying Magistrate that the accused was overawed by the Inspector that he could not refuse to give the milk to the Inspector when the milk was demanded, and that the price was also accepted by the accused because he was unable to disobey the Inspector.

The accused in that case had produced his own brother, the owner of the hotel and of the milk, as a defence witness. The defence of the accused was believed and he was acquitted. Consequently, the Public Prosecutor had appealed against the acquittal. In the course of a judgment dismissing the appeal against acquittal a

learned Judge of the Madras High Court observed, in dealing with the evidence in that case, that the Inspector had admitted that he did not see anybody else purchasing the milk from the accused. The learned Judge also held that the Magistrate who acquitted the accused was not correct in taking the view that there had been no sale to the Inspector. The learned Judge, however, held that there was room for doubt whether the milk was actually intended for sale. It was also observed by the learned Judge that the brother of the accused should have been prosecuted.

4. In my opinion, the Madras case is distinguishable on facts from the case before me. Nothing could be pointed out in the present case which could justify a finding that the accused did not intend to sell the milk. The applicant did not object to the sale of the milk at the time when the Inspector demanded it from him. I doubt very much whether the accused person, who, fudging from his name and residence appears to be a 'pathan' of Rohilkhand could possibly be so overawed by the Food Inspector that he would obediently give the milk, take its price, accept the phial, and then a notice and not protest at all against the coercive influence brought to bear upon him.

5. A sale has been defined in Section 2(18) of the Prevention of Food Adulteration Act. It includes a sale to a Food Inspector. Even in the Madras case, the sale to the Inspector was held to be undoubtedly a sale. With great respect for the view of the Madras High Court, I am unable to agree that, after a transaction has been held to be a sale, the question of any other intention of the accused, who has actually sold an adulterated article of food, matters at all. The requisites of mens rea in such a case are satisfied if there is intention to sell irrespective of the purpose for which the milk may be really intended. If an accused person is not exposing any article of food for sale he ought to refuse to sell when any person, including the Food Inspector, demands any part of the article of food for a price to be paid for it. All that the law requires in such a case is that there should be a sale of an adulterated food by a person, in contravention of Section 7 of the [Prevention of Food Adulteration Act, 1954](#), so as to make that person liable to be punished under the Act. The intention with which the article of food, which is actually found to be sold, is kept or carried by the person selling it is quite immaterial. The sale of an

adulterated article food is in itself an offence.

Therefore, all that matters in such cases is the intention to sell which is proved by the transaction of sale. A seizure of such an article of food by force or by use of any kind of influence brought to bear upon such a person, accompanied by a thrusting of an amount into the hand or the pocket of the person concerned as price, is not really a sale at all. It can be a compliance with the wishes of another as a result of some coercive factor operating upon the victim. A sale necessarily implies willingness to sell which is evidenced by the act of giving an article sold and accepting its price voluntarily. If a sale has taken place it necessarily implies an intention to sell. A sale without an intention to sell is in contradiction in terms. At any rate, the term 'sale' as used in the Prevention of Food Adulteration Act does not mean mere obedience to orders of a person who is in a position to dominate the will and dictate the acts of the alleged seller. But, it needs a great deal of credulity or extremely exceptional circumstances, which have to be duly proved, in order to hold that what is apparently a sale was not really and legally a sale. I find no such evidence in the present case.

6. Three other cases cited on behalf of the applicant are: *Narain Das v. State*, AIR 1962 Ail 82, *In Re V. Govind Rao*, AIR 1960 Andh Pra 366 and *Food Inspector Kozhikode v Punsai Desai*, AIR 1959 Ker 190. In all these cases the question under consideration was the meaning of the word 'store' as used in Section 7 of the [Prevention of Food Adulteration Act, 1954](#). It was held that mere 'storing' without the intention to sell, an adulterated article of food would not amount to 'storing' as contemplated by the Act. The case before me is not one of storing at all. The authorities relied upon have no application to a case of actual sale. Therefore, I need not consider these any further. The evidence in the present case proves satisfactorily and beyond any reasonable doubt that the applicant intended to sell buffalo's milk and that he did sell it, and that the milk sold was adulterated. This evidence amply justifies the conviction of the applicant.

7. Lastly, it was argued that the sentence is excessive. I am afraid that I cannot accept this submission. Adulteration of articles of food by persons selling them is a serious matter which may endanger the lives of innocent citizens who. Far from

doing any wrong to the seller, enable the seller of food to make a profit. The desire to make a profit at the expense of the health of other citizens, who purchase articles of food for consumption in all good faith, must be checked by awarding adequate sentences whenever that desire takes the form of selling adulterated articles of food. In my opinion, the sentence is fairly lenient.

8. This revision application is hereby dismissed.

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