

Ram Dass Vs. the State

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Court : Allahabad

Decided On : Dec-01-1967

Reported in : AIR1969All109

Judge : S.D. Singh, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 7(1), 10(7) and 16;
[Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 103

Appeal No. : Criminal Revn. No. 911 of 1966

Appellant : Ram Dass

Respondent : The State

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : D.P. Mital, Adv.

Disposition : Application dismissed

Judgement :

ORDER

S.D. Singh, J.

1. This application in revision arises out of a prosecution under Section 16 read with Section 7(1) of the Prevention of Food Adulteration Act (XXXVII of 1954)

2. At about 7-30 a. m. on 25th March, 1965, the Food Inspector K. P. Batish of Hapur Municipality in district Meerut took a sample of milk from the shop of the applicant Ram Dass. He purchased 12 chhataks of milk for 51 n. p. and sealed and signed it in three phials, one of which was given to the applicant, the other retained in the office of the Hapur Municipality and the third sent to the Public Analyst for examination and report. The Public Analyst found, as is indicated by his report Ex. Ka. 3, that the sample was deficient in non-fatty solids to the extent of 21 %, the standard applied being that for mixed cow and buffalo milk the mixture of the two milks being supposed to be half and half. The applicant was consequently prosecuted under Section 16 read with Section 7(1) of the aforesaid Act. He was convicted by the Magistrate and sentenced to six months rigorous imprisonment and a fine of Rs. 1,000/-. He went up in appeal which was dismissed by the Additional District and Sessions Judge, Meerut. and hence this application in revision by him.

3. The applicant denied that he sold any sample of milk to the Food Inspector, his allegation being, that there was milk placed in a can underneath his shop, that it belonged to one other milk seller who had come there and that the sample was taken by the Food Inspector from that can and documents prepared by him were in respect of the same and he merely signed them as a witness. The applicant did not examine any evidence in his defence. The prosecution evidence was considered by the Magistrate. It appears that when the sample was taken, two witnesses Shadi Ram and Nathi were required to sign the documents prepared at the time, including the receipt which was given to the applicant, but none of them was examined in the case. The oral evidence in the case consists of the testimony of the Food Inspector, K. P. Batish and one other person, Charan Singh, who is said to have been present when this sample was taken.

4. Some arguments were advanced by the learned counsel for the applicant as to the requirements of sub-section (7) of Section 10 of the Prevention of Food Adulteration Act (referred to hereafter as the Act) and the amendments made therein under the Amendment Act 49 of 1964. Under sub-section (7), as it stood before the amendment, the Food Inspector was required to 'as far as possible call not less than two persons to be present at the time when such action is taken and

take their signatures.' Under the amended sub-section (7) the Food Inspector shall 'call one or more persons to be present at the time when such action is taken and take his or their signatures.' Under the law prior to the amendment, therefore, the Food Inspector was required to call not less than two persons as far as possible, while under the sub-section, as it stands after the amendment, he may call only one or more persons to be present at the time but the verb used in respect of them is 'shall call' which means that it is now mandatory on him to call one or more persons when he takes sample; but nothing turns upon this interpretation of this Sub-section (7) so far the case against the applicant is concerned, for we have it in the evidence that two persons Shadi Ram and Nathi were called by the Food Inspector when he took the sample and he even took their signatures over the documents which were prepared at the time. One of these documents is the report which the Food Inspector submitted to the Medical Officer of Health, but it does not appear to bear any exhibit mark. Another document is Ex. Ka. 1 which is a notice in form no. 6 given to the applicant regarding the taking of the sample and another document is receipt Ex. Ka. 2 which the applicant gave to the Food Inspector for having received the price of the Milk and one of the phials containing the sample of the milk taken from his shop. If two persons were, therefore, called at the time the sample was taken and their signatures also taken by the Food Inspector, the requirements of sub-section (7) of Section 10 of the Act were fully complied with.

5. Reliance was placed by the learned counsel for the applicant on *Ganesh Lal Shaw v. Asansole Municipality*, 1963 (1) Cri. LJ 658 (Cal), in which it has been observed that it is desirable that in a case of this nature the prosecution should examine all the search witnesses, if possible, to dispel all doubts about the manner in which the sample was taken, and about the place where, and the person from whom the sample was taken, in other words, to put the entire transaction above board. In that particular case also there were two witnesses of the taking of the sample; one of them was supposed to be one who always accompanied the Food Inspector. Only he was examined as a witness in the case in addition to the Food Inspector of course, and it was the evidence of this witness which was urged to be unreliable, but even so it was held that there was compliance with the provisions of Section 10, Sub-section (7) of the Act and the

application in revision was dismissed. Even though, therefore, it was observed in the case that it was desirable for the prosecution to examine all the search witnesses as witnesses in the case, the evidence of only one of the witnesses was considered enough to support the statement of the Food Inspector, even though that witness was not supposed to be very independent.

6. It has been observed by Das Gupta, J. himself in the aforesaid case itself that the point involved for decision in such cases is a pure question of fact. What has, therefore, to be seen in a particular case is whether on the basis of the evidence which has been examined in the case it can be believed that the sample which was found to be adulterated was taken by the Food Inspector or if the evidence produced is unreliable or shaky or of a doubtful nature. Even if the evidence is not altogether unreliable, if it is shaky or doubtful in nature, the Courts would certainly give the benefit of the same to the accused; but if the evidence establishes that the sample was taken from the shop of a particular dealer, then even though no witness has been called in the witness box in support of the statement of the Food Inspector, there is no reason why his solitary statement may not be believed. Normally the prosecution will no doubt examine one or more of the witnesses whose signatures are obtained on the documents prepared at the time of the taking of the sample, but if for some reason or the other the prosecution does not rely upon their statements, or does not find it possible to examine them as witnesses in the case, surely the prosecution case will not be thrown out on that account. The prosecution is entitled to urge that the truth of the allegations which are being made against an accused person may be judged on the basis of the evidence which is in fact examined in the case and if that evidence is satisfactory and there is no reason whatsoever to doubt the truth thereof, then the prosecution can very well urge that even though certain witnesses may not have been examined, the Court should record a finding of guilty against the accused.

7. The documents which were prepared regarding the taking of the sample, namely the notice (Ex. Ka. 1) and the receipt (Ex. Ka. 2) are both in Hindi. Copies thereof were given to the applicant. They are even signed by him. Ex. Ka. 1 at two places and Ex. Ka. 2 at one place. Ram Dass signs the documents in Hindi and if one may hazard an opinion as to the nature of his writing, it can be said that he is

not a mere novice in that language. He could certainly have understood or made out what was written in the two documents before he signs them. The two documents it appears make it absolutely clear that the sample was taken from the applicant himself against a payment of 51 nP., the milk was divided into three parts, each part filled in three separate phials and signed and sealed on the spot and one of these phials was given to the applicant himself. The notice (Ex. Ka. 1) makes it clear that the applicant was given notice of the fact that the sample will be sent for analysis to a Public Analyst. It is impossible to believe that Ram Dass signed these documents without caring to understand the nature thereof. The two other persons Shadi Ram and Nathi have signed the documents at the places meant for the signatures of the witnesses. If Ram Dass was required to sign as a witness, he must have been told that he was required to sign as a witness and in that case he would have easily noticed the place where a witness had to sign and he would have put his signatures at that place and not at the place where the notice and the receipt were to be signed either by the seller of the milk or at the place where it was to be signed by the person who received the notice from the Food Inspector.

8. Even in the face of this evidence it was open to the applicant to produce evidence to show that the Food Inspector had taken milk from the can of another dealer and he was made to sign the documents only as a witness, and under some confusion, influence or coercion he signed it at the place where the documents were to be signed by the dealer in milk. If that was the contention of the applicant it should have been supported by some evidence. An accused is certainly not required to produce evidence merely to negative an allegation made against him in the evidence examined on behalf of the prosecution. The prosecution case will stand or fall on the merits of the evidence examined in support of the same. But certainly if an accused puts forward a positive case in his defence and is unable to produce any evidence in support of the same, surely the evidence examined on behalf of the prosecution will not be disbelieved merely because of a vague suggestion or allegation that such and such thing might have happened.

9. There was no irregularity in the case in the taking of the sample and even if there were any, that irregularity cannot vitiate the taking of sample from the applicant. In cases of a search under Section 103 of the Code of Criminal Procedure the Officer who takes the search is not merely required to call two persons and take their signatures, but the two persons have to be respectable persons and that too of the locality. There is no such requirement under Sub-section (7) of Section 10 of the Act. But even while interpreting Section 103 of the Code of Criminal Procedure, their Lordships of the Supreme Court have observed in *Radha Kishan v. State of Uttar Pradesh*, AIR 1963 SC 822:

'It may be that where the provisions of Sections 103 and 165 of the Code of Criminal Procedure are contravened the search could be resisted by the person whose premises is sought to be searched. It may also be that because of the illegality of the search the court may be inclined to examine carefully the evidence regarding seizure. But beyond these two consequences no further consequence ensues and the seizure of the articles is not vitiated.'

10. It has been conclusively established in the case that the sample of the milk was taken from the shop of the applicant. The Magistrate was not impressed by the statement of Charan Singh (P. W. 2). I have gone through his statement and I do not find anything which may discredit his statement. Nor has the Magistrate shown anything which may go against the witness except this that he is not a witness who signed the documents relating to the taking of the sample. He has been an ex-employee of the Municipal Board, but he will not be disbelieved merely on that account.

11. Both the courts below have recorded a clear finding of fact that the sample of milk was taken from the applicant, and even on an independent scrutiny of the evidence in the case, there can be no other view of the evidence than the one which has been taken by the court below.

12. The sample taken from the applicant being deficient in non-fatty solids, he was clearly liable to be convicted under Section 16 read with Section 7(1) of the Act.

13. It was urged that the punishment awarded to the applicant is rather excessive. I do not, however, think it is so. Those who indulge in adulteration of food are parasites to the society and if an offence is made out against them, there is no reason why a punishment contemplated under the law may not be awarded to them.

14. The application is dismissed. The applicant is on bail. He will surrender to his bail bonds immediately failing which necessary steps will be taken for his arrest. The order staying realisation of fine will stand vacated.

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