

Bechan Vs. State of Uttar Pradesh

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Court : Allahabad

Decided On : Jul-21-1965

Reported in : AIR1966All91; 1966CriLJ122

Judge : Gyanendra Kumar, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 11(1) and 13;
Prevention of Food Adulteration Rules, 1955 - Rules 7(3) and 12

Appeal No. : Criminal Revn. No. 31 of 1965

Appellant : Bechan

Respondent : State of Uttar Pradesh

Advocate for Def. : Sushil Kumar, Addl. Govt. Adv.

Advocate for Pet/Ap. : Om Prakash and ;J.N. Chaturvedi, Adv.

Disposition : Revision dismissed

Judgement :

Gyanendra Kumar, J.

1. This is a revision against the conviction of the applicant for a second offence under Section 7/16 of the [Prevention of Food Adulteration Act, 1954](#).

2. Briefly stated the facts of the case are that on 9-84962 at about 9.30A. M., Bechan applicant was found in Mohalla Mutthiganj Allahabad, going with two canisters of milk. On demand being made by the Food Inspector he sold 700 grams of milk to him and received a sum of 37 np. towards its price. The fact of selling the milk and receiving its price was noted in the register of the Inspector which was duly signed by the applicant. The sample was sent to the Public Analyst who, in his report dated 12-9-1962 stated that the sample was deficient in non-fatty solid content by about 28 per cent. The applicant contested the matter on a variety of grounds which were all rejected by the trying Magistrate who convicted the applicant under Section 7/16 of the Act and, this being the second offence, sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs. 2000/- and in default of payment of fine to a further rigorous imprisonment for six months. On appeal the learned Sessions Judge maintained the conviction and sentence of the applicant; hence this revision.

3. Before me the learned counsel for the applicant has raised three main grounds-- (1) that the report of the Public Analyst dated 12-9-1962 (Ex. ka3) states that he had caused to be analysed the sample of milk in question. The argument of the applicant's learned counsel is that there was nothing to indicate that the actual analysis was done by a qualified person nor was there anything to show that the analysis was done under the supervision of the Public Analyst (Dr. R.S. Srivastava). There can be no speck of doubt that the authority and authenticity of the report of the Public Analyst depend upon the presumption that the requisite analysis has been done either by the Public Analyst himself who is a highly qualified person in his branch or by some of his assistant, who is equally or at least very well qualified to do the same. Accordingly at the request of the applicant's counsel I had required the Public Analyst to answer the following questions:--

Q. 1. Through whom did you cause the actual analysis of the sample in question done? What are his qualifications and experience?

Q. 2. Did you supervise the analysis in question?

4. By his letter dated 14-6-1965 the Public Analyst replied that the actual analysis of the sample was done by Sri K.P. Srivastava. His qualifications are B. Sc. LL. B. and he has about 25 years' experience in analytical work of food in this laboratory. He also stated that the analysis was done under the personal supervision of the Public Analyst Sri R. S. Srivastava. Thus there can be no doubt about the accuracy, authority and authenticity of the report, inasmuch as it was done by a fully qualified and experienced officer under the personal supervision of the Public Analyst.

5. The next point urged on behalf of the applicant is that the Form of Report under Rule 78. is in contravention of Form VI prescribed under Rule 12 and is liable to be declared ultra vires under Section 11(1)(a) of the Act. Rule 7(3) provides that after the analysis has been completed, the Public Analyst shall forthwith supply to the person concerned a report in Form III of the result of such analysis. Form III had originally contemplated a further certificate in the following words:--

'I further certify that I have analysed the aforementioned sample, and declare the result of my analysis to be as follows:--' However, after the notification dated 4-4-1960 the above quoted words were modified as, 'I further certify that (I have caused to be analysed the aforementioned sample and declare the result of the analysis) to be as follows:' The amendment made in 1960 thus gave an option to the Public Analyst either to analyse the sample himself or cause it to be analysed by some other competent person. Therefore, there was nothing improper in the instant case if the Public Analyst caused the analysis of the sample in question done by his fully qualified and experienced assistant Sri K. P. Srivastava, under his own personal supervision, inasmuch as the amended form now also permits analysis by a person other than the Public Analyst, put this must be done under the supervision of me Public Analyst himself.

6. The next argument of the learned counsel for the applicant is that at any rate, Form III as amended in 1960 is inconsistent with Form VI (framed under Rule 12) which still shows that the Food Inspector must state in his report that he has taken the sample of food in order 'to have the same analysed by the Public Analyst' and not by his assistant or subordinate. In my judgment, there is no real inconsistency

inasmuch as the analysis done by a qualified assistant to the Public Analyst, under the latter's supervision would be deemed to be an analysis by the Public Analyst himself.

7. There is ample evidence on the record to show that the milk in question was intended for sale. The Courts below have, for proper reasons, refuted the defence theory to the contrary.

8. The revision has no force and is accordingly dismissed. The applicant is on bail. His bailbonds are cancelled. He shall immediately surrender and serve out the balance of the sentence awarded to him by the trying Magistrate.

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