

**Shabbir Abdul Rehman Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/456214](http://sooperkanoon.com/456214)

**Court :** Allahabad

**Decided On :** Jan-09-1968

**Reported in :** AIR1969All478; 1969CriLJ1202

**Judge :** H.C.P. Tripathi, J.

**Acts :** [Prevention of Food Adulteration Act, 1954](#) - Sections 9

**Appeal No. :** Criminal Revn. No. 194 of 1966

**Appellant :** Shabbir Abdul Rehman

**Respondent :** State

**Advocate for Pet/Ap. :** B.P. Gupta, Adv.

**Disposition :** Revision allowed

**Judgement :**

ORDER

H.C.P. Tripathi, J.

1. Applicant Shabbir was convicted by a Magistrate First Class, Moradabad, under Section 7 read with Section 16 of the Prevention of Food Adulteration Act and sentenced to undergo rigorous imprisonment for a period of 18 months and to pay a fine of Rs. 2000/-. In default of payment of fine he was directed to undergo six months' further, rigorous imprisonment.

2. On appeal his conviction and sentence was affirmed by the temporary Civil & Sessions Judge. Hence this revision.

3. According to the prosecution Sri I. P. Apan, Food Inspector, Municipal Board, Chandausi, purchased 3/4th seer of buffalo milk from the applicant on 8-8-1963 and after undergoing the necessary formalities sent a sample of the same for the examination of the Public Analyst. The Public Analyst analysed the sample and found it deficient in fat contents by about 10 per cent and in non-fatty solids by about 16 per cent. Consequently the applicant was prosecuted on a complaint lodged by the Medical Officer of the Municipal Board and convicted and sentenced as has been stated above.

4. Applicant had pleaded not guilty. According to him he was bringing 24 Paos of cow milk which was forcibly taken away by the Food Inspector who neither paid him its price nor gave him any part of the sample as required under the rules.

5. Sri I. P. Apan, Food Inspector, testified to have purchased the milk from the applicant and then to have filled it in equal parts in three bottles and sealed it at the spot. He gave one of the sealed bottles to the applicant and sent one to the Public Analyst for his examination.

6. The testimony of the Food Inspector was corroborated by Ram Saran and Har Prasad (P. Ws. 2 and 3) who stated to have seen him purchasing the milk from the applicant.

7. The trial Magistrate did not rely on the testimony of Ram Saran as in his opinion he was under the influence of the Food Inspector but he placed reliance on the evidence of Har Prasad whom he held to be an independent witness.

8. Har Prasad too, it appears, is not an independent witness. He admitted that he used to go round on checking of food adulteration cases with the Food Inspector and on the relevant date also he was with him when the Food Inspector purchased the milk from the applicant. That, however, does not go to show that the Food Inspector has bolstered up a false case against the applicant for no rhyme and reason.

9. There is, however, another difficulty which confronts the case. Section 9 of the Act lays down that the State Government may by notification in the Official Gazette, appoint persons in such number, as it thinks fit, having the prescribed qualifications to be Food Inspectors for the purposes of this Act. The qualifications are prescribed under Rule 8 which inter alia lays down that a person shall not be qualified for appointment as Food Inspector unless he (i) .....(ii).....(iii) is a holder of a qualification in sanitary science registrable as an additional qualification by the State Medical Council or Health Officers Examination Certificate, or possesses qualifications prescribed by the respective State Governments for appointment of sanitary inspectors or health inspectors.

10. Sri Apan did not possess any diploma recognised by the U. P. Government for being appointed as Sanitary Inspector. The Government, however, issued G. O. on 1-11-1962 Exhibit C-4 in which it permitted unqualified Sanitary Inspectors to continue to work as Sanitary Inspectors subject to their being successful in the special examination arranged by the Government in that behalf. Sri Apan, therefore, continued to act as Sanitary Inspector but he passed the qualifying examination in the month of November, 1963. He had taken the sample on 8th August, 1963, and although he was acting as a Sanitary Inspector he admittedly did not possess the qualification prescribed by the State Government for appointment of Sanitary Inspectors. That qualification he came to possess when he passed the examination in November 1963. It is, therefore, obvious that he was not a Food Inspector within the meaning of Section 9 of the Act and the G. O. dated 1-11-1962 which permitted him to act as Sanitary Inspector could not confer on him the powers of a Food Inspector as required under the Act.

11. That being so, in my opinion, Sri Apan had no authority as Food Inspector to take a sample of the milk from the applicant and his prosecution on the basis of the analysis of that sample is misconceived and not sustainable in law.

12. In the result this revision is allowed. The conviction and sentence of the applicant are set aside. He is on bail. His bail bonds are discharged. He need not surrender. Fine, if paid, shall be refunded to him.