

Nazir Vs. State of U.P.

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Court : Allahabad

Decided On : Apr-28-1983

Reported in : 1984CriLJ74

Judge : R.C. Deo Sharma, J.

Appellant : Nazir

Respondent : State of U.P.

Judgement :

ORDER

R.C. Deo Sharma, J.

1. This application in revision has been made by Nazir against the judgment and order dated 14-4-1981 passed by the learned Vth Additional Sessions Judge of Sitapur in an appeal against conviction and through which the appeal was dismissed and the conviction of the applicant under Section 7/16 of the Prevention of Food Adulteration Act was upheld. The applicant was sentenced by the trying Magistrate to six months' rigorous imprisonment and a fine of Rs. 1,000/-, in default of payment of which he was to undergo further simple imprisonment for three months.

2. The prosecution case in brief was that the Food Inspector Sri Pratap Shankar Srivastava checked the applicant on 8-7-1977 at about 11 A.M. on Sitapur-

Lakhimpur road in village Hargaon while he was carrying milk in a can and suspecting it to be adulterated he obtained a sample according to the rules and having paid the price therefor obtained receipts etc. in the presence of one P. K. Chopra. The applicant had disclosed that it was mixed, milk containing 3 shares of cow milk with 2 shares of buffalo milk. On an analysis the milk was found to contain 5.1 per cent milk fat and 6.1 per cent non-fatty solids and thus according to the public analyst's report non-fatty solids were deficient by 28 per cent. After completing the formalities for obtaining sanction for prosecution a complaint was filed and copy of the public analyst's report was also sent to the applicant.

3. At the trial the Food Inspector examined himself and produced Sri Chopra in whose presence the sample was taken. The Food Clerk in the C.M.O.'s Office Sri Misra was also examined to prove the despatch of public analyst's report to the applicant. In defence the applicant contended that he was not carrying the milk for sale nor was he doing this as a business but was taking milk to his Mause (mother's sister's husband) in connection with the marriage of his daughter.

4. The learned Magistrate believed the prosecution version and convicted the applicant as above. On an appeal being filed the learned Additional Sessions Judge agreed with the findings recorded by the trial court and dismissed the appeal. In this revision petition it has been contended that the evidence did, not establish that the applicant was a milk vendor or that he was carrying or exposing milk for sale. It has also been contended that the deficiency of 28 per cent in the non-fatty solids as reported was incorrect.

5. I have heard the learned, counsel for the applicant as also for the State and have gone through the record. It is not disputed that the Food Inspector obtained a sample of the milk from the applicant on Sitapur-Lakhimpur road and completed the necessary formalities of obtaining a receipt of payment and giving notices in Form VI and Form VII and having obtained a requisite sanction for prosecution, the complaint was lodged. The main contention of the applicant's learned Counsel was that the milk was not being carried or exposed or stored for sale and consequently no offence was made out. It was also argued that the case was different from those cases where a mere sale of sample to the Food, Inspector

was held to be sale for the purposes of Prevention of Food Adulteration Act. The applicant's contention was that he was carrying about 5 litres of milk but had no prescribed measure with him with the help of which milk could be measured and sold and he had carried it to his Mausea in connection with his daughter's marriage. He also stated, that he had no licence for sale of milk and was not a milk-vendor by profession but was an agriculturist. The applicant's Mausea Abdul Rahman was examined as D. W. 1 and he supported the contention that milk was brought to him by the applicant in connection with his daughter's marriage on his request. He admitted that the applicant had told him that on the way the Food, Inspector had obtained the sample of the milk. He also admitted that the applicant was Gaddi by caste and owned two buffaloes. According to the Food Inspector the applicant was going on a Rickshaw when the sample was taken whereas the applicant's contention was that he was going on a cycle. The only witness examined in addition to the Food Inspector was Praveen Kumar Chopra, a student of Intermediate class and who was running a tea shop. He knew the said Inspector for 1 1/2 years prior to this incident as the Inspector often used to visit the shop where his father was mostly conducting business. There were others also nearby but it is said that nobody was prepared to become a witness of the taking of sample. Assuming that all this happened in the manner alleged, the question is whether the applicant was carrying or exposing the milk for sale or was a milk-vendor by profession or as contended, by the defence he was carrying milk only for the purposes of marriage of his Mausea's daughter. Had the applicant been a milk-vendor or was exposing milk for sale then the said fact of sale to the Food Inspector could also be sufficient to constitute sale for the purposes of the said Act. It was not necessary to prove that he was actually in the process of selling milk to anybody and it was sufficient if he was conveying, carrying or storing it for sale. In the instant case there is, however, no reliable evidence to indicate that the applicant was either carrying on business of sale of milk or at the particular moment he was carrying, conveying or storing milk for sale. It is extremely doubtful that he was possessing the measure used, for selling milk. He also had no licence for sale of milk and does not appear to have been prosecuted for that offence. Learned counsel for the applicant has placed reliance on *Municipal Corporation of Delhi v. Laxmi Narain Tandon* : 1976 CriLJ547 . On a consideration of the

provisions of Sections 7, 10 and 16, the Hon'ble Supreme Court held that samples could be taken of articles of food only if they were manufactured, stored,, exposed etc. for sale. In other words the person sought to be prosecuted should be a seller, conveyer, deliverer, consignee, manufacturer or storer. On the other hand, reliance has been placed on : 1972 CriLJ1198 , Mohd. Yamin v. State of U. P., where sale to the Food Inspector for the purposes of sample was itself held sufficient to constitute sale for the purposes of the said Act. Facts in that case were, however, different. The Shakkar which the Food, Inspector had purchased, was, in fact, made for sale although it was contended by the accused that Shakkar as such was not kept for sale but it was kept for the purposes of manufacturing Rab. Even on the assumption that Shakkar was kept for preparing Rab, it was held that because Shakkar is an article of food and was sold to the Inspector, it was sufficient to constitute an offence if it was found to be adulterated. On the own facts of the case it was held to be a sale. It did, not come up for consideration that in case a particular commodity was meant for consumption by self or by a relation and was not carried or exposed or stored for sale, whether it would still constitute an offence if the commodity was found to be adulterated. On the own facts of the present case, therefore, it was difficult to sustain the conviction of the applicant.

6. It was next argued that the deficiency of non-fatty solids as reported by the public analyst was 28 per cent. According to the standard prescribed in the rules framed under the said Act, the non-fatty solids in mixed milk should be 8.5 per cent whereas in the instant case the analyst found, 6.1 per cent non-fatty solids and thus the deficiency was only 2.4 per cent. In what manner 28 per cent deficiency has been reported, could not be explained by the learned Counsel appearing for the State. In the point of milk fat, however, the sample was found to contain 5.1 per cent as against the statutory requirement of 4.5 per cent minimum and consequently there was no deficiency in milk fat. In any view of the matter, therefore, the application deserves to be allowed.

7. The application in revision is accordingly allowed and the conviction and sentences recorded by the learned court below against the applicant are set aside. He is acquitted of the charge made against him. The fine, if realised, shall be refunded and the bail bonds, if any, shall stand discharged.

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