

**Dukhi Vs. Emperor**

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**SooperKanoon Citation :** [sooperkanoon.com/465261](http://sooperkanoon.com/465261)

**Court :** Allahabad

**Decided On :** Dec-06-1935

**Reported in :** AIR1936All148

**Appellant :** Dukhi

**Respondent :** Emperor

**Judgement :**

ORDER

**Niamatullah, J.**

1. This is an application by one Dukhi Halwai of Mirzapur against an order of conviction passed by a Magistrate, First Class, of that district under Section 4, U.P. Prevention of Adulteration Act. The applicant is a 'halwai' and sells among other things 'balai' and milk. On 7th March 1935 a sanitary inspector of Mirzapur went to his shop and asked for half a seer of milk. The applicant supplied that quantity of milk for one anna, that is to say, he sold at the rate of two annas a seer. The sanitary inspector there and then divided the milk bought by him into three parts, one of which was left with the applicant in a sealed phial and another part was sent in a sealed phial to the Public Analyst for examination. It was found that the milk was deficient in fat to the extent of 63 per cent. The applicant was prosecuted under the U.P. Prevention of Adulteration Act and convicted. He has applied to this Court in revision. It is argued that the applicant never professed to

sell pure milk and that every 'halwai' in the locality who sells 'balai' has to sell skimmed milk, which is left after the 'balai' is extracted. It is contended that if the sanitary inspector had asked for pure milk, the applicant would have told him that the milk which was for sale at his shop in the evening (it was in the evening that the sanitary inspector purchased the milk at the applicant's shop) was skimmed milk, which was usually sold by the halwais at the rate of 2 annas a seer.

2. The applicant was tried summarily, and it does not appear from the record that the sanitary inspector added any qualification to the milk. It may be taken that all he asked for was milk and that the accused supplied skimmed milk without informing the sanitary inspector that it was not pure milk. The question is 'whether on these facts the applicant was rightly convicted of an offence under Section 4, U.P. Prevention of Adulteration Act. As I read this section, it is divisible into two parts: (1) where the accused sells to the prejudice of the purchaser, any article of food which is not of the nature, substance or quality of the article demanded by such purchaser, or (2) the accused sells or offers or exposes for sale any article of food which is not of the nature, substance or quality which it purports to be. In the present case, if the sanitary inspector be considered to have asked for pure milk and the applicant supplied skimmed milk, he is clearly guilty under Section 4. He is also to be deemed guilty if he professed to sell pure milk while the milk that he supplied was skimmed milk. In my opinion where a customer asks for milk' he should be understood to be desirous of purchasing pure milk; and if he is supplied skimmed milk by the seller, who does not make it clear that the milk he was supplying was skimmed milk, he is guilty under the first part of Section 4. Similarly, where a person gives out that 'milk' was for sale at his shop, he should be taken to offer to sell pure milk, and not skimmed milk; and if while he is offering to sell 'milk' he supplies skimmed milk, he is guilty under the second part of that section. The 'halwais' of Mirzapur, and possibly of other places, are to make it clear to their customers that they sell skimmed milk, as distinguished from pure milk, so as to leave no room for any deception. On the facts of this case I think the applicant was rightly convicted. The fine of Rs. 10, imposed by the Magistrate taken with Rs. 4 as costs for the prosecution and Rs. 15, the fee of the Public Analyst, which must be paid on conviction is somewhat excessive for a first offence. I reduce it to Rs. 5, with Rs. 4 as costs of the prosecution and Rs. 15, the Analyst's fee. Subject to this

modification the order of the Magistrate shall stand. The fine if paid should be refunded to the extent of Rs. 5.

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