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**Rajanlal Vs. State**

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**Court** : Allahabad

**Decided On :** Sep-10-1975

**Reported in** : 1976CriLJ516

**Judge** : Hari Swarup, J.

**Appellant** : Rajanlal

**Respondent** : State

**Judgement** :
ORDER

**Hari Swarup, J.**

1. This revision has been filed against the conviction of the applicant under S, 7/16 of the Prevention of Food Adulteration Act and the sentence awarded to him is of Rs. 1,000 fine. The case of the prosecution was that on 22-2-1971, the Food Inspector found the applicant selling milk from a container which he was carrying on his cycle. It was said to be cow milk. The Food Inspector after serving the notice required by Rule 12 purchased from him 660 mis. of milk on payment of 0.60 P. as price. The milk was divided into three phials after adding formalin. One of the samples was sent to the Public Analyst for chemical examination. On the report of the Public Analyst that the milk was deficient in non-fatty solids, the applicant was prosecuted. The accused admitted that the milk was sold to the Food Inspector after notice for sample and was divided into three phials. He

claimed, however, that the milk was not adulterated, it was not meant for sale, and was being carried by him for his ailing mother. The accused also admitted his signatures on the receipt for the price paid to him.

2. The prosecution examined the Food Inspector and one Sheo Baran Singh, Sanitary Jamadar, who had witnessed the sale transaction. It also produced in evidence the notice, the receipt and the report of the Public Analyst. According to the Public Analyst, the sample of milk contained fat 3,7 per cent and non-fatty solids 5.6 per cent. It thus found that the sample was deficient in non-fatty solids contents by about 3 per cent.

3. The accused, in his defence, produced one Pati Ram as a witness to state that the Food Inspector had been forcing the accused to put his signatures and the accused was explaining that he was .carrying the milk for his ailing mo! her. The witness further stated that neither anv sample of milk was taken in his presence nor was the milk sealed in his presence. The courts below have disbelieved the defence evidence. There is no error in their appreciation of this evidence as the accused himself in his statement in court admitted to have sold the milk when demanded by the Food1 Inspector and signed the receipt. There was no suggestion in his statement that he was at all unwilling to make the sale.

4. The prosecution evidence in the case is sufficient to establish that the milk had been sold by the accused to the Food Inspector and the Food Inspector had paid the price of the same and sealed the sample after dividing it into three parts. It has further been proved from the report of the Public Analyst that the milk was deficient in non-fatty solids contents and was accordingly adulterated within the meaning of the Act.

5. learned Counsel for the applicant has contended that because fat content in the sample of milk was above the minimum prescribed and non-fatty solids were below the prescribed minimum, the milk could not be deemed to be adulterated, and the applicant could not legally be convicted for the offence under Section 7/16 of the Act. The standard for cow milk prescribed under the Rules is that minimum milk fat should be 3.5 per cent and non-fatty solids 8.5 per cent. When the law prescribes minimum for anything, the presence of that item in excess of the

minimum is irrelevant. If the milk fat instead of 3.5 per cent is 3.7 per cent it only shows that it is not deficient in fat contents. The milk is adulterated because the non-fatty solids are less than the minimum erescribed. Instead of 8.5 per cent they are only 5.6 per cent.

6. 'Adulteration' has been defined in Section 2 to include food sold by a Vendor which is not of the nature and the quality demanded by the [purchaser or of the nature, substance, or quality which it purports or represents. It also, according to Clause (1), means an article of food whose duality or purity falls below the prescribed standard. The prescribed standard for cow milk is that it should contain fat 3.5 per cent and non-fatty solids 8 5 per cent. As the report of the Public Analyst shows the milk was deficient in non-fatty solids.

7. In the case of Municipal Board, Faizabad v. Lalchand Suraitnal : AIR1964 All199 analysis of cow milk showed that it contained fat 2.7 per cent and non-fatty solids to the extent of 4.6 per cent. The milk was thus deficient in both fatty and non-fatty matters. A Division Bench of this Court held that the milk was adulterated. This decision was approved by the Supreme Court in the case of Food Inspector, Calicut v. Cherukattil Gopalan : 1971 CriLJ1277 . In the case of Food Inspector, Calicut Corporation (supra). item of food was sugar. The analysis showed ash 0.02 per cent total sugar as cane sugar 96.00 per cent and sachharin 14.0 mgs. per 100 flms. While according to the specification, sucrose should not have been less than 99.8 per cent and total ash not more than ,3 per cent. The deficiency thus was in the sucrose content and the sugar was held to be adulterated. Applying that test to the present case, the milk must be held to be adulterated because it was deficient in essential constituents.

8. learned Counsel for the applicant relied on a number of decisions (noted below) in support of his contention that if fat is above Me minimum prescribed and non-fatty felids are below the minimum prescribefili then there is no offence. Reliance has basically been placed on the decision of the Supreme Court in Malwa Co-operative Milk Union Ltd. v. Bihari Lal 1973 FAC 375. In that case, the Supreme Court mainly considered the question about the exercise of the powers of the High Court in revision to set aside on acquittal in cases of Food Adulteration where the

quality or purity of food fell only marginally below the prescribed standard. It was held that in such a case, the High Court should not have set aside the acquittal and directed a retrial of the accused. In that case there were two samples of milk the contents of which were as under:-

1st Sample.

Milk Fat 6%.

Solids non-fat 7.9%.

Second Sample,

Milk fat 5.9%.

Solids non-fat 7.7%.

The observation of the Supreme Court on merits of the case apart from considering the powers of the High Court in revision is in the following terms:-It would, therefore, appear that the solids in the milk should be of the order of 14% minimum, In the samples they were almost 14 per cent in the one case being only 0.1 per cent less and in the other 0.4 per cent less. The fat content appears to be proportionately less. It is not clear whether the analyst was able to isolate the fat content so successfully as not to have left room for this slight variation. The variation was thus borderline. What is generally extracted is cream and not the other solids.

9. The Supreme Court in this case had taken the view that the fat contents and non-fatty solid contents can be added together for determining if the quality of the article of food falls much below the standard prescribed or marginally below it. Adding the milk fat and non-fatty solids, the Supreme Court found that the deficiency was insignificant. The basis of the Supreme Court judgment as given in the judgment itself was that there may be error in the analysis made by the Public Analyst and as 1he margin of error in the analysis was in the case before the Supreme Court negligible, -it would not be a case in which the conviction should have been set aside and re-trial ordered.

10. In the case Bhoop Singh v. Nagar Swasthya Adhikari Criminal Revision No. 1475 of 1966 (All.), the learned Single Judge of this Court found that the aggregate quantity of fat and non-fatty contents was 13.6 per cent while the aggregate required under the rules was 12.9 per cent. It was a case of a mixture of the buffalo milk, cow milk and goat milk. The learned Judge was of the opinion that the finding of the Public Analyst about the deficiency in the mixture of non-fatty solid contents may have been due to the error of Analyst. The learned Judge accordingly held that the report of the Analyst was not sufficient for upholding the conviction. This case was followed' by another learned Judge of this Court in Sultan Shah v. State 1973 Cri LJ 1413 (All). In the case of Sultan Shah, the Public Analyst had found the sample of cow milk to contain 5.5 per cent fat and 7.1 per cent non-fatty solids.

The required minimum percentage was 3.5 per cent fat and 8.5 per cent non-fatty solids, The fat content was thus more than the minimum required while the percentage of non-fatty solid contents was less. The aggregate of the two was, more than the aggregate required. The aggregate of fat and non-fatty solids in the sample of milk was 12.6 per cent while the aggregate of the two required by the rules was only 12.0 met cent. The learned Judge held that the deficiency may have been due to the error which may have been committed by the Public Analyst. On this basis, the conviction was set aside. The ratio derivable from these cases is that if the aggregate of the fatty and non-fatty material is more than the aggregate required by law and the deficiency in one of the required constituents is marginally below the minimum it may be due to the error in the process of analysis. These cases were, therefore, decided really on the ground of want of sufficient evidence to establish that the food was adulterated,

11. In the case of Municipal Corporation of Delhi v. Om Prakash 1970 Cri LJ 1047 (Delhi), the report of the Public Analyst showed the fat contents to be 2.2-8 per cent and non-fatty solid contents as 11.1 per cent. Subsequently, on &n; analysis by the Director of the Central Food Laboratory after a lapse of time, fat contents were found to be 3.2, per cent making a total of 14.3 per cent. What was required was 3.5 per cent fat and 8.5 per cent non-fatty solids i.e. total 12 per cent. The court held that the finding about the deficiency in fat content in the sample may

have been due to the erroneous analysis made by the Public Analyst. On these facts, the court refused to interfere with the acquittal of the accused.

12. In the case of Nanak Singh v. State, 1974 FAC 42 (Punj). again the Punjab and Haryana High Court had refused to rely, on the report of the Public Analyst and on that basis refused to convict I he accused. In Municipal Corporation of Delhi v. Surindnrnath 1974 FAC 211 (Delhi) and in Municipal Committee, Amritsar v. Tarlok Singh, 1975 FAC 470 (Punj.), the acquittal was not interfered with in revision on the basis of facts appearing in those cases. In the case of Nanak Singh (supra), the aggregate of the fat and non-fatty contents was 11.8% while the required aggregate should have been 12.0%.

13. An analysis of the cases mentioned above shows that the courts have thought it proper not to convict an accused (provided the aggregate quantity of fat and non-fatty solids contents is either above the aggregate quantity of fat and non-fatty solid contents required under the Rules or that the deficiency in the aggregate required is so small that the courts inferred that it could be due to the error which may have been committed in analysis by the Public Analyst. All these cases really are based on the appreciation of evidence in each case. From the cases mentioned above, the following principles can be deduced:-

1. That if the deficiency is either in the fat contents or non-fatty contents, the article of food would be deemed to be adulterated.

2. That if the aggregate of the fat and non-fatty solids contents in the milk is more than the aggregate of the minimum prescribed and the deficiency in one of the contents is marginal, the courts may not punish the accused on the ground that the marginal deficiency may be due to the error in the analysis by the Public Analyst.

3. That in case the deficiency is in one of the contents namely fat or non-fatty solids and the aggregate is also below the aggregate of the two as prescribed in the rules, the article would be deemed to be adulterated.

4. That if the deficiency in either of the two contents namely fat and non-fatty solids contents is such that the deficiency cannot normally be assigned to the error in .analysis by the Public Analyst, benefit may not be available to the accused by holding that the milk was not adulterated.

14. Applying these tests to the present case, the sample of food has to be held as adulterated because the aggregate is only 9.3% while the required aggregate of fatty and non-fatty solids contents is 12.0% and the deficiency in non-fatty contents is not marginal.

15. The other argument raised by the learned Counsel for the applicant is that it is not a case of sale because the applicant had not been selling the milk but was carrying it for his ailing mother. There is no merit in this contention. As already seen, the accused had himself admitted in the statement under Section 342 Cr.P.C. that he had sold the milk to the Food Inspector after notice, had taken the price for it and had given the receipt. In the face of this statement of the accused, the placing of reliance on the evidence of the prosecution witnesses by the courts below cannot be said to be erroneous. It is also immaterial whether the milk was meant for public sale or not, because once the sale is made to the Food Inspector for purpose of samiple, it is a sale and makes the vendor liable to punishment if the article of food is found to be adulterated This was held by this Court in Municipal Board, Faizabad v. Lalchand Suraimal : AIR1964 All199 and this case was approved 'by the Supreme Court in Food Inspector, Calicut 1971 Cri LJ 1277 (SC) (supra).

16. It was next contended that the conviction was bad because of non-compliance of Sub-section (7) of Section 10 of the Prevention of Food Adulteration Act. The contention is that only Sheobaran Singh, Sanitary Jamadar was the witness and there was no public witness. The Food Inspector was questioned on this point and he gave evidence that he had requested the people present there to witness the incident but they refused to give out their names because they did not want to appear as witnesses in the case. This was believed by the trial court and there is no reason for me to doubt the testimony of the Food Inspector on this point.

learned Counsel relied on ,a decision of the Supreme Court in Ram Labhaya v. Municipal Conporation of Delhi : 1974 CriLJ672 . In that case, even though the Supreme Court emphasised the importance of taking independent witnesses, it was held that if the Food Inspector had called on the neighbouring shop-keepers to witness the taking of the sample but none was prepared to co-operate, the prosecution would be relieved of its obligation to cite independent witnesses. Same iprineiple will apply in the present case. Further, the Supreme Court referred also-to its decision in Babulal Bargovindas v. State of Gujarat : 1971 CriLJ1075 in which it was held that non-compliance with the provisions of Section 10(7) of the amended Act would not vitiate the trial and since the Food Inspector was not in a position of an accomplice, his evidence alone, if believed, can sustain the conviction. In the present case, there is nothing on the basis of which his testimony may be disbelieved. Moreover, in view of the admission of the accused himself that he had sold the sample and had put his signatures on the receipts etc., the argument has no relevance.

17. The last contention of the learned Counsel was that the appellate judgment should be set aside as the accused had not received any notice about the date of hearing of the appeal. The appeal had been filed by the applicant through a counsel. Notice was admittedly served on the counsel about the date of hearing. Section 385 of the Criminal P.C. 1973 which is equivalent to Section 422 of the Crrninal P.C. 1898 provides that the appellate Court shall cause notice to be given to the applicant or his pleader. Subsection (3) of Section 366 of the Criminal P.C. 1898 provides:-

No judgment delivered by any court shall be deemed to be invalid by reason only of the absence of any party or this pleader on the day or from the place notified for the delivery thereof, or of any omission to serve, or defects in serving, on the parties or their pleaders, or any of them, the notice of such day and place.

The judgment in appeal cannot accordingly be held to be invalid for this reason. In spite of this, the learned1 counsel was permitted in this Court to refer to the entire evidence in the case and actually the relevant evidence in the case was placed before me and on consideration thereof, I too have come to the same conclusion,

viz., that the prosecution has succeeded in establishing that the accused had sold the milk as alleged by the Food Inspector and that it was found to be adulterated by the Public Analyst, The appellate order cannot accordingly be quashed on this ground.

18. The sentence awarded in the (present case is already below the minimum, inasmuch as less than the minimum period' of imprisonment prescribed by law has- been given. The reason assigned for giving a lesser punishment is that the appellant is a petty hawker and there is no previous conviction against him and that the had been in jail for two days. The sentence below the minimum can be awarded under Section 16 of the Act only if the court finds some adequate and special reason for imposing a sentence of imprisonment for a term of less than six months. The reasons assigned in the judgment of the lower appellate court are neither adequate nor special.

The person being not a previous convict is irrelevant as the minimum is prescribed for-the first offence independently of the penalty for subsequent offences. Being a petty hawker is no special circumstance. The reason has to have some nexus with the crime or the circumstances in which it was committed. The sentence of two days of imprisonment in the circumtances was wholly inadequate. The learned Judge had wrongly reduced the sentence awarded by the trial court. I would have issued a notice to the accused to show cause why sentence be not enhanced; but as the offence was committed in February, 1971 and the learned Counsel at the bar has stated that he has reason to believe that the applicant has never again acted in an anti-social manner, I refrain from issuing notice of enhancement of sentence.

19. In the result, the revision fails and is dismissed.

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