

**Shri Ram Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/466457](http://sooperkanoon.com/466457)

**Court :** Allahabad

**Decided On :** Sep-29-1975

**Reported in :** 1976CriLJ736

**Judge :** Hari Swarup, J.

**Appellant :** Shri Ram

**Respondent :** State

**Judgement :**

ORDER

**Hari Swarup, J.**

1. This revision has been filed by the applicant against his conviction under Section 7/16 of the Prevention of Food Adulteration Act (herein- after called the Act) and the sentence of six months' rigorous imprisonment award<sup>^</sup> ed to him.

2. The case of the prosecution, in brief, was that the accused was selling sweets at his shop. The Food Inspector (hereinafter called the Inspector) found that the 'Laddus' which the accused was selling were coloured. He asked the accused to give him a sample of 'Laddus' for being examined Toy the Public Analyst, but the vendor refused. When the Inspector advanced to take the Laddus for sample he was threatened. The Inspector thereafter prepared a memorandum to the effect that the vendor had refused to sell Laddus to him. He then kept waiting for ten or

fifteen minutes. The vendor thereafter closed his shop and went away. A complaint was lodged on these facts and the vendor was put to trial for preventing the Food Inspector from taking the sample of food.

3. The prosecution examined<sup>1</sup> the Food Inspector and one Balwant who had signed the memorandum prepared by the Inspector. The trial court believed the prosecution version and convicted the accused and sentenced him as mentioned above. Appeal filed by the accused was dismissed. He has now come up in revision to this Court.

4. learned Counsel for the applicant has contended that the prosecution has failed to prove that the vendor-accused had prevented the Inspector from taking the sample. His contention is that unless the vendor had done some overt act to prevent the Inspector from taking the food for sample, the vendor could not be held to have prevented him from taking the sample.

5. Coming to the questions of fact, it is fully established that the accused had exposed for sale Laddus which were coloured. The Inspector had asked for a sample and the vendor had refused to give it, and had left the shop after closing it, ten or fifteen minutes after the demand had been made by the Inspector, Both the courts below have believed the testimony. I have also looked into the evidence and found no reason to disagree with the findings of the courts below regarding these facts.

6. As regards the allegation that the vendor had threatened the Inspector and had by that threat stopped him from taking the Laddus, the evidence of the Inspector is not corroborated by the witness Balwant. The complaint also does not specifically mention the threat. The words are. 'I again asked him to give the sample and proceeded to take sample of that coloured Laddu from the shop. But the above-noted Shri Ram refused and prevented me from taking sample of that coloured Laddu. He told me to leave the shop. I waited for 10-15 minutes. He closed the shop and went anywhere after closing the shop'. Balwant, P.W. 2 has not stated anything about the Inspector's advancing towards the Laddus for taking sample himself, nor has he stated anything about the alleged threat. The trial court has observed that even if Balwant's testimony was not taken into consideration the

sole testimony of the Inspector could be relied up. Neither of the two courts has given any positive finding that the threat was extended, though it appears that the courts below had believed the statement of the Food Inspector in its totality. In the question put to the accused under Section 342, Cr, P.C. also no explanation was asked about this alleged threat. It would thus be better to give the benefit to the accused and hold that the prosecution has not proved beyond reasonable doubt the fact that the accused had threatened the Inspector and by that threat positively stopped the Inspector from taking the sample. I accordingly proceed to decide the case on the basis that the accused had, on demand, refused to give sample and had then gone away closing the shop.

7. Section 16(1)(b) of the Act makes any person liable to punishment who prevents the Food Inspector from taking a sample as authorised by the Act. Section 10(a)(1) gives the Inspector power to take samples of any article of food from any person selling such article. Sub-section (2) of Section 10 gives the Food Inspector power to enter any place where the article of food is exposed for sale. Sub-section (4) of Section 10 provides for seizure of adulterated food. Contention of the learned Counsel for the applicant is that as the Inspector had the power to take the sample, he could have taken the sample himself by picking up the 'Laddus' and hence by not giving the sample the vendor committed no offence. The matter was considered by this Court in the case of *Municipal Board v. Jhamman Lal* : AIR1961 All103 . In that case the vendor had left the shop telling the Food Inspector that he would be coming back soon. The employee at the shop also left saying that he was going to look for the shopkeeper. Neither of the two returned although the Inspector waited for considerable time. It was held that the vendor, by leaving the shop and disappearing from the scene had prevented the Food inspector from taking the sample. This case was considered in the case of '*Municipal Board v. Malukdas*', 1971 All WE (HC) 64 :(1971 Cri LJ 705). In that case it was held that mere inaction on the part of the vendor in not giving the sample would not tantamount to preventing the Food Inspector from taking the sample. In this case the dictum laid down by the Court in *Jhamman Lai's* case (supra) was modified and it was held that the vendor must play some active role. Taking the ratio of these two decisions, the applicant in the present case will be guilty if, (besides refusing to give sample, he is proved to have done some overt

act. In the present case the overt act alleged by the prosecution is the closing of the shop by the vendor and his disappearance from the scene

8. learned Counsel for the applicant has, however, contended that the ten to fifteen minutes' time which elapsed between the refusal by the vendor and the closure of the shop was sufficient to enable the Inspector to take the sample by picking up the Laddoos. The questions to be determined, thus are; whether the closing of the shop by the vendor was with the intent to prevent the Inspector from taking the sample and had this act resulted in preventing the Inspector from taking the sample. This will depend upon the question whether the demand for sample was continuing or had terminated when the shop was closed. The prosecution case is that the Inspector had remained wait-tag for ten to fifteen minutes after the vendor's refusal. After the vendor is asked to give the sample and he refuses, there must take place a reaction in the mind of the Food Inspector about that steps he should take. He may think it would be a proper course to persuade the vendor to give the sample. He may also think that better sense will prevail upon the vendor and he will offer the sample voluntarily. Similarly, there would be reactions going on in the mind of the vendor also. In the present case it appears that the Inspector was too slow to seize the goods while the vendor reached more quickly. The purpose of his waiting at the shop could have been none else -awn the taking of the sample. Once the Food Inspector arrives and demands the sample, it must be taken that he is there to take the sample and the vendor knows that he has to give the sample. To event of the transaction, in the circumstances of the present case, cannot be deemed to have come to a close on the vendor's refusal as the Food Inspector was still waiting at the shop to take the sample, By closing the shop and going away the vendor frustrated the Inspector's mission and prevented him from doing his duty. The period of ten to fifteen minutes between the refusal by the vendor and the closing of the shop by Mm cannot in the .sequence of events be deemed to be such a long time as to give the vendor the impression that the Inspector had withdrawn his demand and was waiting at the shop with1' out purpose. The closing of the shop in the circumstances of the case had direct nexus with the vendor's refusal to give the sample. His Action must accordingly be deemed to be an overt act which was meant to and in fact did prevent the Food Inspector from taking the sample.

9. learned Counsel must contended that the first question put to the accused by the trial court under Section 342, Cr.P.C. was a combination of a number of questions and was accordingly in violation of Jaw. The question was in the following terms:

Kya dinank 19-8-70 ko samay kareeb 9 baje din mein ap ki dukan jo Bhathat men hai Khadya Niriksfeak pehunche aur ap ki dukan men kuli hui mithaiyan paye aur us per dhul wa makkhiyan bai-thi hui thi aur inhonen ramgeen laddu ka sample manga aur dene se inter kiya aur dukan band karke chale gaye?

No doubt H would have been better If question had been divided Into a number of questions and each question toad teen put separately; but the putting of the three questions together cannot %e said to have caused any prejudice to the accused. No objection was taken by the accused, who was represented throughout by a counsel, to the framing of the question at any stage of the trial. In the appellate court also no such point a raised, la the case of 'Moseb Chaudhury v. State of West Bengal' AIR 1SS6 SC S3S : 1956 Cri LJ 940 it was observed:

A judgment Is not to be set aside merely by reason of inadequate compliance with Section 342, Cr. P. C Clear prejudice must be shown.

It was further held that the question of prejudice was. ultimately one of inference tram all the facts and circumstances of each case. In the present case there does not seem to be any prejudice caused to the Applicant by the asking of the combined question. The question only states the fact that the Food Inspector had reached the shop at which sweets were exposed for sale and those sweets were attracting flies and had dust over them; that the Food Inspector had wanted to take sample, and that the vendor-accused voluntarily refused to give the sample and went away dosing the shop. The question was in the negative. The two basic question related to the circumstance of the food being exposed fox sale and its sample being not given and the vendor's disappearance on shop being closed. The question was not such as to cause any prejudice to the accused,

10. The objection that no specific question was put to- the accused regarding the consequence of the overt act of the accused's disappearing after closing the shop

is also of no validity as the accused had denied the closing of the shop and his disappearance. After the negative answer given by the accused the next question about the consequence of the overt act did not arise. If he had accepted that the Food Inspector had come to take the sample and that he had closed the shop and gone away, the question would have arisen as to- why he had closed the shop and gone away and what was the effect of the same, but when the answer was in the negative the question did not arise. It was held in the case of *Makan Jivan v. State of Gujarat* AIR 1971 SC 1757 : 1971 CM LJ 1310 that where the accused had denied their presence it would have served no purpose to ask further questions. As in the present case further questions did not arise after the denial by the accused, no prejudice can be deemed to be caused to the accused by the consequential question being not put to the accused under Section 342, Cr.P.C. The trial cannot accordingly be deemed vitiated on this ground.

11. learned Counsel for the applicant has lastly urged that the applicant be given the benefit of Section 4 of the U.P. First Offender's Probation Act. learned Counsel has stated in support of his plea that the applicant has never again been charged for having committed any offence under the Act. As it is not proved that the applicant was selling adulterated food and the applicant has a regular shop and business and was never convicted before or after, it would be just and proper that he may be given the benefit of Section 4 of the U.P. First Offender's Probation Act. There is nothing on the record to show anything against the character or antecedents of the applicant to disentitle him from getting the benefit of the U.P. First Offender's Probation Act.

12. Taking into consideration all the circumstances, the sentence awarded to the applicant is set aside, and the applicant is directed to be released on his entering into a bond with one surety to appear and receive sentence when called upon during six months from the date of the execution of the bond and in the meantime to keep peace and be of good behaviour. The bond may be filed within one month from the date the applicant receives a copy of this judgment or within one month from the date of the receipt of the record by the trial court, whichever period may expire earlier. In case the applicant does not furnish the required bond, he shall be taken into custody and brought to this Court for receiving the sentence.

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