

**Jai Singh Vs. State**

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**Court :** Allahabad

**Decided On :** Sep-12-1975

**Reported in :** 1976CriLJ739

**Judge :** Hari Swarup, J.

**Appellant :** Jai Singh

**Respondent :** State

**Judgement :**

ORDER

**Hari Swarup, J.**

1. The applicant has filed this revision against his conviction under Section 7/16 of the Prevention of Food Adulteration Act and the sentence awarded thereunder. The trial court awarded the sentence of six months' R. I. and a fine of Rs. 1,000. In appeal the sentence of imprisonment was reduced by the learned Sessions Judge to the period till the rising of the court. The sentence of fine was, however, maintained.

2. The prosecution case in brief was that on March 6, 1971 at about 6-30 P.M., the applicant was found selling milk purporting to be cow milk. The Food Inspector after serving a notice on the applicant purchased from him 660 ml. of milk and paid 75 P. as its price. The milk was divided into three parts and was sealed after

mixing formalin into three phials. One of the phials was given to the applicant. One was sent for examination to the public analyst and the third was maintained by the Food Inspector.

3. The report of the public analyst showed that the sample was deficient in fat contents by about 17 per cent and in non-fatty solids contents by 24 per cent. The vendor was accordingly prosecuted for selling adulterated milk.

4. The accused pleaded not guilty and stated that he was not selling the milk but was taking it to the machine to get the fat extracted and that the sample was taken by the Food Inspector forcibly and without paying the price for the same. The accused, however, admitted putting his thumb marks on the notice and the receipt.

5. Both the courts below have considered the evidence led by the prosecution and have come to the conclusion that the prosecution had succeeded in establishing beyond reasonable doubt that the accused had sold to the Food Inspector the milk on 6th March, 1971 and that the milk was adulterated. There is nothing on the basis of which I may hold that the finding recorded by the court below suffers from any error.

6. The learned Counsel for the applicant has raised two points in support of the revision. The first point is that the sample was sent after delay for analysis to the public analyst. It is urged that though the sample was taken on 6th March 1971, the report of the public analyst is dated 18th May, 1971. The contention is without merit. The delay in the submission of the report cannot be said to be inordinate. Further in the report itself, there is a certificate to the following effect:

No change had taken place in the constituent of milk which would have interfered with the analysis.

In view of this certificate, it cannot be said that the accused suffered any prejudice on account of the fact that the sample was not sent for analysis immediately by the Food Inspector, or that the report came after two months.

7. The second point raised by the learned Counsel is that he was denied the opportunity of getting the opinion of the Director, Central Food Laboratory, as

contemplated by Section 13(2) of the Act. The contention is that because the prosecution was launched after considerable delay, the applicant could not avail of the opportunity. The accused was summoned for 30th December, 1971. The accused did appear on that date, but did not apply under Section 13(2) of the Act for getting the sample tested by the Director, Central Food Laboratory. At no stage did he make such an application. The learned Counsel has urged that it was of no utility for him to apply under Section 13(2) for the sample being tested as 299 days had already expired, and the milk of the sample should in the ordinary course have deteriorated. The same point was argued in the case of 'Ajitprasad Ramkishan Singh v. State of Maharashtra : 1972 CriLJ1026 . The Supreme Court negatived the argument and observed:

If in pursuance of the application the part of the sample was sent to the Director and he had reported that the part of the sample was incapable of analysis for the reason that it was decomposed, the appellant could perhaps, have contended that he was deprived of his right to have the sample analysed (by the Director on account of the laches of the complainant and that he should be acquitted. But, since the appellant never applied under Section 13(2) of the Act, he cannot complain that he has been deprived of any right. In *Bafoulal Hargovind Das v. State of Gujarat : 1971 CriLJ1075* Jag,an Mohan Reddy, J. speaking for the Court, said that unless an application to send the sample to the Director is made, the vendor cannot complain that he was deprived of his right to have the sample analysed by the Director.

It is thus clear that the vendor-accused cannot himself decide that no useful purpose will be served by the sample being for test by the Director of Central Food Laboratory. He has to move an application and get sample tested and if it is found deteriorated by the Director, he can claim that the prejudice was caused to him and he was deprived of the right by reason of laches on the part of the prosecution. In the present case, no application was ever moved, and hence no right of the applicant can be said to have been affected.

8. Lastly, the learned Counsel contended that the sentence awarded to the applicant is excessive. It is surprising that such an argument is being advanced

when the minimum punishment under law is six months' R. I. and a fine of Rs. 1,000, The learned Sessions Judge has given no special reasons for reducing the sentence of imprisonment from six months' R. I. to the period ending with the rising of the court. The only reason given by the learned<sup>1</sup> Sessions Judge is that the applicant is a petty shopkeeper not dealing in the sale of milk. The question of further reduction does not arise at all. The offence was committed long back and the sentence was reduced in April, 1972 and no appeal was preferred by the State and, therefore, I do not think it proper to issue notice of enhancement.

9. In the result, the revision is dismissed. The stay order is vacated.

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