

Asgar Vs. State

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Court : Allahabad

Decided On : Jan-01-1969

Reported in : 1970CriLJ1289

Judge : V.G. Oak, C.J.

Appellant : Asgar

Respondent : State

Judgement :

ORDER

V.G. Oak, C.J.

1. This criminal revision arises out of a prosecution under the Prevention of Food Adulteration Act. According to the prosecution, Asgar accused was carrying two drums containing adulterated milk. He was stopped by R. D. Sharma, Food Inspector. He purchased samples of milk, which the accused was carrying. One sample was sent to the Public Analyst. It was reported that the sample was deficient in non-fatty solids. The accused was, therefore, prosecuted under Section 7/16, Prevention of Food Adulteration Act, for selling adulterated milk. The accused conceded that he was checked by the Inspector. But it was denied that any money was paid to the accused. The trial Court was satisfied that the accused was selling adulterated milk. He was, therefore, convicted under Section 16, Prevention of Food Adulteration Act, and was sentenced to rigorous imprisonment

for six months and a fine of Rs. 1,000. Aagar's appeal was dismissed by the Temporary Sessions Judge, Bnlandshahr. Asgar has, therefore, come to this Court in revision.

2. It is common ground that B. D. Sharma, Food Inspector took a sample of milk from the accused. The main question for consideration is whether the milk, which the accused was carrying, was meant for sale. Three : witnesses were examined for the prosecution. P. W. 1 is B. D. Sharma, Food Inspector. He stated that the accused carried some 15 seers of milk. He denied the suggestion that the accused carried only four seers of milk.

3. P. W. 2 supported the Food Inspector in the examination-in-chief. But in cross examination P. W. 2 stated that the accused had five seers of milk in a Dibba. The accused was saying that the milk was not for sale. He was taking it to a relation of his. Abdul Rashid (P. W. 3) turned hostile. It will be noticed that two out of the three witnesses for the prosecution turned hostile.

4. Shaukat (D. W. 1) stated that the accused is his nephew. The accused brought milk for the witness.

5. There is material difference between the statements of the Food Inspector and P. W. 2 as regards the quantity of milk, The position taken up by the accused was that the milk was not for sale. He was taking it to a relation of his. The statement of the accused on this point is supported by the statements of P. W. 2 and D.W., 1. It is therefore, quite possible that the milk, which the accused was carrying was not meant for sale at all,

6. The learned Magistrate discussed this question thus : - ,

The only question is whether it was for sale or not. He had definitely sold the milk to the Food Inspector which is a sufficient evidence for sale.

Now, I do not think that compulsory gale would constitute sale for purposes of Section 7 of the Act. Section 10 of the Act confers wide powers on Food Inspectors to collect samples of suspected articles. Sub-section (1) of Section 10 states:

A Food Inspector shall have power-

(a) to take the samples of any articles of food from-

(i)

(ii) any person who is in the course of conveying, delivering or preparing to deliver such article to a purchaser or consignee....

It appears that on the language of Sub-clause (ii) of Clause (a) of Sub-section (1) of Section 10 of the Act the Food Inspector would have been entitled to collect a sample from Asgar even if Asgar's milk was not meant for sale. Sub-section (8) of Section 10 directs the Food Inspector to pay the price of the article to its owner, A purchase made under such circumstances cannot be considered a voluntary sale. If the milk was not in fact meant for sale, a sale of this nature would not bring the accused within the clutches of Sections 7 and 16 of the Act.

7. The prosecution evidence on the question whether the milk was for sale or not is meagre. There is reasonable possibility that the milk, which the applicant was carrying, was not meant for sale. Under the circumstances, the applicant's conviction under Section 16 of the Act appears to be improper,

8. The revision is allowed. I acquit Asgar of the charge under Section 16, Prevention of Food Adulteration Act. His bail bonds are discharged. If any fine has already been paid, it shall be refunded.

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