

Gopal Das Vs. State

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Court : Allahabad

Decided On : Nov-14-1960

Reported in : 1962CriLJ685

Judge : M.C. Desai, J.

Appellant : Gopal Das

Respondent : State

Judgement :

ORDER

M.C. Desai, J.

1. It is a finding of fact that the shop of the applicant was raided by a Food Inspector, who took a sample of ghee exposed for sale in it and that at that time one Hanuman Das was in charge of the shop and the applicant was absent. It is also a finding of fact that the sample contained adulterated ghee. Both the applicant and Hanuman Das were prosecuted and both have been convicted.

2. This reference has been made by the Sessions Judge of Mathura with the recommendation that the conviction of the applicant be quashed on the (sole) ground that no notice was given to him by the Food Inspector in compliance with the provision of Section 11(1)(a) of the Food Adulteration Act. There was also a question before the courts below whether Hanumandas sold the sample as his

own property or on his own behalf or as a servant or agent of the applicant. The Magistrate rightly came to the conclusion that he acted as a servant or agent of the applicant and did not expose the ghee as some body unconcerned with the applicant. In any case it is a finding of fact and the learned Sessions Judge has not made this reference on the ground that it is illegal or improper.

3. Coming to the only ground on which the reference has been made, I find that the view taken by the Magistrate in his explanation is quite correct. What is meant by 'the person from whom he has taken the sample' in Section 11(1)(a) is the person who was present in and incharge of the shop, from whom personally the sample was taken and not the owner of the sample. The same words are used in Section 11(1)(c)(i) and Section 11(2) and must have the same meaning in all the provisions. It is clear that the words in Sections 11(1)(c)(i) and 11(2) cannot possibly mean a person other than the person who personally sold the sample or under whose personal supervision the sample was taken. It would be impossible for a Food Inspector to give notice in writing of his intention to have it analysed at the moment of taking the sample to the owner of the shop who is not present at the shop when the sample is taken. Similarly it would be impossible for him to deliver one of the parts of the sample to him before leaving the shop.

The act mentioned in Section 11(1)(c)(i) is to be done at the time of taking a sample for analysis. A reading of Section 10 also leads one to the same conclusion; Sub-section (1)(a) empowers a Food Inspector 'to take samples of any article of food from (1) any person selling such article and Sub-section (3) obliges him to pay its price 'to the person from whom it is taken'. The words in italics (here into ") must necessarily mean the person who is present at the shop and is actually selling the article and not the owner of the shop who is absent and gets article sold through a servant or agent. It is not in dispute that the Food Inspector did give the required notice to Hanuman Das and that was full compliance with the law. Only the notice i.e., notice to only one person, is required to be given and when it is given no notice is required to be given to any other person even though he may be liable under the Act. It is to be noted that the provision is not that notice should be given to every person who may be liable under the Act.

4. I find nothing illegal in the conviction and reject the reference.

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