

Swami DIn Vs. State

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Court : Allahabad

Decided On : Oct-06-1972

Reported in : 1973CriLJ941

Judge : P.N. Bakshi, J.

Appellant : Swami Din

Respondent : State

Advocate for Pet/Ap. : Sri. S.S. Tewari

Judgement :

ORDER

P.N. Bakshi, J.

1. Swami Din has been convicted under Sections 7/16 of the Prevention of Food Adulteration Act and sentenced to six months rigorous imprisonment by the First Class Magistrate Banda. He filed an appeal which has been dismissed by the Sessions Judge, Banda on 28.8.1970. He has now come to this Court in revision.

2. The prosecution case is that on 21.12.1968 at about 11.30 a.m. Food Inspector Sri K.N. Srivastava found the applicant exposing for sale a mixture of cow and buffalo milk. After giving due notice to the accused Swami Din the Food Inspector purchased 660 Millilitres of milk from him on payment of 66 paise. He added form

a line to the sample of milk, divided it into three parts, put it into three separate phials and sealed the same. He obtained the endorsement of Swami Din on form No. 6 with respect to the purchase of the sample of milk for analysis. One of the said phials was given to the accused and out of the other two phials one was retained by the Food Inspector and the other was sent to the Public Analyst, U.P. Lucknow for his analysis and, report. The report of the Public Analyst disclosed a deficiency of 18 per cent in the non-fatty solid contents The necessary sanction was obtained from the District Medical Officer of Health and the accused was duly prosecuted. On behalf of the prosecution two witnesses were produced to prove the charge, viz., Sri K.N. Srivastava (P.W. 1) the Food Inspector and Angad (P.W. 2), a shopkeeper.

3. The accused denied having ex-posed for sale or having sold the sample of milk to the Food Inspector. He, however, admitted his signatures on notice Ex. Ka. 1. No witness was produced in defence.

4. The Magistrate after a consideration of the entire evidence on the record came to the conclusion that the prosecution case had been fully established and that the accused was guilty of the offence charged. The Sessions Judge has confirmed the findings of the trial court while dismissing the appeal.

5. I have heard counsel for the parties and have also perused the record of the case. Sri S.S. Tewari learned Counsel for the applicant has made two submissions. The first submission on which great emphasis is laid is given in ground No. 5 of the memo of revision. It runs thus:

Because the Chemical Examiner's report is not admissible as no link evidence to the effect that the samples sealed tallied with the seals on the articles has been produced.

The next submission made by him is that as the proper quantity of formaline had not been mixed in the sample, the non-fatty solids therein were destroyed and, as such, the report of the Public Analyst is not reliable.

6. I shall now consider the force of these submissions. Before, however, dealing with these questions, It is necessary to examine the evidence which is on record. The Food Inspector Sri. K.N. Srivastava (P.W. 1) has stated that on 21.12.1967 at about 11.30 a.m. he saw the accused selling a mixture of cow's and buffalo's milk near Amar Talkies. He purchased 660 millilitres of milk from His accused on payment of 66 paise. He mixed formaline in the said sample and divided it into three equal parts. He put the sample in three separate phials. He labelled them and sealed them. The accused was given a notice in form No. 6 (Ex. Ka. 1) which was endorsed by him. In token of the sale for purposes of analysis. Out of three phials one phial which had been duly labelled and sealed as mentioned above was given to the accused. One phial was retained by the Food Inspector and the third phial was sent to the Public Analyst along with form No. 7. He also states that a separate copy of form No. 7 was also sent to the Public Analyst by post.

On receipt of the report of the Analyst the Food Inspector obtained the necessary sanction for prosecution of the accused. In cross-examination the Food Inspector has denied the suggestion made to him that he did not add formaline to the sample of milk. He has further clarified that he had mixed 48 drops of formaline to the entire sample of milk by which he meant that each phial contained sixteen drops of formaline as required under the rules. Angad (P.W. 2) is a shopkeeper who has been produced to corroborate the prosecution story. From a perusal of the statement of the accused recorded under Section 342. Cr.P.C. it is obvious that even though Swami Din denied the sale of the milk to the Food Inspector he admitted his signatures on Ex. Ka. 1. He tried to explain his signatures by saying that he was told that his signatures were being taken in connection with another case. At this very stage it would be pertinent to refer to the notice in form No. 6 (Ex. Ka. 1). The endorsement which has been made by Swami Din on this notice is to the following effect:

Maine Inspector Sahab Ko 660 millilitre dudh babat namoone ke janch becha. Mere samne yah dudh teen saf shishi une barabar barabar bhara wa seal mohar Mya gaya. Maine Inspector Sahab se ek kita notice babat namoone ki janch, ek seal band shishi, 66 paise dudh ki kimat wasul pai

Dastkhat Swami Din

Ta. 21.12.1967.

7. In the report submitted by the Public Analyst in form No. 3 under Rule 7(3) of the Prevention of Food Adulteration Rules he has given the following opinion:

(1) Fat 5.6 per cent.

(2) Non-fatty solids. 7.2 per cent This sample is deficient in non-fatty solid contents by about 18 per cent. No change had taken place in the constituents of milk which would have interfered with the analysis. The sample has been judged on the basis of the standard derived from the statutory standards for cow milk and buffalo milk mixed in the proportion specified above. The seal fixed on the container of the samples tallied with the seal impressions sent by the Food Inspector and the sample was in a condition fit for analysis.

Signed this 19th day of Feb. 1968

Sd. R.S. Srivastava

Public Analyst, Government of Uttar

Pradesh, Lucknow.

This is the entire evidence on the record produced by the prosecution. On the basis of this evidence I am in agreement with the courts below that the accused was selling milk and further that he sold the sample of milk in question to the Food Inspector.

8. I shall now consider the first submission made on behalf of the applicant in the background of the above facts. Section 11 of the Prevention of Food Adulteration Act provides the procedure which the Food Inspector has to follow when he takes the sample of food for analysis. The relevant portion of Section 11. Sub-section (1) runs thus:

When a Food Inspector takes a sample of food for analysis, he shall

- (a) give notice in writing then and there of his intention to have it so analysed to the person from whom he has taken the sample;
- (b) except in special cases provided by rules under this Act separate the sample then and there into three parts and mark and seal or fasten up each part in such a manner as its nature permits; and
- (c) (i) deliver one of the parts to the person from whom the sample has been taken;
- (ii) send another part for analysis to the public analyst; and
- (iii) retain the third part for production in case any legal proceedings are taken or for analysis, by the Director of the Central Food Laboratory under Sub-section (2) of Section 13, as the case may be.

Part V of the Prevention of Food Adulteration Rules prescribes for the sealing, fastening, and despatch, of samples taken by the Food Inspector. Rule 14 lays down the manner of sending samples for analysis. According to this rule samples of food for purposes of analysis shall be taken in clean, dry bottles or jars or any other suitable containers which shall be closed sufficiently tight to prevent leakage, evaporation, or in the case of dry substance, entrance of moisture, and shall be carefully sealed. Rule 15 lays down that the bottle or jars etc containing samples for analysis shall be properly labelled and the parcel shall be properly addressed. This rule lays down certain data which shall be filled on the label affixed to the sample. Rule 16 describes the manner of packing and sealing of samples. After all these requirements have been complied with, the Food Inspector despatches a sealed bottle or container of the sample for analysis to the public analyst.

Rule 17 lays down that the container of sample for analysis shall be sent to the public analyst by registered post, or railway parcel, or air freight, or by hand, in a sealed packet enclosed together with a memorandum in form VII in an outer cover addressed to the public analyst. In order to guard against misplacement, misdelivery, or other transitional errors. Rule 18 lays down that a copy of the memorandum, and specimen impression of the seal used to seal the packet, shall

be sent to the public analyst separately by registered post, or delivered to Mm. or to any person authorised by him. These directory rules have been framed for the guidance of the Food Inspector, who after obtaining a sample of food from an accused proceeds to despatch the same to the public analyst. Rule 7 of the Prevention of Food Adulteration Rules prescribes the duties of the Public Analyst. It lays down that on the receipt of a package containing a sample for analysis from the Food Inspector or any other person, the Public Analyst or other officer, authorised by him, shall compare the seals, on the container and the outer cover, with the specimen impression received separately, and shall note the conditions of the seals thereon.

The Public Analyst after fulfilling these conditions proceeds to analyse the sample of food. After the analysis has been completed the Public Analyst is required under Rule 7, Sub-rule 3 to send to the Food Inspector two copies of his report giving the result of the analysis in form III, within sixty days of the receipt of the sample. It would be pertinent to note at this stage that in form III which is the report of the public analyst an amendment has been made by G.S.R. 1533 dated 8.7.1968. In view of this amendment the Public Analyst has not only to certify that the sample sent to him for analysis was properly sealed and fastened, but that the 'seal on the container of the sample tallied with the specimen impression of the seal separately sent by the Food Inspector and the sample was in a condition fit for analysis.' In the present case, this certificate has been given by the public analyst in his report. It has been held by this Court in a case reported in 1969 All WR (HC) 446, *Babulal v. State* that the provisions of Rules 7 and 18 of the Rules framed under the Prevention of Food Adulteration Act are not mandatory, and are merely directory.

9. The evidence in the present case, mentioned above, clearly discloses that the Food Inspector Sri K.N. Srivastava had taken a sample of milk from Swami Din, that he had divided the sample into three bottles, that he had sealed and labelled each bottle, that he had given one of the three bottles to Swami Din and that out of the remaining two he had sent one bottle for analysis to the public analyst. Lucknow, that he had sent a separate specimen of the seal under registered cover to the Public Analyst and that he had received the report of the Public Analyst in form III concerning the analysis in question. Swami Din has admitted that he had

signed Ex. Ka. 1. It is Form No. VI. Further, he has also endorsed on form No. VI that the sample taken from him was divided into three parts. Each bottle was sealed and labelled in his presence and one bottle was given to him. It is further proved that the Public Analyst had given certificate as required in form III to the effect that the seal on the sample tallied with the impression of the seal sent separately to him by the Food Inspector. These facts having been proved, in my opinion, a legitimate presumption can be drawn under Section 114(f) the Indian Evident Act, that the sample sent for analysis by the Food Inspector was the same sample which was actually analysed by the Public Analyst and that the seals of the sample in question were not tampered with during this period. If the accused doubted that the sample had been tampered with he had a right to have his sample bottle sent to the Central Food Laboratory for analysis.

10. It has been held in 1957 All WR (HC) 385. Kamal Singh v. State that where there is evidence to the effect that the sample was sent by the Food Inspector to the Public Analyst it presumably raises a presumption that the act of despatch was done regularly and properly. It has also been held in AIR 1963 Raj 233 : (1963) 2 CM LJ 527, Swarup Ram v. State that where the samples were duly sealed by the Food Inspector in the presence of the applicant and they were received by the analyst in a sealed condition and there is no material on the record from which any suspicion might arise that the bottles were tampered with the presumption is that the seals were not tampered with.

11. Section 13(5) of the Prevention of Food Adulteration Act runs as follows-

Any document purporting to be a report signed by a Public Analyst unless It has been superseded under Sub-section (3) or any document purporting to be a certificate signed by the Director of the Central Food Laboratory, may be used as evidence of the facts stated therein in any proceeding under this Act or under Sections 272 to 276 of the Indian Penal Code (Act, XLV of 1860).

12. I have already mentioned above that after the amendment of form III the Public Analyst is required to certify that the seal on the container of the simple tallied with the specimen impression of the seal separately sent by the Food Inspector. He is also required to certify that the sample was in a fit condition for analysis. It would,

therefore not be a correct interpretation of this section to hold that the result of the analysis of food alone would be admissible in evidence under this sub-section, and that the rest of its contents regarding the seals and the fitness of the sample for analysis would be inadmissible. There is nothing in Section 13 Sub-section (5) on the basis of which it can be reasonably argued that only a part of its contents are to be used as evidence of the facts stated therein, and the rest of its contents are to be excluded. I am therefore of the opinion that the first submission made by the counsel for the applicant has no force.

13. Regarding the second submission made by the counsel for the applicant that the proper quantum of formaline was not mixed with the sample, I do not find any force in it. I have already referred above to the evidence of the Food Inspector that 16 drops of formaline were added in each bottle of milk. The certificate given by the Public Analyst in form III clearly indicated that the sample was in a condition fit for analysis. The object of adding formaline or any other preservative to a substance is to retain its original character and to prevent it from deterioration, so that it can be properly analysed. Even assuming that on a strict calculation another drop should have been added to the sample in question that would not materially affect the result of the analysis. The certificate of the Public Analyst regarding the fitness of the sample is in my opinion sufficient to reject this submission of counsel for the applicant. Nothing has been pointed out to me to convince me that the sample in question underwent any material change which rendered it unfit for analysis. I therefore find no force in this submission

14. Considering the fact that the applicant is a petty milk vendor, and that he has not been convicted before for an offence under this Act, I am of the opinion that the interests of justice would be served by altering the sentence imposed upon the applicant under Section 7/16 of the Prevention of Food Adulteration Act. from six months' rigorous imprisonment to a fine of Rs. 1000/-.

15. While therefore dismissing this revision on the merits. I set aside the sentence of imprisonment of six months' rigorous imprisonment imposed upon the applicant, and instead sentence him to a fine of Rs. 1000/-. The fine shall be paid within three months from today. In the event of failure to pay the fine the applicant shall

undergo rigorous imprisonment for six months as awarded by the courts below.

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