

Nanhey Vs. State of U.P.

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Court : Allahabad

Decided On : Jul-24-1981

Reported in : 1982CriLJ158

Judge : R.B. Lal, J.

Appellant : Nanhey

Respondent : State of U.P.

Advocate for Pet/Ap. : Sri. R. K. Dwivedi

Judgement :

ORDER

R.B. Lal, J.

1. This revision has been filed by Nanhey who has been convicted for an offence Under Section 7 read with Section 16 of the Prevention of Food Adulteration Act (briefly the Act) and sentenced to undergo rigorous imprisonment for six months and pay a fine of Rupees 1,000/-.

2. The relevant facts, in brief, are that Food Inspector V. N. Kulshrestha took a sample of cow's milk from the applicant at Lohamandi crossing within the limits of Nagar Maha Palika, Agra on 25th Aug. 1973 at about 9 p.m. after observing the relevant rules. A part of the sample was sent to the Public Analyst who reported

that the fat content was 3.6% and non-fat contents were 5.6%. The sample was treated as adulterated. A complaint was filed against the applicant on or before 4th May, 1974. The applicant took a variety of defences but none was accepted by the trial court. In the result, the applicant was convicted and sentenced. His appeal was also unsuccessful. Hence this revision,

3. Sri R. K. Dwivedi, learned Counsel for the applicant, argued this revision at great length on 6th and 15th July, 1981.

4. The first point urged by Sri Dwivedi is that the Public Analyst was not examined at the trial by the prosecution in order to prove as to what method was applied by him to find out the fatty and non-fatty contents of the sample milk. In the absence of the examination of the Public Analyst, the report of the Public Analyst could not be taken into consideration to come to the conclusion that the sample of milk was adulterated. In connection with this submission Shri Dwivedi has placed reliance on two reported decisions of this Court namely, Sultan Shah v. State of U. P., 1978 FAJ 168 (All) and four unreported decisions of this Court namely, Criminal Revn. No. 745 of 1975 Dhani Ram v. State decided on 19-9-1978, Criminal Revn. No. 1224 of 1975, Bhagwan Singh v. State decided on 27-9-1978, Criminal Appeal No. 2225 of 1974 Nagar Swasthya Adhikari, Na-gar Maha Palika, Agra v. Ram Swarup, decided on July 19th 1979 and Criminal Revn. No. 2058 of 1979 Babu v. State of U. P. decided on 4-9-1980. In the last four decisions, the aforesaid Division Bench decision was followed.

5. I have perused the judgments of the aforesaid cases. The judgments of the unreported cases were obtained from the record room of this Court.

6. In Sultan Shah's case 1973 Cri LJ 1413 (All) the fat content of milk was over 60% higher than the required minimum, whereas non-fatty solids content was 16% below the minimum required by the rule. An earlier unreported decision was cited before the learned single Judge who observed, thus (at p. 1413):

The ratio decidendi of the said decision, to put it briefly, is that the fact that the fat content found in the milk sold is much higher than the minimum prescribed by the Rules leads necessarily to the inference that no water had been added to the milk

and that in such a case the mere circumstance that the non-fatty solid content was below the standard prescribed by the Rules could only justify the inference either that the cow, from the udders of which the milk was drawn, was not given the proper feed or that the Public Analyst's report was erroneous.

7. Puran Singh's case 1978 FAJ 168 (All) came up before a learned single Judge, who in view of Sultan Shah's case 1973 Cri LJ 1413 (All) (supra) referred the case to a larger Bench. The Division Bench observed that 'the only question which arises, is whether in view of S. 13 of the Act, the correctness of the report of the Public Analyst can be doubted.' The Division Bench held that in view of Section 13(5) of the Act the report signed by Public Analyst, is evidence of the facts stated therein, but it would be open to the Court deciding the case either to accept such evidence to be reliable or vice versa. If on the face of it the correctness of the report appears not free from reasonable doubt, benefit of that doubt has to go to the accused. The Division Bench also observed that the fatty and non-fatty solid contents in the milk would depend on proper feeding and also on the health of animal from whose udder the milk was extracted. In that case the Public Analyst, had found that the sample milk contained 11 % fat and only 1.9% non-fat solids. It seems that the Division Bench summoned the Public Analyst to know if it was possible to take fatty and non-fatty solids from milk without reducing or affecting the fat contents. The Public Analyst replied half-heartedly that it did not seem possible. In view of the findings of the Public Analyst and the replies given by him, the Division Bench observed 'We find that the report of the Public Analyst is far from convincing and we have grave doubts if the analysis of the sample was properly done, (emphasis supplied) Hence no reliance was placed on the report of the Public Analyst and the accused were acquitted-

8. In Dhani Ram's case the sample was of goat's milk. The Public Analyst found that the sample contained 6.8% fat while the prescribed standard was only 3.5%, but was deficient in non-fatty solids content by 13%. The learned single Judge (Hon'ble M. P. Saxena, J.) referred to an earlier decision in Criminal Revision No. 1475 of 1966 decided by Hon. S. D. Singh, J. on 11th Mar. 1968 and observed 'the ratio decidendi of the said decision, to put it briefly, is that the fact that fat contents found in the milk sold is much higher than the minimum prescribed by the rules

leads necessarily to the inference that no water has been added to the milk and that in such a case the mere circumstance that the non-fatty solid content was below the standard prescribed by the Rules could only justify the inference either that the cow, from the udders of which the milk was drawn, was not given the proper feeding or that the Public Analyst's report was erroneous but not an inference that the milk in question was not pure. The view was followed in the case of *Sultan Shah v. State* 1973 Cri LJ 1413 (All) (supra) also'.

9. The learned single Judge then referred to the Division Bench decision *Puran Singh's case* 1978 FAJ 168 (supra) and noticed some observations of that Bench, which have been referred to earlier in this judgment, and went on to say that the position in the Criminal Revision before him was the same. He further said 'by no stretch of imagination it could be said that the milk which was deficient considerably in non-fatty solids was adulterated. The factors which were involved in the case of *Kadam Singh v. State* (*Puran Singh's case*) (supra) are equally well involved in the instant case and the sample of milk collected by the Food Inspector cannot, under the circumstances, be held to be adulterated',

10. In *Bhagwan Singh's case* the sample was of cow's milk. The Public Analyst found that the sample contained 4.7% fat and 7.2% non-fatty solids. The learned single Judge (Hon'ble M. P. Saxena J.) referred to his decision in *Dhani Ram's case* and to the Division Bench case and held, 'in my judgment when percentage of fat contents is in excess of the prescribed standard and the non-fatty solids are slightly deficient the milk cannot necessarily be held to be adulterated.'

11. In *Nagar Swasthya Adhikari v. Ram Swarup*, the milk was mixed milk of cow, buffalo and goat mixed in equal quantity. The Public Analyst found fat 5.9% and non-fatty solids 7.2% while the prescribed standard for such a mixed milk was 4.5% fat and 8.5% nonfat. In these circumstances, relying on *Kadam Singh's case* (*Puran Singh's case*) 1978 FAJ 168 (All) (supra) the learned single Judge held that 'either the report of the Public Analyst is erroneous or the quality of feed eaten by the animals whose milk was sent to the Public Analyst was not good.'

12. In *Babu's case* (Cri Revn. No. 2058 of 1979, D/- 4-9-1980 (All)) the sample was of cow milk, the fat content was found above the prescribed standard but the

non-fatty solids content was de- 1978) 2 FAC 185 (All) .1975 FAJ 107 (All) 1982 Cri.L.J./H I ficient by 12% only. The learned single Judge relying on Kadam Singh's case (Puran Singh's case) 1978 FAJ 168 (All) (supra) observed that there was no known method by which non-fatty solids could be removed from milk without disturbing its fat content and as the report of the Public Analyst does not disclose how it could have been done, no reliance can be placed on the report of the Public Analyst. Hence the report of the Public Analyst was not relied upon and the accused was acquitted.

13. 'A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found there in nor what logically follows from the various observations made in it.'

This was held by the Supreme Court in *State of Orissa v. Sudhansu Sekhar Misra*; : (1970)ILLJ662SC . The Supreme Court in this connection referred to the following observation made by the Earl of Halsbury LC in *Quinn v. Leathern* 1901 AC 495 :

Now before discussing the case of *Allen v. Flood* (1898) AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but gov' erned and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it, Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all.

14. In the light of the above principles, the ratio of the various decisions cited by the learned Counsel for the applicant and discussed above, is to be determined and further, it has to be seen how far the same can help the applicant.

15. From a careful reading of the aforesaid decisions, it is clear that it was not laid down in any of them that production of the Public Analyst as a witness at the time of trial is a must for proving the report of the Public Analyst and for making the report admissible in evidence. The Division Bench in Puran Singh's case 1978 FAJ 168 referred to Section 13(5) of the Act and clearly laid down that report signed by the Public Analyst is admissible in evidence regarding its contents. The mere fact that the Division Bench summoned the Public Analyst in that case in order to seek clarification in view of the findings recorded in his report, would not lead to the conclusion that the Division Bench laid it down that it is peremptory for the prosecution to examine the Public Analyst as witness to prove the report and make it admissible in evidence. The Division Bench only laid down that though the report of the Public Analyst is admissible in view of Section 13(5) of the Act, it is open to the Court deciding the case either to accept the report as reliable or to hold otherwise, if on the face of it the correctness of the report appears not free from reasonable doubt and the benefit of that doubt has to go to the accused. Neither the Division Bench nor any other learned single Judge laid down that it is obligatory on the prosecution to produce the Public Analyst to prove by what method of analysis he had arrived at the findings mentioned in his report. Hence the legal position remains that the report of the Public Analyst can be read in evidence in view of Section 13(5) of the Act and the prosecution need not produce the Public Analyst to formally prove 'the report and its contents.

16. Though in some of the aforesaid decisions some observations were made with regard to the poor feed or poor health of Indian milch animal, it was not laid down that if the constituents in a sample of milk fall below the prescribed standard on account of poor breed or poor health of the animal or on account of the poor quality of feed given to it then it would not be a case of adulteration under the Act. The reason for this appears to be that the learned Judges were aware of the definition of the term 'adulterated' occurring in the Act, which by a legal fiction gave an extended meaning to the word 'adulteration' beyond what is understood in common parlance by this word. The term 'adulterated' has been defined in Section 2 of the Act and inter alia includes an article of food which is sub-standard for any reason. It will include the case of milk which does not have fat and non-fat contents in the prescribed quantity notwithstanding the fact that it was in that very

condition in which it was drawn from the udders of the concerned animal and nothing was added to or subtracted from it.

17. In such of the aforesaid cases on a consideration of the fat and non-fatty solid contents found by the Public Analyst in the respective sample milk, the learned Judge came to the conclusion that no reliance could be placed on the report of the Public Analyst as it could be erroneous. This view cannot be taken as a ratio. In each case it will have to be decided by the Court concerned on a consideration of its peculiar facts, if the report of the Public Analyst should be accepted or should be rejected as erroneous and unworthy of reliance, Hence, none of the aforesaid decisions can serve as an authority for the instant case on the question of reliability or otherwise of the report of the Public Analyst. The question of reliability of the report, of the Public Analyst in the instant case shall have to be decided on the peculiar facts and circumstances of this case itself,

18. In the instant case the Public Analyst found fat content 3.6% and non-fat solids content 5.6%, according to the standard prescribed for cow milk; thus the sample was deficient in nonfat solids content by about 33%. The mere fact that there was deficiency only in non-fat solid contents in the sample cannot lead to the conclusion that the milk was not adulterated or that the report of the Public Analyst was erroneous. If the Legislature thought that the non-fatty solid contents would not be deficient in a sample in which the fat content is not less than the prescribed standard, it would not have prescribed standard for both fat and non-fat solid contents. It should be taken that the Legislature was aware that there could be a sample of milk in which fat content may be according to the prescribed standard but which may still be deficient in the non-fat solids content. It is likely that in the instant sample the non-fat solid content was below the prescribed standard because of the milk being sub-standard. It is also likely that the applicant falsely gave out that the milk was of cow while it was in fact Buffalo's milk which was deficient both in fat and non-fat solids content. So far no test has been discovered which would distinguish between cow's milk and buffalo's milk. The applicant had very opportunity to get the report of the Public Analyst checked up by getting another part of the sample analysed by the Director of the Central Food Laboratory. No attempt was made by the applicant to get such analysis done. For

all these reasons I am not prepared to infer from the circumstance that the sample was found deficient in only non-fat solids content, that the milk was not adulterated and the report of the Public Analyst to the contrary was erroneous and unworthy of reliance,

19. In view of the above, I repel the first contention of Sri, Dwivedi and hold that the report of Public Analyst was admissible and was rightly received in evidence. This report was not erroneous and was rightly acted upon by the learned Courts below.

20. The next contention of the learned Counsel for the applicant is that the Nagar Swasthya Adhikari of Nagar Maha Palika, Agra had no authority to file complaint against the applicant. There was no sanction as required Under Section 20(1) of the Act, further, there was no application of mind. He has also urged that there were two Nagar Swasthya Adhikaris namely Dr. H. B. Singh and Dr, C. K. Ahuja. It was not clear as to which of these two Nagar Swasthya Adhikaris had the authority to file complaint. Dr. Singh had no authority to score out the signatures of Dr. Ahuja.

21. I have given careful consideration to the above submission and, in my opinion, all the submissions are misconceived. All Municipal Medical Officers of Health were authorised by the Government of U.P. to institute or to give written consent for instituting prosecution under the Act within the Municipal areas in their respective jurisdictions vide Notification No. 10305/XVI (PH)-461-fi2 dated 16th December, 1955. When Agra Municipal Board became a Nagar Maha Palika the above notification was saved by virtue of Section 574 of the U.P. Nagar Maha Palika Adhiniyam, 1959. Hence, the Nagar Swasthya Adhikari had power to file complaints Under Section 20(1) of the Act. A similar view was taken with respect to the Nagar Swasthya Adhikari of Nagar Maha Palika, Kanpur vide Nagar Maha Palika, Kanpur v. Sri Ram : AIR1964 All270 . Hence, the Nagar Swasthya Adhikari Agra was competent to file complaint against the applicant. In the instant case, the complaint was filed by Dr. H, B. Singh, Nagar Swasthya Adhikari and, therefore, there was no question of according any sanction to anyone. Hence no question arises as to whether the concerned authority had applied its mind while granting

sanction for launching prosecution against the applicant.

22. It is true that signatures of Dr. C. K. Ahuja appeared which were scored out but this cannot help the appellant in any way. Signature of Dr. H. B. Singh Nagar Swasthya Adhikari appeared on the complaint. The Food Inspector proved the signatures and also the fact that Dr. Singh was the Nagar Swasthya Adhikari. It was not elicited from the Food Inspector that at the relevant time there were two Nagar Swasthya Adhikaris and that the function of filing complaints under the Act was entrusted to the other Nagar Swasthya Adhikari. It was also not clarified as to what was the status of Dr. C. K. Ahuja. Merely eliciting the fact that the scored out signatures were of Dr. C. K. Ahuja cannot help. It must be taken that the complaint was filed by Dr. H. B. Singh who was the Nagar Swasthya Adhikari and had the authority under S- 20 (1) of the Act to file the complaint.

23. The next contention of the learned Counsel for the applicant is that there was no compliance with Rule 9 (j) of the Rules framed under the Act. The said rule was mandatory and under it a copy of the report of the Public Analyst should have been sent to the applicant within ten days of its receipt from the Public Analyst, In this connection the learned Counsel has placed reliance on two decisions. Kesar Singh v. State 1979 All WC 591 and Puttu Lal v. State, 1980 All Cri C 77. On the other hand, I find the learned Additional Sessions Judge had placed reliance on the decision Jai Singh v. State, 1979 All WC 588 in support of his view that the said rule was only directory.

24. Rule 9 (j) as it exists now was substituted with effect from 13th May, 1974. It may be pointed out that in the instant case the prosecution had been launched against the applicant on or before 4th May 1974 the before the amended Rule 9 (j) came into force. The R, 9 (j) as it obtained prior to 13th May 1974 read, thus:-

To send by hand or registered post, a copy of the report received in form-3 from the Public Analyst, to the person from whom the sample was taken, in case it is found to be not conforming to the Act or Rules made thereunder, as soon as the case is filed in the Court.

25. In Jai Singh's case 1979 All WC 588 the question whether Rule 9 (j) was mandatory or merely directory, fell for consideration and a learned single Judge took the view that it was directory. In Kesar Singh's case 1979 All WC 591 the learned single Judge was considering the question whether Sub-section (2-a) of Sec, 13 of the Act was mandatory or directory. The question whether Rule 9 (j) was mandatory or directory had not arisen for consideration. It was only in passing that an observation was made by the learned Judge that if Rule 9 (j) could be mandatory, a fortiori Section 13(2-A) would be mandatory. In Puttu Lai's case 1980 All Cr C 77 the plea of Rule 9 (j) was raised for the first time in revision, the learned single Judge refused to entertain the plea because it was not taken up before the lower Court. However, some observation was made regarding the mandatory nature of Rule 9 (j). From these, it is clear that neither in Kesar Singh's case nor in Puttu Lai's case, the question, whether Rule 9 (i) is mandatory or merely directory, came up for consideration and whatever was observed with regard to this rule was nothing more than obiter. I am in respectful agreement with the view taken in Jai Singh's case. Rule 9 simply enumerates the duties of Food Inspector and also lays down guidelines for his guidance. A non-observance of any part of Rule 9 may expose the Food Inspector to any departmental or disciplinary action but it will be too much to say that non-observance of any of the parts of this rule would vitiate the criminal proceedings against an accused. I am, therefore, clearly of the view that Rule 9 (j) is only directory. The learned Counsel for the applicant had not shown that non-observance of this rule caused any prejudice to the applicant or that on account of it the applicant was precluded from getting another part of the sample analysed by the Director of Central Food Laboratory. The lower appellate Court also rightly emphasised this aspect of the matter. Hence, this contention of the learned Counsel is also repelled.

26. The learned Counsel for the applicant has next contended that the milk of which the sample was taken, was not meant for sale, the Food Inspector had not paid its price. In this connection the learned Counsel has cited two authorities *Prag Narain v. State* 1977 All Cri C 245 : 1977 Cri LJ (NOC) 146 (All) and *Masta Singh v. Union Territory* 1979 All Cri C 103 (SC). This contention of the learned Counsel is devoid of force. The Food Inspector stated that the applicant was exhibiting milk for sale and had given him sample of milk on receiving payment of Re. 1/- as its

price. Both the courts below held that the milk was for sale and the applicant had sold milk to the Food Inspector. The two decisions cited by the learned Counsel are distinguishable. In the Supreme Court case, there was absolutely no evidence on record to accept the ipse dixit of the Food Inspector which was also vague and of the kind that no court could rely on it, and for these reasons, the Supreme Court held that there was no sale. In Prag Narain's case the accused was a labourer for doing grinding work of Haldi, it was on the insistence of the Food Inspector that he had handed over Haldi for sample to the Food Inspector and received payment of price,

27. Next it has been contended that there was no compliance with Section 10(7) of the Act inasmuch as no public man was taken as a witness. The contention is not well founded. The statement of the Food Inspector shows that he had asked the public men who had come to the scene to be witnesses but they declined.

28. The learned Counsel has next contended that there was no compliance with Rules 17 and 18 of the rules framed under the Act. This contention is also not well founded. The statement of the Food Inspector which was not shaken in any way, goes to prove that the requirements of these rules were fully complied with while sending one part of the sample to the Public Analyst for analysis.

29. Above I have discussed the various objections raised by the learned Counsel for the applicant and have shown how they have no substance.

30. No other point has been submitted before me.

31. In the result, this revision has no force and is dismissed. The conviction and sentence of Nanhey applicant are well founded and are upheld. He is on bail. He shall surrender forthwith to serve out the sentence. He is allowed two months time to pay up the fine not already paid.