

Nathu Ram Vs. the State

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Court : Allahabad

Decided On : Dec-18-1981

Reported in : 1982CriLJ1010

Judge : N.N. Sharma, J.

Appellant : Nathu Ram

Respondent : The State

Judgement :

ORDER

N.N. Sharma, J.

1. This revision is directed against the order dated 4th December, 1980 by Sri Gaya Prasad learned 6th Addl. Sessions Judge Mainpur in Criminal Appeal No. 275 of 80 dismissing the appeal and upholding the conviction and sentence of revisionist Under Section 7/16 Prevention of Food Adulteration Act 37 of 54 as amended up-to-date by Sri Satish Kumar 2nd Addl. Munsif Magistrate Mainpur dated 12-9-1980 in case No. 421 of 1979. The revisionist was sentenced to R. I. for a period of six months; a fine of Rs, 1000/- was also imposed upon him. In default he was sentenced to two months' R. I.

2. The revisionist was found .carrying for sale in a can goat milk on 29-1-1978 at about 10 A.M. at Etah Bus Stand Shi-kohabad by Sri B. P. Chaudhari (PW 1) the

then Food Inspector of the circle. The Food Inspector purchased 660 m.l. milk on payment of Re. 1/- for analysis by Public Analyst Lucknow. The sample was divided according to rules and a portion of it was sent to Public Analyst for examination after taking necessary precautions. The report of Public Analyst Exh. Ka. 4 dated 13-3-1978 disclosed that milk fat was 5.8% and non-fatty solids were 7.4%. Thus non-fatty solids were deficient by 18% according to the standard prescribed for goat milk in U. P. which is 3.5% for fat contents and 9.0% for non-fatty solids.

3. The revisionist was accordingly tried, convicted and sentenced as aforesaid.

4. I have heard learned Counsel for parties and perused the record. The simple point which was argued before me in this revision was that having regard to the result of analysis the fat contents were much in excess of the prescribed standard; deficiency in non-fatty solids was simply marginal and was a pointer to the milk not being adulterated. In this connection reliance was placed upon *Dhani Ram v. State* reported in (1979 FAJ 107) in which deficiency in non-fatty solids by about 13% was held as ignorable. In that case fat contents were 6.8% and non-fatty solids were deficient by 13% and the revisionist was acquitted. The Hon'ble Judge in that case relied upon *Sultan Shah v. State* (1973 AC 2351 :1973 Cri LJ 1413). The case was subsequently decided by a Division Bench in *Kadam Singh and Puran Singh v. State* (Criminal Revn. No. 2042 of 1972 decided on 6-1-1978 by this Court) in which facts were as below. It related to buffalo milk. Sample contained 11% of milk fat and only 1.9% of non-fatty solid milk. According to clause A. 11.0,1.0.2 of Appendix 5 of the rules framed under the Act standard of buffalo - milk in U. P. should contain 6% milk fat and 9% milk solids other than milk fat. Thus the sample was deficient in non-fatty solids. The revisionist was convicted and sentenced by trial Magistrate. It was observed in revision that such variation in fat contents and non-fatty solids could be due to not only proper feeding but also the health of animal. Their Lordships also summoned the Public Analyst and recorded his statement. He conceded that it was not possible to take out non-fatty solids from milk without reducing or effecting the fat contents. It was further found that when milk is stored and the fat contents come to the top as the milk cools, so the revisions were allowed and the deficiency was ignored. A similar view was

reiterated in *Ram Swarup v. State* reported in 1979 FAJ 86(All). In that case deficiency in non-fatty solids was by 42% while the fat contents were not deficient. The revision was allowed and the deficiency of 42% was ignored although the percentage of fat contents was not disclosed in the aforesaid authority. In that authority also reliance was placed on the Division Bench case *Kadam Singh v. State* (supra). It appears that learned appellate court based himself on *Meg Singh v. State* reported in 1979 FAJ 95. Where the sample was deficient in non-fatty solids by 18% but no deficiency was found in fat contents for the standard fixed for cow milk. There was a reference to Division Bench ruling reported in *Kadam Singh and Puran Singh v. State* and *Kadam Singh v. State* (supra) which was distinguished in this case, on the ground that in that case the legal question whether deficiency in non-fatty solids below the prescribed standard was or was not an offence under the Prevention of Food Adulteration Act was not considered. In *Kadam Singh v. State* (supra) the report of Public Analyst was found unsatisfactory and thus there was ample ground to distinguish that case. The case reasoning is available in this case also with equal force to distinguish the aforesaid authority,

5. In *Meg Singh v. State* there was a reference to definition of adulteration Under Section 2(1)(m) which is in point:

1. If the quality or quantity of the article falls below the prescribed standard or its constituents are present in quantities within the prescribed limits of variability which renders it injurious to health.

(m) If the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability but which does not render it injuries to health; provided that where the quality or purity of the article being primary food has fallen below the prescribed standard or its constituents are present in quantities not within prescribed limit of variability, in either case was due to natural causes beyond the control of human agency, then, such article shall not be deemed to be adulterated within the meaning of this sub-clause.

6. It was further pointed out in the aforesaid authority that both these clauses refer to two different situations. In the first case if the article of food falls below the prescribed standard of limits of variability which renders it injurious to health, then such an article is deemed to be adulterated. Clause (1) is applicable to all such cases. Clause (m) deals with article of food which falls below the standard or limits of variability but which does not render it injurious to health, such an article would also be deemed to be adulterated. Milk which is an article of food and constituents of which may fall below the prescribed limit by addition of water undoubtedly not become injurious to health, yet it would be deemed to be adulterated. The proviso lays down an exception which applies in those cases where the quality or purity of the article which has fallen below the standard due to natural causes beyond the control of human agency is primary-food. Milk does not fall within the definition of primary-food as laid in Section 2(xii-a) which has been introduced by Section 2 of Act 34 of 76 and means an article of food, being a produce of agriculture or horticulture in its natural form. So the exception provided is inapplicable to milk.

7. learned Counsel for applicant revisionist also referred to Raj an Lai v. State (1976 Cri LJ 516)(All) but it laid down that if there was deficiency either in fat or non-fatty contents the article of food would be deemed to be adulterated. A similar view was taken in Kallu v. State (1978 FAJ 332)(All).

8. In Puttu Lai v. State (1979 All LJ 1145) the view taken by this Court in Meg Singh v. State (1979 FAJ 95)(supra) was followed.

9. learned Counsel for applicant-revisionist pressed into service the principles adopted in Rajan Lal v. gstate 1976 All Cri C 52 : 1976 Cri LJ 516 where it was observed (at p. 519 of Cri LJ):

1. If the deficiency is either in the fat contents or non-fatty contents, the article of food would be deemed to be adulterated.

2. That if the aggregate of the fat and non-fatty solids contents in milk is more than the aggregate of the minimum prescribed and the deficiency in one of the contents is marginal, the Courts may not punish the accused on the ground that the marginal deficiency may be due to the error in analysis by the Public Analyst.

3. That in case the deficiency is in one of the contents namely fat or non-fatty solids and the aggregate is also below the aggregate of the two as prescribed in the rules, the article would be deemed to be adulterated.

4. That if the deficiency in either of the two contents namely fat and non-fatty solids contents is such that the deficiency cannot normally be assigned to the error in analysis by the Public Analyst benefit may not be available to the accused by holding that the milk was not adulterated.

Thus the contention was that variability in case of milk is not so rigid as cast iron percentage, in support of his contention that a minor deficiency in non-fatty solids was ignorable, learned Counsel for revisionists referred to Malwa Co-operative Milk Union Ltd. Indore v. Behari Lai reported in 1973 FA 375(SC) where the respondents were prosecuted Under Sections 7(i) and 16(1-ai) of the Prevention of Food Adulteration Act 1954 where the samples of buffalop milk taken from them were found to be sub-standard. The difference in the standards was only 1% in one case and 4% in another as detailed below:

1st sample :

Milk Fat 6%

Solids non-fat 7.9%

Test for formalin positive.

2nd Sample.

Milk Fat 5.9%

Solids non-fat 7.7%

Test for formalin positive.

10. As the variation was border line the respondents were acquitted as Public Prosecutor withdrew the case. A third party filed an application in revision which was dismissed by Sessions Judge. On being moved in revision the High Court set

aside the order of acquittal and ordered re-trial, Hon'ble Supreme Court held that this was hardly a case in which the High Court should have exercised its power to set aside in revision an order of acquittal and to order the determination of the issues afresh.

11. On a careful perusal of the aforesaid authorities I am inclined to accept the view laid in *Meg Singh v. State* (1979 FAJ 95)(supra) for the following reasons :

1. In *Municipal Committee Amritsar v. Hazara Singh* : [1975]3SCR914 a larger Bench of three Judges in express terms explained the proper ratio decidendi of the *Malwa Co-operative Milk Union case* 1972 FAC 375)(SC) by pointing out that in that case the Supreme Court simply mentioned about the extent of revisional powers of High Court which was to be exercised for setting right a grave miscarriage of Justice and was not to be invoked by private prosecutors. Nothing more was to be read in the aforesaid case than the extent of those revisional powers. It was further observed:

Standard fixed under the Act is one that is certain. If it, is varied to any extent the certainty of a general standard would be replaced by vagaries of fluctuating standard. The disadvantages of the resulting unpredictability, uncertainty and impossibility of arriving at fair consistent decision are great. So the *Malvis Co-operative Milk Union Ltd. Indore v. Behari Lai* (Criminal Appeals Nos. 235 and 236 of 1964 decided on 14-8-1967) did not lay down that a minor error in chemical analysis was ignorable or was to be presumed. 2. It is also difficult to hold that a deficiency in non-fatty solids by 42% as pointed out in *Ram Swarup v. State* was ignorable as marginal deficiency. In *Umrao v. State of Haryana* : 1981 CriLJ1704 deficiency of 0.4% in fat contents was held as sufficient to expose the accused to penalty Under Section 16(1)(a)(i) of Prevention of Food Adulteration Act.

3. The point came up for consideration before a Full Bench of the Kerala High Court reported in *State of Kerala v. Parmeshwaran Pillai Vasudevan Nair* (1975 Cr. LJ 7 FB) which is binding for the simple reason that this case has been approved by the Hon'ble Supreme Court in *Hazara Singh's case* 1975 Cri LJ 928)(supra) in unreserved terms. In that case it was observed :

The standard fixed under the Act is one that is certain. If it is varied to any extent the certainty of a general standard would be replaced by the vagaries of a fluctuating standard. The disadvantages of the resulting uncertainty and impossibility of arriving at fair and consistent decisions are great. The Act does not provide for exemption of marginal or border line variation of the standard from the operation of the Act. In such circumstances to condone such variation on the ground that they are negligible is virtually to alter the standard itself fixed under the Act. On the point of there being any presumed possibility of error in the course of chemical analysis the Full Bench had to say :

But where there is one report or one certificate there is no warrant for the assumption about inaccuracy in any detail mentioned in it or regarding error in calculation or isolation at the stage of, analysis....Referring to marginal deviations from the prescribed standards which could be ignored it was held in the said authority in unequivocal terms :

Food pollution even if it be only to the slightest extent, if continued in practice would adversely affect the health of every woman, man, and child in the country. Hence even marginal or border line variation of the prescribed standards under the Act are matters of serious concern for all and as public interest is involved in them the maxim 'de minimis non curates' law does not concern itself about trifles does not apply to them. This point came up before a Full Bench of Punjab High Court in *State of Punjab v. Teja Singh* reported in 1976 Cri LJ 1648 where it was observed:

It is not permissible to add the percentages of the various constituents of milk disclosed by the Public Analyst and thereafter deduce a conclusion therefrom about the deficiency or otherwise of the milk from its prescribed standards. The Court is not entitled to assume a slight or reasonable margin of errors in the conclusions recorded by Public Analyst during the course of analysis of the milk. Thus in prosecution for offence Under Section 16(1-a-i) read with Section 7. (i) a negligible or marginal deviation from the prescribed standards laid down by the Act cannot be ignored and acquittal cannot be recorded on that basis,

(4) There was nothing cogent on record to show that the deficiency in non-fatty contents was due to the milk having fatty matters above the standard-When the

law prescribes minimum percentage for any thing the presence of that item in excess of the minimum in fat contents but not in non-fatty solids is irrelevant. Excess in fat contents is not correlated with deficiency in non-fatty solids. So in the instant case also the milk shall be treated as adulterated as the non-fatty solids are less than the minimum prescribed. Thus the conviction is upheld.

12. As regards the sentence minimum sentence has been awarded to the revisionist and there is no occasion for reduction of sentence except that the period of 18 days which the revisionist has already undergone shall be reduced from the sentence of imprisonment Under Section 428 of Cr.P.C. No other point was argued before me.

13. In the result the revision fails and is dismissed. The stay order is dissolved. Let the fine be deposited at once. The revisionist shall surrender to his bail bonds to undergo the remainder of the sentence viz. five months and twelve days.

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