

Mamchand Vs. State

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Court : Allahabad

Decided On : Aug-16-1971

Reported in : 1971CriLJ1772

Judge : H.C.P. Tripathi, J.

Appellant : Mamchand

Respondent : State

Judgement :

ORDER

H.C.P. Tripathi, J.

1. Applicant was convicted by a Magistrate First Class for an offence Under Section 16(1)(b) of the prevention of Food Adulteration Act and sentenced to six months' rigorous imprisonment and to a fine of Rs. 1000/-.
2. On appeal, the learned Additional District and Sessions Judge affirmed the conviction and sentence of the applicant.
3. According to the prosecution on 24-12-1968 Sri Vir Singh. Food Inspector. Municipal Board, Meerut found the applicant hawking' milk for sale within the Municipal limits at about 8.30 A. M. Applicant was in possession of the licence for selling milk. The Food Inspector asked the applicant to give a sample of his milk.

Applicant, however, refused to give the sample and leaving the can of milk at the spot bolted away from the scene. The Food Inspector took the can of milk in possession, sealed it in the presence of two witnesses and then produced the same in the Court of Magistrate. Subsequently, applicant was prosecuted for preventing the Food Inspector from taking the sample.

4. learned Counsel for the applicant has argued that when the applicant disappeared from the scene leaving his can of milk in the possession of the food inspector, he did not prevent him from taking sample. learned Counsel contends that the entire quantity of milk was left with the food inspector and, therefore, he could have taken any number of sample from it. The argument is fallacious.

5. The sample had to be taken in accordance with the provisions of the Act and Rules thereunder. As soon as the owner of the milk disappeared from the scene the food inspector could not have obtained the sample as required under law. By running away from the place the applicant did prevent the food inspector from taking sample as required under the Act though not from taking away the entire quantity of the milk which the food inspector could do in exercise of his powers Under Section 10(iv) of the Act, In the case of 'Municipal Board Sambhal v. Jhamman Lai : AIR1961 All103 , it was held by a Division Bench of this Court that if a person selling article leaves the shop he prevents food inspector from taking sample as authorised by the Act. In the instant case, the applicant left the milk, which he was exposing for sale and thereby prevented the food inspector from taking its sample. I am, therefore, satisfied that the applicant's conviction for an offence. Under Section 16(1)(b) of the Prevention of Food Adulteration Act is fully justified.

6. Then there remains the question of sentence only. There is nothing, on the record to suggest that the applicant is a previous convict. There is also nothing on the record to indicate that the milk was adulterated. Applicant is a poor hawker, who sells milk by going round on the road. In these circumstances, I think it is not necessary to send him to jail and the ends of justice will be served by the fine of Rs. 1000/- imposed on him.

7. Accordingly while I confirm the conviction of the applicant. I set aside his sentence of imprisonment but maintain the sentence of fine of Rs. 1000/-. In default of payment of fine, he will undergo three months' rigorous imprisonment. Applicant to deposit the amount of fine within one month after the receipt of the record by the trial Magistrate.

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