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State Vs. Azimulla

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Court : Allahabad

Decided On : Mar-20-1980

Reported in : 1980CriLJ1353

Judge : M. Murtaza Husain and; Mahavir Singh, JJ.

Appellant : State

Respondent : Azimulla

Judgement :

M. Murtaza Husain, J.

1. This is a complainant's appeal filed after obtaining special leave from this Court against the acquittal of the respondent ordered by the learned Sessions Judge, Rae Bareli in Criminal Appeal No. 95 of 1974 on 19-2-1975.

2. The facts of the case under appeal are that the Food Inspector of Rae. Baraeli Municipal Board Sri G.D. Das filed a complaint in the Magisterial Court at Rae Bareli that at about 9.50 a. m. on 13-11-1973 the respondent was carrying two tins containing buffalo milk on his cycle. The Food Inspector, after giving prescribed notice to the respondent, purchased 660 M. L. milk from the respondent. Its due-price was paid. The sample thus obtained was duly sealed in three containers in accordance with rules and a-recovery memo was prepared. One-phial was handed over to the respondent and the other was sent to the Public Analyst who reported

that the milk, whose sample was sent to him, was deficient in non-fatty solids by about 20%. When the respondent was summoned by the Magistrate and' accusation was explained to him he pleaded not guilty and suggested that he was carrying milk belonging to one Gaffar Ghosi to the tea-stall of one Siddiq and it was not meant for sale. The learned Magistrate believed the prosecution case and came to the conclusion that the milk, whose sample was sealed by the Food Inspector, was adulterated. He, therefore, held the respondent guilty under Section 7/16 of the Prevention of Food Adulteration Act and awarded him six months' rigorous imprisonment and a fine of Rs. 1000/-. In default of payment of fine he was awarded six months further R.I. The respondent filed criminal appeal No. 95 of 1974 against the said order of the Magistrate before the Sessions Judge, Rae Bareli. The learned Sessions Judge believed the prosecution evidence but came to the conclusion that it was not proved that the milk, whose sample was sold by the respondent to the Food Inspector, was adulterated because the non-fatty solid contents of the milk could be below prescribed standard for various reasons and that deficiency did not necessarily lead to the conclusion that the milk, whose sample was sold by the respondent to the Food Inspector, was adulterated. With these observations the learned Sessions Judge acquitted the respondent. It is against this acquittal that the present appeal has been filed.

3. After hearing the learned Counsel for the parties we are of opinion that the reasoning given by the learned Sessions Judge for acquitting the respondent is wholly untenable in law and has resulted in miscarriage of justice. It is now the settled view of this Court as well as the Supreme Court that sale of sample of an article of food by a vendor to the Food Inspector is sale for the purposes of the provisions of the Food Adulteration Act. So far as the reasoning of the Sessions Judge about the milk, whose sample was sold by the respondent to the Food Inspector, being not adulterated as it was found deficient only in non-fatty solids, is concerned, there is a string of decisions of this Court as well as of other courts wherein it has been laid down that adulteration, as defined in Prevention of Food Adulteration Act, means that the food sold by a vendor must be of the nature, sub-stance or quality demanded by the purchaser or of the nature, sub-stance or quality which it purports or represents. Under Clause (1) of the said section an adulterated article of food means an article whose standard falls below the

prescribed standard. The sample of buffalo milk, whose sample was sold by the respondent to the Food Inspector, was found to be below the prescribed standard, so far as the non-fatty solid contents were concerned.

4. An Hon'ble Single Judge of this Court laid down in Rajan Lal v. State 1976 Cri LJ 516 that if the deficiency in the milk is either in the fat contents or non-fatty contents the article of food will be deemed to be adulterated. that view was reiterated by the same learned single Judge in Vidya Nand v. State of U. P. 1976 Cri LJ 1820 (All). In Food Inspector v. Pichaya Konar Parmeswaran 1976 Cri LJ 169 a single Judge of Kerala High Court also laid down that if milk sold by a vendor is deficient of the prescribed standard both for the purposes of fatty and non-fatty solids it should be held that the milk is adulterated. In Municipal Corporation of Delhi v. Sriram 1975 Cri LJ 1071, Municipal Corporation of Delhi v. Altaf 1975 Cri LJ 1073 and New Delhi Municipal Committee v. Raj Kumar Sharma 1975 Cri LJ 1601 different Division Benches of Delhi High Court also expressed the same view. Finding ourselves in complete agreement with the said view we are of the opinion that Milk, if deficient even in non-fatty solids and found below the prescribed standard, has to be held to be adulterated. The learned Sessions Judge, while acquitting the respondent, certainly committed an illegality in coming to the conclusion that the milk sold by the respondent to the Food Inspector was not adulterated. The said erroneous approach adopted by the learned Sessions Judge has obviously resulted in miscarriage of justice.

5. We, therefore, allow this appeal and after setting aside the order of acquittal passed by the learned Sessions Judge we find the respondent; guilty under Section 7/16 of the Prevention of Food Adulteration Act and convict him for the same. Considering the circumstances that the respondent is enjoying the liberty of acquittal tor the, last five years and the percentage of deficiency found in the aggregate of fatty and Ron-fatty solid contents of the sample of milk was not very high, we find adequate and compelling reasons for not sending the respondent to jail after such a long lapse of time. A sentence of fine of Rs. 1000/- will in our opinion be adequate punishment for the respondent. We award the said amount of fine to him and grant him four months' time with effect from to'day to pay the same. The Chief Judicial Magistrate, Rae Bareli shall accept the amount of fine when it is

tendered before him along with a certified copy of this order. In default of payment of fine within the aforesaid period the respondent shall undergo rigorous imprisonment for six months.

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