

**Vishnu Awatar Vs. State**

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**Court :** Allahabad

**Decided On :** Sep-22-1978

**Reported in :** 1978CriLJ1664

**Judge :** P.N. Bakshi, J.

**Appellant :** Vishnu Awatar

**Respondent :** State

**Judgement :**

ORDER

P.N. Bakshi, J.

1. The applicant has been convicted under Sections 7/16 of the Prevention of Food Adulteration Act by the 1st Class Magistrate, Bareilly and sentenced to 6 months' R.I. and a fine of Rs. 1,000. Aggrieved thereby an appeal was filed before the Sessions Judge, Bareilly which has been dismissed on 21st November. Hence this revision.

2. According to the prosecution case Sri V. V. Saxena Food Inspector posted at Bareilly while on checking duty visited the shop of the accused-applicant at about 2-45 P.M. on 22nd December, 1972 at Shahamatganj, Bareilly City. He purchased a sample of 800 Grams of Haldi from the applicant on payment of price for which a receipt Ex. Ka-2 was executed by the accused. Usual formalities were completed by the division of the sample in three parts. One sample phial was sent to the Public Analyst for his report. The Public Analyst found that the sample of Haldi was coloured with Lead Chromate, the use of which is not permitted under the Rules framed under the Prevention of Food Adulteration Act After obtaining the requisite sanction the accused applicant was prosecuted and convicted as above.

3. The main point which has been argued by the learned Counsel for the applicant is that the accused had sold the Haldi (turmeric powder) in the same state in which it was purchased by him from a licensed distributor and as such he would be protected under Section 19(2)(a)(ii) of the Prevention of Food Adulteration Act, The aforesaid section runs as follows:

19 (2) : A person shall not be deemed to have committed an offence pertaining to the sale of any adulterated or mis-branded article of food if he proves-

(a) that he purchased the article of food-

(i) in a case where a licence is prescribed for the sale thereof, from a duly licensed manufacturer, distributor, or dealer;

(ii) in any other case from any manufacturer, distributor or dealer with a written warranty in the prescribed form; and

(b) that the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it.

4. The aforesaid section indicates that the vendor will not be held guilty for having sold adulterated food if he proves, that he had purchased it either from a licensed manufacturer, distributor or dealer, or from a manufacturer, distributor or dealer under a written warranty in the prescribed form. The further condition is that the article should be sold in the same state in which it was purchased.

5. There is no dispute that there is a form of warranty prescribed under the Rules. It is also not disputed that no warranty form was executed in the prescribed form by the distributor from whom the purchase of Haldi has been made by the applicant on 26th December, 1972.

6. The case of the applicant is that he is himself a licensee Kirana shopkeeper and that the sale of Haldi is included in his licence. He had purchased five bags of Haldi from the Firm Arjun Mal Jagernath on 26th of Dec., 1972. These bags of Haldi he had brought and kept in his shop. They remained there in the same condition in which they have been purchased. When the Inspector took the sample from the shop of the accused, he was informed about it. In proof of this case, the accused produced two witnesses namely Banarasi Das D. W. 1 and Vishnu Awatar D. W. 2. He also filed a credit memo of the firm Arjun Mal Jagernath Ex Ka. 1. This credit memo discloses the purchase of five bags of Haldi by the Firm of the applicant Sheo Kumar Ashok Kumar from the Firm Arjun Mal Jagernath on 26th of December 72. This receipt has been proved by Banarasi Das D. W. 1 who is Munim of the Firm Arjun Mal Jagernath. He has admitted that this receipt is on the memo of the firm and that it has been made in the hand-writing of Shyam Shanker, another Muneem of his firm, whose handwriting he recognized. Vishnu Avtar accused-applicant who has produced himself as D. W. 2 has also stated that he had purchased these five bags of Haldi from the firm of Arjun Mal Jagernath on 26th of Dec., 72, in the evening and that the five bags of Haldi had been kept in his shop in the same condition in which they had been purchased. This evidence has not been examined by the Sessions Judge. On a perusal thereof I am satisfied that the five bags of Haldi from which a sample was taken by the Food Inspector were purchased the previous evening by the accused-applicant from Arjun Mal Jagernath and that they were kept in his shop in the same condition.

7. It has been argued on behalf of the State that in order to claim exemption under Section 19(2) of the Prevention of Food Adulteration Act, it was necessary for the vendor to obtain a warranty in the prescribed form from the manufacturer or distributor or dealer from whom he has purchased the article in question. Counsel for the applicant on the other hand has submitted that Section 14 of the Prevention of Food Adulteration Act has been amended by Act 34 of 1976 and a proviso has been added. Section 14 as amended runs thus -

Section 14 : No manufacturer or distributor of, or dealer in, any article of food shall sell such article to any vendor unless he also gives warranty in writing in the prescribed form about the nature and quality of such article to the vendors:

Provided that a bill, cash memorandum or invoice in respect of the sale of any article of food given by a manufacturer or distributor of, or dealer in, such article to the vendor thereof shall be deemed to be a warranty given by such manufacturer, distributor or the dealer under this section.

8. It has been strenuously argued that an appellate or revisional court is entitled to take note of the change in the law. For that purpose reliance is placed upon a decision of the Federal Court reported in Lachemeshwar Prasad Shukul v. Keshwar Lal Chaudhuri, wherein it has been held that it is very settled that the appellate court is entitled to take into consideration any change in the law. There can be no doubt that substantive right of parties cannot be taken away by a subsequent amendment, unless specifically enacted by legislation, but procedural law can always have a retrospective application. In my opinion, therefore, the proviso mentioned above, which has been added by Act No. 34 of 1976 would certainly be available to the applicant. As I have mentioned above, the Bill (Ex. Ka 1) has been duly proved. Under the proviso it shall be deemed to be a

warranty given by the dealer as required under Section 14 of the Prevention of Food Adulteration Act. In this view of the matter in spite of the absence of a written warranty in the prescribed form, the production of the duly proved Bill is a sufficient compliance of the law which grants protection from prosecution to the applicant under Section 19(2) of the Food Adulteration Act. The appellant is, therefore, not guilty of the commission of any offence. This revision is accordingly allowed. The conviction and sentence of the applicant for the offence under Section 7/16 of the Prevention of the Food Adulteration Act is set aside. The applicant is on bail. He need not surrender. His bail bonds are hereby discharged, The fine if paid shall be refunded to him.

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