

**Ramji Vs. State of U.P.**

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**Court :** Allahabad

**Decided On :** Oct-21-1982

**Reported in :** 1983CriLJ190

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

**Appellant :** Ramji

**Respondent :** State of U.P.

**Judgement :**

ORDER

**P.N. Bakshi, J.**

1. The applicant has been convicted under Section 7/16 of the Prevention of Food Adulteration Act and sentenced to 6 months' R.I., and a fine of Rs. 1000/- In default, he is directed to undergo further 3 months' R.I, His conviction and sentence have been maintained in appeal by the Addl. Sessions Judge, Varanasi, hence this revision.

2. It appears that a sample of mixed buffalo and cow milk was purchased by the Food Inspector from the applicant on 6th December, 1079 in accordance with the formalities provided by law. One of the sample bottles was sent for analysis to the Public Analyst, whose report dated 8-1-1980 disclosed that it was deficient in non-fatty solids by 6 per cent. After obtaining the requisite sanction a complaint was

filed against the accused on 27th December, 1980, A copy of the report of the Public Analyst and the intimation as required under Section 3(2) of the P. F. A. Act was sent to the accused on 29th January, 1981. The applicant pleaded not guilty. The prosecution produced Sri S. P. Gupta, the Food Inspector and Sri Alauddin An-sari Food Clerk Nagar Mahapalika Varanasi in support of its case. Both the courts below on a consideration of the materials on record came to the conclusion that the offence under Section 7/16 of the P. F. A. Act was established against the accused,

3. Learned Counsel for the applicant has submitted that there has been considerable delay in the launching of the prosecution. The sample of milk was purchased by the Food Inspector on 6th December, 1979. The report and the intimation is alleged to have been despatched on 28th January, 1981. Thus about a year and 7 weeks had elapsed since the taking of the sample. Therefore, the sample of milk must have deteriorated and as such the applicant has been deprived of his right to get the sample reanalysed by the Director Central Food Laboratory. Admittedly on the appearance of the accused no application has been made by him for sending the sample for reanalysis to the Central Food Laboratory, Calcutta. Learned Counsel argued that since the sample must have deteriorated therefore, it was not necessary to file an application in court for sending the sample for reanalysis. His valuable right under Section 13(2) of the P.F.A. has thus been infringed. The conviction of the applicant should therefore, be set aside.

4. In support of his argument learned Counsel has cited a Division Bench case of the Allahabad High Court, Nagar Swasthya Adhikari v. Ram Babu, 1969 All Cri R 302. From a perusal of the judgment of the Division Bench it appears that on the direction of this Court certain experiments have been conducted by the Public Analyst to determine the period within which deterioration would set in a sample of milk to which formalin had been added. By a process of deduction this Court took the view that analysis of sample of cows and buffalo milk examined after 308 days can be disregarded, since after this period deterioration will set in and the sample would not be fit for analysis. Therefore, in the case of such a belated prosecution, the accused would be deemed to have been deprived of his right under Section 3(2) of the P.F.A. Act. It is not necessary that he should file an application in court

for getting his sample reanalysed.

This Division Bench decision would ordinarily be binding upon me but in view of what the Supreme Court has held in Babu Lal Hargovind Das v. State of Gujarat : 1971 CriLJ1075 . I would respectfully observe that the aforesaid decision of this Court cannot be considered to be good law. A three Judges Full Bench of the Supreme Court has observed as follows (para 6):

There is also in our view no justification for holding that the accused had no opportunity for sending the sample in its custody, to the Director Central Food Laboratory because he made an application to the court for sending. It does not avail him at this stage to say that over 4 months had elapsed from the time the sample was taken to the time when the complaint was filed and consequently the sample had deteriorated and could not be analysed.

In view of the above dictum of the Supreme Court it has now become necessary for an accused to make an application to the court for getting his sample reanalysed, if he desires to take that advantage of Section 13(2) of the P.F.A. Act. If the sample has deteriorated due to lapse of time, it is obvious that, the report of the Director C. F. L. would be that the sample had decomposed or had deteriorated and is unfit for analysis, In these circumstances the benefit of Section 13(2) of the P. F. A. Act would be available to the accused. Experiments are conducted under different and variable conditions and the slightest difference in the quality of the milk, the atmospheric conditions mixture of formalin and such other circumstances can lead to differing results. Thus no universal rule of thumb can be laid down on the basis of such experiments for the guidance of the court. The safest and the surest test in each individual case is to have the sample sent for reanalysis so that the Director of the Central Laboratory may as a question of fact certify in each case that the sample has deteriorated and is incapable of analysis due to efflux of time. It is for this reason that the Supreme Court has directed that the accused must apply to the court for getting his sample reanalysed, if he is to exercise his invaluable right under Section 13(2) of the P. F.A. Act

5. Two other cases of Supreme Court have been cited by the applicant, viz. State of Tamil Nadu v. S. Shanmugham Chetfiar, reported in : 1981 CriLJ31 which has been later on referred to again in Nebhrai v. State (Delhi Administration), 1981 Cri LJ 3 (SC). Both these cases have been decided by the same Division Bench of the Supreme Court. The facts of these cases are entirely different and the observations made therein apply to different circumstances, existing in each of these cases. Both these Supreme Court cases do not deal with the question of the application of Section 13(2) of the F. A. Act, and therefore, they are of no assistance to the accused.

6. A similar question arose before me in the unreported case of Raja Ram v. State of U. P. Cri. Revision No. 1910 of 1982 : (since reported in 1983 Cri LJ 188 (All)) wherein also I had taken the same view in consequence of the decision of the Supreme Court in Babu Lai Hargovind Das v State of Gujarat (1971 Cri LJ 1075).

For the reasons given above, I am of the opinion that there is no merit in this revision, which is hereby dismissed.

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