

Devi Prasad Vs. the State of Uttar Pradesh and anr.

Devi Prasad Vs. the State of Uttar Pradesh and anr.

SooperKanoon Citation : sooperkanoon.com/487683

Court : Allahabad

Decided On : Aug-01-2000

Reported in : 2001CriLJ637

Judge : S.K. Agarwal, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 2, 7, 16 and 11(1)

Appeal No. : Cri. Revn. No. 1114 of 1984

Appellant : Devi Prasad

Respondent : The State of Uttar Pradesh and anr.

Advocate for Def. : M.K. Shukla, A.G.A.

Advocate for Pet/Ap. : S.C. Tripathi, Adv.

Disposition : Petition allowed

Judgement :

ORDER

S.K. Agarwal, J.

1. This revision is preferred by the revisionist against the judgment and order dated 23-5-1984 passed by III Addl. Sessions Judge, Kanpur Nagar whereby he dismissed the appeal and confirmed the judgment and order dated 8-2-1984

passed by Sri K.K. Tyagi, Chief Metropolitan Magistrate, Kanpur Nagar in Case No. 2267 of 1981 convicting the revisionist under Section 7/16 of the Prevention of Food Adulteration Act and sentencing him to undergo R.I. for a period of six months and pay a fine of Rs. 1,000/-. In default of payment of fine he shall further undergo 4 months R.I.

2. The prosecution case in brief is that on 5-2-1981 at 1.00 P.M. Sri K.N. Misra, Food Inspector, Nagar Mahapalika, Kanpur, found the revisionist selling milk at Halsey Road, Kanpur. The Food Inspector purchased 6.60 Mili Litre Milk and paid a sum of Rs. 1.65 as its price. The milk was divided and filled into three phials which were sealed on the spot. Necessary documents were also prepared on which thumb marks of the applicant were obtained. One of the phials was sent for analysis. The report of the Public Analyst is Ex.Ka-4. It shows that sample milk contained only 4.6% milk fat and 8.5% non fatty solids. The Public Analyst has judged the sample milk with the standard prescribed for buffaloe milk, thus he opined that milk fat was less by about 2.3% and fatty solid by about 6%. The milk was thus found to be adulterated.

3. In support of its case the prosecution examined Sri K.N. Misra, Food Inspector as P.W. 1 and Sri S.K. Jauhari, Chief Food Inspector as P.W. 2.

4. The defence of the appellant was that he was not selling the milk, sample from which was taken, but was carrying it to the house of Chhotey Lal on behalf of Kanhaiya Lal a resident of Village Bhanpur police station Bidhanu, district Kanpur.

5. After considering the entire evidence on record the trial Court has convicted the revisionist and sentenced him as mentioned above which too was affirmed in the appeal.

6. I have heard Shri S.C. Tripathi, learned counsel for the revisionist and Sri M.K. Shukla appearing for Nagar Mahapalika, Kanpur.

7. The main question involved for determination before me in this revision is that whether the failure of Food Inspector to make an enquiry regarding the nature of milk to be sold to him will adversely affect the prosecution? The failure of making

such enquiry by the Food Inspector before the sample is drawn is a must or not?

8. As the Food Inspector has to find out whether the milk being offered for sale is buffalo milk, cow milk or of any other animal's milk before he embarks upon the exercise of taking the sample. Milk has been defined in Rule A11.01.01. The evidence shows that the Food Inspector never cared to find out the nature of the milk from the applicant which was claimed to be carried by him. In this case it will not be possible to contend that the milk was offered for sale without any indication of its nature or class. Falling back on the note to apply the standard for buffalo milk if on making such an enquiry the vendor does not make any disclosure does not arise in this case since the legal onus was not discharged by him. This presumption under Schedule B of the Rules would arise only when such an enquiry was made and the vendor fails to disclose nature of his milk. On the other hand, if the Food Inspector did not make any enquiry about it the vendor voluntarily does not state that nature of his milk himself, as the case may be, there cannot arise any question of raising a presumption as referred to in Schedule B.

9. Section 11(1)(a) read with Section 2(i-a)(a) of the Prevention of Food Adulteration Act provides that the Food Inspector may take sample in bulk to be divided in three parts. Such taking of sample though not a sale in true sense but still shall be so treated in law because it is recognised as such. It is further indicated by these provisions that there must be a representation about the article sold.

10. In the instant case, there is no evidence on the record to indicate that when the Food Inspector purchased the sample of milk in dispute, he cared to ascertain the class or nature of that milk from its vendor. There is no legal obligation on the vendor to disclose the nature suo motu when any one wants to buy his milk. It will, therefore not be possible to say that the nature of milk is indicated as mixed or buffalo milk in those cases where the vendor maintains silence. There is no evidence of any attempt by Food Inspector to elicit the same from him. Only cases where notwithstanding such attempt, the vendor chooses not to disclose the nature of milk or is unable to disclose it, the presumption may be pressed into service and the milk will be tested with the standard prescribed for buffalo's milk.

11. As a matter of fact, the Food Inspector cannot be treated as customer because a customer undoubtedly commands the nature and quality of the article which he is going to purchase as a customer. Vendor is doing it under a legal obligation and he is required under the law to supply the article of the nature and quality as demanded by his customer. The case with Food Inspector, a public servant, is much different than an ordinary customer. The Food Inspector is under an obligatory duty to enquire from the vendor about the nature of the article carried by him or exposed for sale by a retailer, whole-seller or manufacturer. Thus in most of the cases where the nature of an article of Food by its visual examination cannot be ascertained, the Food Inspector is under obligatory duty to enquire about the same from its vendor. In the present case the contention appears to be that the Food Inspector has not fulfilled his obligation. He had failed, as argued by learned counsel for the applicant, to give a clear reply whether he had made any enquiry about the nature of article of food before taking this sample as indicated clearly by note (1) appended to Rule A.11,01.01. (Appendix B).

12. According to this Rule, the Food Inspector is required to find out as to whether the milk being offered for sale is (a) buffalo milk, cow milk or any other class of milk or (b) milk without any indication of any class. If the milk is offered for sale without any indication, even on enquiry, while analysing it standard for buffalo milk is to apply. The evidence shows that the Food Inspector never cared to find out what class of milk the applicant claimed to be carrying. Therefore, it would not be possible to contend that the milk was offered for sale without any indication of its nature and so he could fall back on Note 1 to this rule for following the standard of buffalo milk for analysing the sample. As the note does not apply to the facts of this case as discussed above the milk cannot be held to be adulterated. Judging it from the standard of mixed milk it conforms to that standard.

13. In the circumstances the revision succeeds and is allowed. The conviction and sentence passed under Section 7/16 of the Prevention of Food Adulteration Act is hereby set aside. The fine, if paid shall be refunded to the revisionist. He is on bail. He need not surrender. His bail bonds are cancelled and sureties discharged.