

**Sabban Vs. State of U.P.**

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**SooperKanoon Citation :** [sooperkanoon.com/488037](http://sooperkanoon.com/488037)

**Court :** Allahabad

**Decided On :** Nov-13-2000

**Reported in :** 2001CriLJ2085

**Judge :** S.K. Agarwal, J.

**Acts :** [Prevention of Food Adulteration Act, 1954](#) - Sections 7, 16 and 16(1);  
;Prevention of Food Adulteration Rules, 1955 - Rule 50

**Appeal No. :** Criminal Revn. No. 930 of 1983

**Appellant :** Sabban

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

**Advocate for Def. :** A.G.A.

**Advocate for Pet/Ap. :** Shamimul Hasnain, ;Brijesh Sahai and ;Rakesh Tiwari,  
Advs.

**Disposition :** Revision allowed

**Judgement :**

ORDER

**S.K. Agarwal, J.**

1. Heard learned counsel for the applicant and learned A.G.A.

2. So far as conviction Under Sections 7/16 of the Prevention of Food Adulteration Act (hereinafter referred to as the 'Act') for not giving the sample whereby the applicant was held guilty for the violation of the provisions of Section 16(1)((c) and (1)(d) is concerned, the evidence of PW 2 coupled with the evidence of DW 1 clinches the issue in favour of the applicant that neither he was carrying on the business of grocery nor he had any such shop. His defence that he was engaged in watch repairing work is borne out from the evidence available on record.

3. PW 2 is the independent witness of the prosecution. He has admitted in so many words in the examination-in-chief as well as in cross-examination that the applicant had informed the Food Inspector that the shop does not belong to him. He may take the sample from its owner, who is not present at the shop, on his return. The Food Inspector and this witness both had stated that the applicant had locked the shop and went away. He thereafter stated that when he was 4 or 5 steps away from the shop the applicant had left the place by bolting the shop. Thus he made two different types of statements in the same breath. Therefore, it appears that PW 2 was not an eye-witness. The later portion of his evidence has also some bearing upon the presence of this witness. He had stated that 'Who does not know the Food Inspector is P.S. Malik. He is a king. Whatever he will ask people will do. No body can defy him. I have no reason, to disbelieve this piece of his statement. It leads to no other inference, than one that the Food Inspector wielded enormous influence upon the local people of his area. They are gripped by a typical fear psychosis. He was not re-examined by the prosecution to seek any clarification for the above evidence from him. Therefore, this witness is apparently speaking what the Food Inspector commanded him to say irrespective of the fact whether it is true or false. He had deposed every thing that is stated by the Food Inspector, but the statement made by him in cross-examination is that they were just 5 or 4 steps away from the shop when the shop was closed. He had further admitted that he did not know the applicant from before. In these facts and circumstances, the evidence of this witness cannot be used by me for corroboration of the Food Inspector. His statement clearly negatives any case of resistance having been offered by applicant to the Food Inspector in taking sample.

4. From the statement of the Food Inspector, it appears clearly that the applicant had left the shop before Food Inspector came there and the story of locking the shop may be a doubtful situation. If he was not the owner of the shop, it was not possible for him to give any sample to the Food Inspector. Why any one, who is not concerned with the business and does not own it, should take the responsibility upon him. The Food Inspector had admitted that he had made no enquiries regarding the owner of the shop either from other persons present there or from the local body. In the presence of these lacunae it is not proper for this Court to affirm the conviction of the applicant Under Sections 7/16 of the Act for the violation of Rule 50 of the said Act (sic).

5. The applicant has examined DW 1 Girdhari Lal, who is Pradhan of village Loha for the last 11/12 years. He has very clearly stated that he knew the applicant from before. He is doing only watch repairing work. He had never engaged himself in the grocery business. According to this witness, before engaging himself into watch repairing business the applicant was having a cycle repairing shop. He has very clearly stated that the place where the house and the shop of the applicant situate, he is Pradhan of that area. His house is at a distance of 200 Mts. from the house of the applicant. He had further, in cross-examination, asserted that the applicant is doing this watch repairing business for the last five years. He had no animus or friendship with the applicant. In the circumstances, I do not find any valid reason not to accept his testimony that the grocery shop where the Food Inspector was allegedly prevented from taking sample of edible mustard oil did not belong to the applicant. No cross-examination was directed against him by the prosecution to elicit from him the name of the owner of this shop. The prosecution itself has not admittedly verified the fact.

6. In the result, for the above reasons, this revision is allowed. The conviction of the applicant Under Sections 7/16 and Under Rule 50 the said (sic) Act and consequent sentences awarded to him are hereby set. aside. He is acquitted of these charges. He is on bail. He need not surrender. His bail bond is cancelled and sureties are hereby discharged.