

Chhajoo Vs. the State

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Court : Allahabad

Decided On : Jan-17-2002

Reported in : 2002CriLJ2066

Judge : U.S. Tripathi, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 7, 13(2) and 16;
Prevention of Food Adulteration Rules

Appeal No. : Criminal Revn. No. 970 of 1982

Appellant : Chhajoo

Respondent : The State

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Rajul Bhargava, Adv.

Disposition : Revision allowed

Judgement :

ORDER

U.S. Tripathi, J.

1. This revision has been directed against the judgment and order dated 18-5-1982, passed by learned Sessions Judge, Agra in Criminal Appeal No. 27 of 1982,

dismissing the appeal and confirming the conviction of the applicant under Section 7/16 of the Prevention of Food Adulteration Act and sentence of R.I. for a period of six months and fine of Rs. 2000/-recorded by the Munsif Magistrate First Class, Agra in Criminal Case No. 44 of 1980, vide order dated 5-2-1982.

2. The prosecution case briefly stated was that on 25-6-1976 at about 10.30 p.m. the Food Inspector found the applicant, selling milk in a Tanki of 40 litres capacity, containing 10 litres of milk. The Food Inspector disclosed his identity gave notice to the applicant and purchased 660 ml of milk after paying Rs. 1.30. He disclosed that the sample would be sent for analysis. The Food Inspector divided the sample into three equal parts, added formaline in each part and kept the sample in three dry and clean phials and sealed them on the spot. Spot memo was also prepared. One phial of the sample was sent to the Public Analyst for analysis and report. The Public Analyst found that the sample contained 5.4% fat contents and 7.3% non-fatty solids. The sample was found deficient by 14% in nonfatty solids. On receipt of the report of the Public Analyst the Food Inspector obtained sanction for prosecution from the Local Health Authority and filed a complaint against the applicant. A copy of the report of the Public Analyst was also sent along with the memorandum to the applicant by registered post at his address in compliance of the provisions of Section 13(2) of the Prevention of Food Adulteration Act.

3. The applicant was tried by the Magistrate for the offence punishable under Section 7/16 of the Prevention of Food Adulteration Act.

4. The prosecution in support of its case examined Sri V.P. Sharma, Food Inspector (PWI), Gulab Rasool (PW2) and Mool Chand (PW3). The learned Magistrate on considering evidence of the prosecution held that the applicant was selling adulterated milk and an offence punishable under Section 7/16 of the Prevention of Food Adulteration Act was fully established against him. With this finding he convicted and sentenced the applicant as mentioned above.

5. Aggrieved with the above conviction and sentence the applicant filed an appeal before the Sessions judge, Agra. The learned Sessions Judge found that the appeal lacked merit and accordingly, dismissed the appeal.

6. Heard Shri Rajul Bhargava, learned counsel for the applicant, learned AGA and perused the record.

7. The only point pressed by the learned counsel for the applicant was that the sample of cow milk was deficient in nonfatty solids and it was not deficient in fats. There is no evidence on record that the Food Inspector took sample after stirring or churning the milk to make the sample homogenous and representing bulk of the milk and, therefore, the deficiency in nonfatty solids was due to defect in the manner of taking of the sample. He further contended that though this ground was not specifically taken before the trial Court or appellate Court and was also not mentioned in the memo of revision, but this point being legal one can be raised at any stage.

8. There is no dispute that the legal point can be raised at any stage before specifically being taken in the memo of appeal or revision. It is true that in his evidence the Food Inspector had not stated that before taking sample he stirred or churned the milk of the container. The Apex Court in the case of Food Inspector Municipal Corporation Baroda v. M.R. Sharma, A.I.R. 1983 Supreme Court 176 held as below:- (Para 8)

We are conscious of the fact that in milk and milk preparations including curd, it is distinctly possible that the fat settles on the top and in order to find out whether the milk or its preparation such as curd has the prescribed content, the sample must be homogenous and representative so that the Analyst can furnish reliable proof of the nature and content of the articles of food under analysis.

9. Relying on the above observation of the Apex Court this Court in the case of Nagar Swasthya Adhikari, Nagar Mahapalika, Allahabad v. Asharafi Lal Yadav 1985 All LJ 924 held that there is no evidence on the record to show that any churning was done before taking sample. Though there is nothing in the Act or the Rules which prescribes that churning must be done by some instrument or by hand, it has received a judicial recognition in the above mentioned case that in milk and milk preparations it is distinctly possible that the fat settles on the top and in order to find out whether the milk or its preparations such as curd has prescribed contents, the sample must be homogenous and representative, so that

the Analyst can furnish a reliable proof of nature and content of the article of food under analysis. For this purpose churning is one of the methods of making the sample homogenous and representative. In the absence of any evidence of churning, this point also goes in favour of the accused respondent.

10. It was further held by this Court in the case of *Raja Ram v. State of U.P.* 1991 (28) All. Cri C 260 that it is borne out from the record that the Food Inspector did not state that before taking sample he stirred the milk and made it homogenous. In the absence of such evidence it cannot be said that homogenous sample was taken. When there is defect in the process of taking of sample, the benefit of doubt would go to the accused.

11. The above decision of the Apex Court in *Food Inspector, Municipal Corporation Baroda* (AIR 1983 SC 176) (supra) was also relied on by the Madras High Court in the case of *State by Food Inspector, Erode Municipality v. Sundaram* 1997 Cri LJ 387 and it was held that from the above observation of the Apex Court, it is clear that the sample taken must be homogenous and representative. In the instant case, admittedly, as taking of the sample of milk had not been carefully done by the Food Inspector, it could not be safely said that the sample of milk sent to the Analyst truly represented the milk which was to be tested.

12. In the above circumstances, the benefit of doubt must go to the applicant. The revision is accordingly, allowed and the conviction and sentence of the applicant are set aside and he is acquitted of the charge under Section 7/16 of the Prevention of Food Adulteration Act. He is on bail. He need not surrender. His bail bonds are cancelled and sureties discharged. Fine if deposited may be refunded.