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**Mansingh Amarsingh Vs. State**

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**SooperKanoon Citation** : sooperkanoon.com/500200

**Court** : Madhya Pradesh

**Decided On :** Jul-21-1959

**Reported in** : AIR1960MP125; 1960CriLJ487

**Judge** : H.R. Krishnan, J.

**Acts** : Prevention of Food Adulteration Act, 1954 - Sections 2(1), 13, 16(1) and 23

**Appeal No.** : Criminal Revn. No. 54 of 1959

**Appellant** : Mansingh Amarsingh

**Respondent** : State

**Advocate for Def.** : S.L. Dube, Dy. Govt. Adv.

**Advocate for Pet/Ap.** : D.P. Bhargava, Adv.

**Disposition** : Application dismissed

**Judgement** :
ORDER

**H.R. Krishnan, J.**

1. This is an application by a seller of milk, (which he described as cow's milk) convicted for the second time under Section 16(1) (ii) of the Prevention of Food Adulteration Act, 1954. Awarded the minimum sentence of one year's simple

imprisonment and a fine of Rs. 2000/- with further simple imprisonment in default, the applicant went in appeal. The appellate Court upheld the conviction, but reduced the sentence to simple imprisonment for six months and a fine of Rs. 500/- only, which is below the minimum prescribed by law, the ostensible reason being that

'he was a poor man and it may be that he brought this milk from some one else and sold it without knowing that it was adulterated'.

2. Whatever the merits of the conviction, the legal grounds, urged against which I shall examine presently, the reason given by the lower appellate Court for a lesser sentence is inadequate. Certainly, the appellate Court should examine the facts and see if the conviction is correct. But once the conviction is upheld and the law has provided a minimum sentence, really adequate reasons should be given for giving sub-minimum sentences. The mere possibility that the offender may have got the milk from another, is certainly not adequate. I have to leave it with bare mention, as there is no application before me by the State for the minimum sentence on the ground of inadequacy of the appellate Court's reasoning.

3. The broad facts are common ground. The appellant was going about within the Indore Municipal area soiling milk when he was stopped by the Municipal Food Inspector who paid for the samples, took them, divided and sealed them as prescribed by law, giving the vendor one of the samples, retaining one for a check up and sending the third for the analysis. The analyst's report was also submitted and it was found that the milk contained 5 per cent fat and 6.39 per cent non-fat solid, the rest being water.

The standard prescribed for cow's milk by the statutory rules (vide Schedule II Rule 5) is 'not less than 3.24 per cent fat and not less than 8.5 per cent solid other than fat.' If it had been buffalo milk, it should be not less than 5 per cent fat and not less than 9 per cent non-fat solid. As cow's milk is slightly thinner than buffalo milk, both in respect of fat and non-fat solids and it is in evidence that when the Food Inspector stopped him, the applicant said that he was selling cow's milk, the lower Courts applied the standards for cow's milk which are loss exacting than for buffalo milk.

As far as the fat contents went, there was no difficulty, it being within the prescribed limit of variation. But the non-fat solid content was about 25 per cent short of the minimum requirement of 8.5 per cent. These are the non-controversial arithmetical (acts emerging from the analyst's report, the breach being the one defined in Section 2 (1) (1).

4. The applicant was unrepresented by a lawyer and in fact pleaded guilty. That is not of any consequence as the learned Magistrate, very properly in my opinion, declined to proceed on that plea, but heard the evidence and examined it just as if it was a plea of not guilty. Still, it is difficult to avoid the impression that the applicant pleaded guilty, because .some six months before this, he had already been convicted once for a similar offence on a plea of guilty, and had been let off with the disgracefully feeble punishment of a fine of Rs. 20/- only. Be that as it may, even in the trial Court, all the points in defence were considered,

5. Shri Bhargaya appearing for the applicant hero has urged the following points. In particular, he alleges that the report of the analyst who is an expert, is really incomplete, and therefore, should not have been made the basis of the conviction. Called upon to show the incompleteness, he has pointed out that the non-fat solids contained in milk arc of several different kinds; for example, there are different kinds of proteins, lactose or milk sugar, calcium .salts, and other ingredients that are called 'ash'.

It was the duty of the analyst, according to the learned counsel, to have given a quantitative break-up of each of these compounds instead of a total return of so much of 'non-fat solids.' It is not that the applicant has either in the trial Court, or in the appellate Court where he seems to have had a lawyer, or even here, challenged the correctness of the analysis. If so, he had means of showing it either by a fresh analysis or by praying that the analyst should be called for cross-examination. According to him, the report of the analyst is useless unless it shows a break-up of the kinds of nonfat solids.

6. I cannot accept this argument which really ignores both the requirements of the law, and the modus operandi of the analysis, indicated for such cases. If the law had prescribed a minimum percentage content of each of the different kinds of the

non-fat solids, certainly, there should be a break-up during analysis. But if the law has prescribed a minimum content of this non-fat solids all lumped together, I do not see why the expert should go out of his way to report such a breakup. Certainly, it is possible by some laboratory tests to show how much of each of the separate non-fat solids is found in the milk.

There may be certain lines of research in which such a break-up is necessary. In fuct, there may be lines of research in which a more elaborate break-up right down to amino acids will be necessary. But experts will go and need go only so far as the law and the occasion requires. The law hero requires a quantitative break-up of the milk only into three contents (1) fats which are separately extracted and measured, (2) all solids other than fats which are estimated by evaporation, and (3) whatever is left as water, which obviously can be worked out by simple arithmetic without separate estimation. To the extent that each of the two contents, namely, the fat and nonfat solids fell short of the prescribed limit, the water content will be increased.

7. Another argument made on behalf of the applicant is that writers on this subject have noted that the contents of the milk, whether of fat or non-fat solids are variable factors depending upon quite a number of circumstances, twelve of which have been enumerated in a paper by Davics quoted on page 184 of Shri Sethi's book on the Prevention of Food Adulteration Act. Such papers do not form evidence, but it is certain that the contents of the milk, whether of fat or of non-fat solids, do vary.

That is exactly why the law has not prescribed a cast iron percentage, but has said that to be within the standard these ingredients should not fall below a particular percentage. Section 2 (1) (1) also mentions the variability. The only point is that the limit of variability has to be prescribed. In oilier words, the possibility of the content varying because of this or that circumstance has already been taken into account when the law prescribed the minimum requirement. We cannot go beyond it and still assume that in certain circumstances the content may go lower than that prescribed minimum. The law has prescribed a minimum content; here, the applicant's milk has been found short to the extent of 25 Per cent in regard to the

non-fat solids.

8. I have already noted that the punishment is inadequate, and has been reduced by the learned Sessions Judge for reasons that are altogether unsatisfactory. Food adulteration is an ancient blight on this country, and unless stiff punishment are awarded, there is no chance of improvement. It would, be improper to reduce the sentence any further.

9. The application is without substance and is dismissed.

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