

Bansilal Babhutram Vs. the State

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Court : Madhya Pradesh

Decided On : Dec-22-1961

Reported in : 1962CriLJ681

Judge : H.R. Krishnan, J.

Appellant : Bansilal Babhutram

Respondent : The State

Judgement :

ORDER

H.R. Krishnan, J.

1. This is an application in revision by a seller of milk who has been convicted Under Section 16(1)(a)(ii) of the Prevention of Food Adulteration Act: and in the view of at least one previous conviction for a similar offence, to suffer rigorous imprisonment for one year and a fine of Rs. 2000/- with further imprisonment in default, for six months.

The appeal having been dismissed, he has come up In revision alleging as ground of law that he was selling, neither pure cow's milk nor pure buffalo's milk but a mixture, for which no standard has been prescribed. The factual allegations are that though he had thirty seers of milk at his shop, it was not for sale and again, the data found by the public analyst are not worthy of credence.

This application touches on one or two misunderstandings which seem to be common, it is therefore convenient to deal with the matter at some length so that subordinate Criminal Courts in the State dealing the cases may be under no confusion.

2. The factual allegations can be disposed of briefly.

The applicant's own account was that he sells ghee and not milk and he had brought the milk for extracting butter and riot for sale as such. The quantity was considerable and the evidence was that it was being actually offered, for sale. So there is nothing more to be said in the regard in revision.

The second factual allegation is that the analyst's, data are unacceptable, the applicant does not say way. The lower courts have found what is clear on the face of the matter, that the analysis has been done properly. It is admitted that the Food-Inspector gave the applicant his sample of the milk preserved with formalin in a sealed container. It was open to the applicant to have asked for a second analysis; he has not done so, not has he given any reason why he did not avail of this opportunity for a second analysis. It has been pointed out that the fat content has been found by the analyst to be 7.2 per cent, in other words, higher than the one prescribed for pure buffalo's milk, so far, it is very credible. Why it happens at times that milk offered for sale contains, on the one hand, an exceptionally high fat percentage and on the other, a considerable shortage of non-fat solids, is an interesting question for which different answers can be found; we are not concerned with it immediately. The non-fat solids were 8 per cent, in other words, one in nine lower than the percentage prescribed for cow's milk, and lower still (3 in 19) than the percentage prescribed for buffalo's milk, which is thicker in this regard. It cannot at all be urged that the shortage of one content can be made good by an excess of the other in whatever manner the latter excess might have been brought about.

3. This takes us to the ground most seriously canvassed, namely, that the applicant had indicated that he was selling neither cow's milk nor buffalo's milk pure, simple, but a mixture. The law not having prescribed any standard for such a mixture, the prosecution should fail. This is over-ingenious and laboured and

would normally have been dismissed with bare mention; but some time ago, the Allahabad High Court, sitting in Single Bench, gave a ruling that in the absence of a standard prescribed for a mixture, there could be no prosecution for the sale of such a mixture, however watered. This ruling (*Municipal Board, Kanpur v. Badloo* : AIR1960 All504) has been overruled by the recent Full Bench ruling dated 15-5-1961 and reported in *Prem Das v. State* : AIR1961 All590 .

4. The law provides against the sale of adulterated; or below standard milk whether from buffalo or cow or goat. As the nutritious contents of each of these varies with the origin, different percentages have been prescribed; if any of the contents falls below this, the milk is below standard, and the vendor is liable to punishment. He has to indicate clearly whether he is selling one or another of the varieties concerned or a mixture, and if so, of what components. If he does not, then it will be presumed that he is selling the variety that is richest in these ingredients, (which is buffalo milk) and punished if the percentage of any of them falls below the prescribed percentage. So far, it is clear.

5. Some of our lower Courts have at times quite unnecessarily bewildered themselves in regard to the position where the sale is of a mixture, indicated as such, but without at the same time any indication of the proportion in it of the two or three kinds of milk. While the law obliges the vendor clearly to indicate whether he is selling this or that milk or a mixture of this or that variety, it does not, as it stands, oblige him to indicate the proportion. It should be remembered, that whenever two or all the three varieties are mixed, there is no startling change, and the proportion of the nutritious contents is in between the original percentages. In case the proportion is known, the standard for the mixture can be worked out accurately by a simple arithmetic. At all events, a dealer, selling what he indicates as a mixture, without showing the proportion of the components, is liable, if the percentages found on analysis are below the ones prescribed for the thinner or the thinnest of the two or three components.

For example, if, as in this case, the milk sold is indicated as a mixture of cow and buffalo's milk, the percentage of the contents should in no event fall below the percentage prescribed for the cow's milk which is the thinner of the two. Stated

thus, it becomes clearly unnecessary for the law to prescribe for the mixture a standard separate from that of the components. This is implied in the standards for each of them.

The Single Bench ruling of the Allahabad High Court' would, in any event, have been unacceptable to High Court; but as it turns out, it has been overruled by that High Court. Thus there is no force in this argument either.

6. The application is therefore summarily dismissed.

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