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Court : Delhi

Decided On : Oct-26-1972

Reported in : 1973RLR63

Judge : V.D. Misra, J.

Acts : Prevention of Food Adulteration Act - Sections 7

Appeal No. : Criminal Revision Appeal No. 470 of 1971

Appellant : Ganpat Ram

Respondent : State

Advocate for Pet/Ap. : S.P. Pandey and; D.R. Sethi, Advs

Judgement :

V.D. Misra, J.

(1) This revision is directed against the judgment of an Additional Sessions Judge, Delhi, upholding the conviction of the petitioner under Section 7/16 of the Prevention of Food Adulteration Act (hereinafter referred to as 'the Act', but reducing the sentences to four months rigorous imprisonment and fine of Rs. 1,000.00 and in default of payment of fine to undergo three months rigorous imprisonment.

(2) The petitioner has a shop numbered 1251 at Gali Charhat Gulian, Jama Masjid, Delhi. Food Inspector O.P. Khurana on 11.11. 1970 at about 6 a.m. found the petitioner selling milk from a container which bore the inscription 'cow milk', and took a sample of the same for analysis according to law. The report was that the same is misbranded as the same is skimmed milk but has been declared as Cow's Milk.'

WHENprosecuted under Sections 7/16 of the Act, the petitioner's defense, as disclosed in his statement under section 342 of the Code of Criminal Procedure, was that he gave 'skimmed milk' and not 'cow's milk' ; and that the container also bore this indication. He also stated that being illiterate his signatures were forcibly taken by the Food Inspector on various documents though he never accepted any price.

(3) The trial Court found in favor of the prosecution version and convicted the petitioner sentencing him to one year's rigorous imprisonment and a fine of Rs. 1,000.00 in default of which to undergo further rigorous imprisonment for three months. On appeal the learned Additional Sessions Judge reduced the sentence as aforesaid.

(4) Mr. S.P. Pandey, learned counsel for the petitioner, contends that no case of misbranding under Section 2(ix)(c) is made out since milk, whether buffalo's, cows or skimmed, is milk for all purposes and they constitute but one article of food only.

(5) The relevant provisions of the Act and the Rules made there under may be noticed with advantage. Under Section 2(ix) of the Act 'misbranded' has been defined thus :

'(IX)'misbranded'-an article of food shall be deemed to be misbranded- (c) if it is sold by a name which belongs to another article of food ; '

THEprevention of Food Adulteration Rules have been made under the Act. Part Iii thereof has the heading 'Definitions and Standards of Quality'. It contains Rule 5 which lays down : Standards of quality of the various articles of food specified in Appendix 'B' to these rules are as defined in that Appendix.' 'Appendix. 'B' has the

heading 'Definitions and Standards of Quality'. Item A. 11 deals with Milk and Mills Products.

THENfollows the standards for different classes and designations of milk. Buffalo Milk, Cow Milk, Goat or Sheep Milk, Standardised Milk, Recombined Milk, Toned Milk, Double Toned Milk and Skimmed Milk are shown separately under the heading 'Class of Milk'. In other words, these are treated different classes of milk and have different standards of Milk Fat and Milk Solid not Fat. Skimmed Milk is to have not more than 0.5 per cent Milk Fat and minimum 8.7% Milk Solid not Fat.

(6) It is not correct to say that 'skimmed milk' and 'cow mills' are not different articles of food. Whereas, cow milk is the Secretion derived from complete milking of healthy cow, skimmed milk is a milk product prepared by mechanically removing almost all the milk fat. Milk and milk products are different articles of food and are sold under separate names. The rules have classified them under separate names and have laid down their standards of quality which materially differ. Thus, when 'skimmed milk' is sold under the name of cow milk', it is a clear case of misbranding under Section 2(ix)(c).

(7) The next submission of Mr. Pandey is that the duty of Public Analyst is only to give his findings on analysis and his opinion that the article of food is misbranded, is not binding on the Court. Of course the opinion of Public Analyst is not final or conclusive and the vendor is entitled to show that the article of food in question is not misbranded. In the instant case the milk fat has been found to be 0.2% only. It clearly shows that the article of food in question was skimmed milk.

(8) Mr. Pandey also contends that the Food Inspector having neither joined independent witnesses at the time of taking the sample or taken into possession the container from which the milk was given, he should not be believed. Reliance is placed upon a judgment of the Punjab High Court in Ram Dhun v. The State, Criminal Revision No. 316-D of 1965 decided on 20.5 1966, and a Division Bench decision of this Court in Municipal Corporation of Delhi v. Puran chana, 1971 Food Adulteration Cases 326.

(9) Food Inspector O.P. Khurana appearing as Public Witness . 2 has deposed that only 3/4 persons. collected at the time of his taking ihe sample but none of them agreed to be a witness. In Delhi 6 A.M. in middle of November is quite cold and there arc only a few persons who. are up a ad about. In these circumstances, it. is really difficult for a Food Inspector to get independent witness. Moreover, the general reluctance of the Public to become witness is well-known. The Food Inspector had prepared relevant documents Exhibits P.A., P.B. and P.C. on the spot showing his taking a sample of cow milk from the petitioner who has signed and thumb-marked all of them. Another Food Inspector, Girdhari Lal Public Witness . 3, is a witness who supports O.P. Khurana. In my opinion both the courts below were correct in holding that the sample was duly taken according to law. The failure of the Food Inspector to seize the container cannot affect his taking. the Sample. Sample was taken in routine and there was nothing to create a suspicion in the mind of Food Inspector that milk was. misbranded.

(10) The Supreme Court in Bdbulal Hargovindas v. The State of Gujrat. 1971 (1). Sc, 767 has held that it is not a rule of law that the evidence of Food Inspector cannot a be accepted without Corroboration. His evidence alone, if believed, can be repied upon for proving that the sample was taken according to law. The circumstances of each 'case will show what value has to be attaced to his evidence. In the case of Puran Chand (supra),. the evidence of Food Inspector, which was not corroborated by any independent witness, was believed and the acquittal was set aside. It is true that it was observed 'If the Food Inspector is to comply with the requirements of Rule 9 (e) and such evidence was made available at the stags of the trial, it would lind assurance to the conduct of the Food Inspector and prevent to some extent any allegations of excesses or resort to unfair means at the hand of the Food Inspector but, it does hot mean that failure to produce record prepared under Rule 9 (e) should result in disbelieving the Food Inspector. In view of these two decisions it is not necessary 'to comment on the case of Ram Dhan (Supra).

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