

State Vs. Kasturi Lal

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Court : Delhi

Decided On : Nov-04-1985

Reported in : 1986CriLJ1474; 29(1986)DLT273; 1986(10)DRJ91; 1986RLR141

Judge : G.R. Luthra, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 7

Appeal No. : Criminal Revision Appeal No. 140 of 1985

Appellant : State

Respondent : Kasturi Lal

Advocate for Pet/Ap. : S.T. Singh and; Gulshan Rai, Advs

Judgement :

G.R. Luthra, J.

(1) The present criminal revision petition is directed against the order of discharge passed on March 18, 1983 by Shri V.K. Shall, Metropolitan Magistrate, New Delhi. It was the respondent who was discharged in respect of the alleged commission of offences punishable under section 7 read with Section 16 of the Prevention of Food Adulteration Act (hereinafter referred to as the Act).

(2) Raj Pal Singh, a food inspector, in the department of Prevention of Food Adulteration, Delhi Administration, visited on 27th April 1983 the premises of M/s. Imperial Dairy, H-32, Rajouri Garden, New Delhi. Kasturi Lal respondent was present at the said dairy and conducting the business. After disclosing his identity, R.P. Singh took sample of cow's milk. That milk was sent to the Public Analyst for analysis. A report of the Public Analyst was received that the milk was adulterated on account of deficiency for the non-fatty solids. At the request of Kasturi Lal respondent sample of milk was sent to the Director, Central Food Laboratory, Pune. The report was that the total milk solids were 13.1. out of which milk fat was 6% and the balance of 7.1% was milk solids not fat. The milk was opined to be adulterated on account of deficiency in the milk solids not fat.

(3) The prosecution of the respondent started on a complaint having been filed by Delhi Administration through Shri R..C. Chopra (Public Witness 3). Consent in accordance with Section 20 of the Act, as per the case of the prosecution, was given by Shri M.C. Verma, Secretary (Medical), Delhi Administration who was the person duly authorised to give such consent.

(4) The learned Magistrate recorded the statements of three witnesses. Pw 3 was Shri R.C. Chopra who proved the complaint Ex. Public Witness 3/A as well as signatures of Shri MC. Verma, Secretary (Medical) on the consent under section 20 of the Act. The learned Magistrate was of the view that it was doubtful if the Secretary (Medical) had applied his mind while giving the consent and, therefore, gave 11 opportunities to the prosecution to produce Shri M.C. Verma. The prosecution failed to produce Shri M C. Verma. The learned Magistrate closed the evidence of the prosecution and after expressing an opinion that the Secretary (Medical) had not applied his mind in the matter of grant of consent, the learned Magistrate on the basis of that opinion held that the prosecution of the respondent was illegal and on that basis discharged the respondent.

(5) In the present petition it is stated by the petitioner (Delhi Administration) that Mr. M.C. Verma was out of India and that, therefore, he could not be produced as a witness. It is further asserted that by way of not giving an opportunity to the petitioner to produce Shri Verma, there has been miscarriage of justice and that,

therefore, the order of discharge be set aside and the case be remanded for re-decision after allowing the petitioner to produce Shri M.C. Verma as a witness.

(6) I have heard the learned counsel for the parties. Although in view of the assertions of the petitioner to the effect that Shri M.C. Verma was out of India, which assertion has been denied by the counsel for the respondent I am of the view that a further opportunity should have been given by the learned Magistrate for producing him, yet there is one circumstance which obliges that the case should not be remanded for re-trial.

(7) That circumstance entitles the respondent to discharge. The same is being mentioned hereinafter. According to item A. 11 01. 11 of Appendix B to the Prevention of Food Adulteration Rules, 1955, standard of cow milk prescribed is that it should contain non-fatty solids, to the extent of 8.5 per cent and fat to the extent of 3.5 per cent. No doubt in this case non-fatty solids being 7.1 per cent fell short of the standard mentioned above, yet the aggregate of the fat and the non fatty solids in this case comes to 13.1 per cent (in accordance with the report of the Director of Central Food Laboratory) as against aggregate of the standard of both non-fatty solids and fat of 12%. The contention of the learned counsel for the respondent is that the milk was not properly stirred before taking sample and was thus not homogenised which meant that the sample which was taken was not proper representative of the milk being sold by the respondent. Learned counsel relied upon the following statement of R.P. Singh (Public Witness 2) who took the sample:

'The milk contained in the drum was properly homogenised before taking the sample at about 5 Pm and then 660 ml. of cows milk was purchased by me from the accused from the said container on payment of Rs. 2.50 paisa against a vendor's receipt Ex. Pn executed by the accused and signed by him at point A attested by me and the accompanying witness.'

(8) I agree with the learned counsel that although the witnesses has stated that the milk was properly homogenised before taking sample, yet it has not been told as to what was the process used for that homogenising. Pw 2 has not disclosed as to what was the contrivance or device by which the whole milk was properly stirred

so as to become homogenous. Mere laying that the milk was homogenised is an opinion of the witness and not a statement of fact on the basis of which the court can form Opinion.

(9) Even otherwise there is an authority of this High Court (by Prithvi Rnj, J.) in M.C.I. v. Jawahar Lal, 1980 (2) F.A.C. 145 In that case it was held that when percentage of fat was higher than standard and percentage of solids not fat was slightly lower, and the aggregate of the two was more than the aggregate of the standard, the inevitable inference was that either the test was erroneous or that there was imbalance in the fodder fed to the cow which resulted in high percentage of fat while giving lower percentage in solids not fat and that, therefore, the accused was rightly acquitted. In that case reliance was placed on a number of authorities.

(10) Under the above circumstances, although I find that the petition was rightly filed by the petitioner, the order of discharge must be maintained on different grounds, as already mentioned.

(11) Under these circumstances I dismiss the petition.

(12) Criminal Revision No. 140 of 1985 stands disposed of.