

Shyam Lal Vs. State

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Court : Delhi

Decided On : Mar-20-1991

Reported in : 44(1991)DLT159; 1991(21)DRJ1; 1991RLR270

Judge : V.B. Bansal, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 7 and 20

Appeal No. : Criminal Revision Appeal No. 268 of 1978

Appellant : Shyam Lal

Respondent : State

Advocate for Pet/Ap. : K.K. Sud,; Rakesh Sherawat,; Sudhir Garg and ;

Judgement :

V.B. Bansal, J.

(1) Shyam Lal petitioner was convicted under Section 7 read with Section 16 of the Prevention of Food Adulteration Act (for short the Act) by a Metropolitan Magistrate, Delhi vide judgment dated 20th January, 1978 on the ground that he sold boiled cow's milk which on analysis was found to be adulterated. He was sentenced to R.I. for six months with a fine of Rs. 1000.00 or in default to undergo further R.I. for two months vide order of even date by the metropolitan magistrate.

(2) Conviction and sentence were challenged by Shyam Lal by way of filing an appeal, which was, however, dismissed by an Addl. Sessions Judge vide judgment dated 28th August, 1978.

(3) Still not satisfied from the conviction and sentence recorded by the two courts below. Shyam Lal bag filed this present petition.

(4) Briefly stated the facts leading to the filing of this petition are that on 26th August, 1976 at about 12.45pm. the petitioner was found present at premises No. 3381, Chowk Singhara, Qutub Road, Delhi where he was keeping milk. Food Inspector Vinod Kalra made known his intention to the petitioner of taking a sample of boiled cow's milk for analysis and thereafter in terms of the provisions of the Act purchased 660 ml. of milk which was divided in three equal parts and after putting the same in three dry and clean bottles they were fastened and sealed in accordance with the rules. A bottle of sample was sent t analysis was found deficit by 1.09 percent in milk solids not fat and 24.7 per cent deficiency in milk fat. After taking proceedings a complaint was filed against the petitioner in the court of concerned metropolitan magistrate by .Shri R.N. Gujral, Assistant Municipal Prosecutor. The learned trial court recorded the statements of the witnesses and the plea taken by the partner in his statement recorded under Section 313 Criminal Procedure Code . was that he was only a tea seller and did not sell milk products. He has also taken up the plea that the boiled cow's milk was lying in the shop for preparation of tea. He. however, claimed that the milk was not stirred in his presence so as to make it homogenous. A specific plea was taken by him that the Food Inspector who bad taken the sample bad no authority under the law and that all the proceedings stood vitiated. One witness was examined by him in defense. Learned trial court after hearing arguments after convicting awarded the sentence as referred to above.

(5) I have heard learned counsel for the parties and have also gone through the records.

(6) I earned counsel for the petitioner has submitted that there was no proper sanction for the prosecution of the petitioner and on this ground alone the conviction and sentence of the petitioner recorded by the two courts below is liable

to be set aside.

(7) In order to appreciate this submission it would be appropriate to quote Section 20 of the Act which reads as under : Cognizance and trial of offence- (1) (No prosecution for an offence under this Act, not being an offence under Section 14 or Section 14-A), shall be instituted except by, or with the written consent of (the Central Government or the State Government or a person authorised in this behalf, by general or special order, by the Central Government or the State Government : Provided that a prosecution for an offence under this Act may be instituted by a purchaser (or a recognised consumer association) referred to in Section 12, if he (or it) produces in court a copy of the report of the public analyst along with the complaint.' (2) (3)

(8) A bare reading of this section makes it abundantly clear that the authority competent to sanction prosecution for a case under the Food Adulteration Act has to apply mind and go through the relevant documents for coming to the subjective satisfaction that the facts disclosed to him warranted the giving of sanction.

(9) In the instant case Ext, Public Witness 1 /B is the sanction order dated 12th October, 1978 signed by Director of Health Service, Delhi Administration. It is the admitted case of the parties that the officer who gave sanction for the prosecution of the petitioner has not been examined as a witness and the said sanction order has been proved by Shri K.N. Gujral Aistt. Municipal Prosecutor It has nowhere been stated by Public Witness 1 that the sanction order was signed by Director of Health Services in his presence. A perusal of the sanction order Ext. Public Witness 1/B makes it abundantly clear and it is on a cyclostyled proforma in which the only writing in hand is 'boiled cow's milk', 'BK 120', '26th August 1976' and the names and address of the accused. This document thus is silent as to whether any record was produced before the said authority for coming to the subjective satisfaction for the grant of sanction. It is also conspicuous by its absence from his record as to whether any material was placed before the said authority at the time he signed this order or even prior to it. In these circumstances, the submission of learned counsel for the petitioner that it is a stereo-typed sanction which might have been signed in routine without even papers being placed before the said

authority cannot be said to be without substance especially when the complainant has failed to bring on record the relevant material to support that the sanctioning authority had gone through the relevant papers. It may also be noticed that after the framing of the charge the petitioner had indicated his intention to cross-examine all the witnesses Even at that stage it was open to the complainant to lead evidence to prove that proper sanction was issued by competent authority in terms of Section 20 of the Act. This has, however, not been made.

(10) There is a clear judgment of this court in case State (Delhi Administration) v. Shyam Lal, 1987 (2) PFAC 198 holding that sanction granted in a cyclostyled form in which particulars are typed without mentioning of the documents which may have to be considered was held to be invalid. This judgment was followed by Division Bench in another case R N. Gujral and another v Pritpal Gupla, 1988 (2) PFAC 84 The same view was expressed in another case Rattan Chand v .State of U.T.Chandigarh 1989 (2) PFAC 327.

(11) Considering all the facts I am clearly of the view that there has not been any proper sanction for the prosecution of the petitioner and on this account alone the petition is liable to be accepted.

(12) Learned counsel for the petitioner has also submitted that in sales Chain Sukh v. The State of Haryana 1987 (2) Fac 265 and Har Lal v. State of Haryana 1988 (1) Rcr 666 while taking the sample of the boiled milk the Food Inspector had not stirred the milk before taking the sample and. thus. the sample having not been taken in accordance with the Rules there could be variation in the result of the analysis. He has submitted that similar has been the present case and on this account also the conviction and sentence of the petitioner cannot be sustained.

(13) I have gone through the preliminary report for prosecution and the other documents prepared by the Food Inspector at the time of taking the sample. All that has been mentioned in the documents about the taking 660 ml. boiled milk without there being any indication that the milk was stirred. However, during cross-examination Public Witness 2 Vinod Kalra Food Inspector claimed that malai was not visible in the milk but it was made homogenous.

(14) Submission of learned counsel for the respondent has been that the very fact of the Food Inspector having mentioned that the milk was made homogenous would indicate that the sample was taken properly and petitioner has not made any grievance in this regard. I, however, do not agree with this submission. For the offences alleged to have been committed by the petitioner minimum sentence is provided. A strict compliance of the provision is expected from a Food Inspector taking sample. In these circumstances, I have no hesitation in holding that it was incumbent upon the Food Inspector to have mentioned in the documents prepared at the time of taking the sample that the milk was made homogeneous. Merely his saying so in the court, in my view, cannot be considered to be sufficient that it was complied by him. This fact would amount to an improvement made during trial which is not permissible and cannot be relied upon. I find support for this view from the case *Har Lal v. State of Haryana* 1988(1) Rcr 666 (Supra) and *Mitha Ram v. The State of Punjab* 1989 CC. 213. Considering all these judgments I am clearly of the view that no latitude can be granted to the Food Inspector to make improvement in the case at the time of the trial and this material fact having been proved that the milk was not stirred properly before taking the sample is also a ground on account of which the conviction and sentence are liable to be set aside,

(15) As a result the revision petition is allowed. Conviction and sentence of the appellant are set aside. Giving him the benefit of doubt he is acquitted. Fine, if paid, shall be refunded to the petitioner. The Bail Bonds of the petitioner stand discharged.

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