

M.B. Risaldar Vs. Deviram Chhitamal and ors.

M.B. Risaldar Vs. Deviram Chhitamal and ors.

SooperKanoon Citation : sooperkanoon.com/738042

Court : Gujarat

Decided On : Jun-23-1983

Reported in : (1984)1GLR228

Judge : A.M. Ahmadi and; M.B. Shah, JJ.

Appellant : M.B. Risaldar

Respondent : Deviram Chhitamal and ors.

Judgement :

M.B. Shah, J.

1. The Food Inspector, Baroda Municipal Corporation has preferred this appeal against the judgment and order dated 28th February, 1979 in Criminal Appeal No. 49 of 1978 passed by the learned Additional Sessions Judge, Baroda, wherein he set aside the order of conviction and sentence passed by the learned Judicial Magistrate, First Class (Municipality), Baroda in Criminal Case No. 4823 of 1977.

2. The Judicial Magistrate, First Class (Municipality), Baroda, has convicted respondent No. 1 under Section 7(1) and Section 16(1)(a)(1) of the Prevention of Food Adulteration Act by judgment and order dated 26-4-1978 for selling adulterated curd on 20th June, 1977 to the present appellant. The learned Magistrate came to the conclusion that the curd was adulterated and as he sold the curd to the present appellant, he convicted respondent No. 1. Against the said

judgment and order respondent No. 1 had preferred the abovesaid Criminal Appeal No. 49 of 1978, wherein the learned Additional Sessions Judge has set aside the said order of conviction on two grounds. He came to the conclusion that as the appellant was preparing Lachhi (butter-milk) from the said curd, the curd was stored only for preparation of Lachhi and, therefore, it cannot be said that the accused was selling curd. He also held that Rule 16(c) of the Prevention of Food Adulteration Rules, 1955 was not complied with because the Local Health Authority had not placed the code number and serial number on the paper slip and the said code number and serial number were written by the Food Inspector. It is an admitted fact that the said paper slip contains the signature of the Local Health Authority as required by Rule 16(c) of the aforesaid Rules.

3. The said judgment and order of the learned Additional Sessions Judge was challenged on the ground that the learned Appellate Judge has not at all appreciated the evidence of Food Inspector Mr. G.A. Parikh. It was pointed out to us that the Food Inspector in his deposition has specifically stated that he went to the shop of respondent No. 1 and he purchased curd from respondent No. 1. It has been specifically deposed by him that on the said shop there is a board which inter alia mentions that in the said shop milk and curd are sold. He, also deposed that respondent No. 1 had informed him that he was selling curd and also preparing Lachhi from the said curd. He also deposed that for purchase of the said curd he paid Rs. 1-80 Ps. to respondent No. 1 and that respondent No. 1 was selling curd at Rs. 3/- per kilogram. In cross-examination of this witness it was suggested to him that he was not having any other evidence to show that curd was kept there for sale. In his further cross-examination he has stated that he took curd by small bowl which was kept there for selling curd. In paragraph 19 of his deposition it was suggested that the accused was not selling curd but was only preparing Lachhi and that suggestion was denied by him.

4. The prosecution has further examined Thakorbhai Babubhai - P.W. 2 Ex.54. He was called as a Panch. He deposes that in the shop of the accused milk, curd and sweetmeat were kept and that accused was selling the said articles. He was cross-examined on behalf of the complainant with the permission of the court. In his cross-examination he has stated that the curd was prepared from cow milk.

Even to this hostile witness no suggestion was made on behalf of the accused that curd was not sold but it was only kept for preparing Lachhi.

5. The prosecution has also examined Somnath Mahadev Joshi-P.W.4 Ex. 61. He had produced original licence issued to the accused. It is at Ex. 62. In the said licence it is specifically stated that the business of the accused was to sell milk and curd. The said licence was issued under the Bombay Provincial Municipal Corporations Act, 1949.

6. The accused was asked in his statement recorded under Section 313 of the Code of Criminal Procedure, whether he was having a shop for sale of milk and curd and he has replied that he was having such shop. Further question was asked to him whether the Food Inspector informed him that he wanted to purchase curd from him. The said question was also replied by him in the affirmative.

7. Looking to the evidence on record, it is clear that the Food Inspector purchased curd from the shop of the accused. The Food Inspector paid Rs. 1-80 ps. for the purchase of the curd. The board on the shop of the accused clearly mentions that milk and curd are sold in the said shop, and curd was sold at the rate of Rs. 3/- per kilogram. There is no evidence on record to show that curd was not sold by the accused. It is an admitted fact that the Food Inspector purchased the curd by paying Rs. 1-80 ps. The accused is also having the licence for sale of milk and curd. Merely because Lachhi is prepared from curd, it cannot be inferred that curd was not for sale. Merely because the Food Inspector has stated in his cross-examination that he has no other evidence to show that the accused was selling curd and that the accused was selling Lachhi, it cannot be inferred that the curd was not sold at the shop of the accused. The learned Additional Sessions Judge arrived at the conclusion that the curd was kept for preparing Lachhi and not for sale, and that because of the said admission of the Food Inspector the prosecution has failed to prove that curd was kept for sale. The learned Additional Sessions Judge has not at all appreciated the evidence of the Food Inspector as stated above, because the Food Inspector has specifically deposed that he purchased curd by paying Rs. 1-80 Ps. The learned Additional Sessions Judge has not considered the licence Exhibit 62 issued in favour of the accused which

specifically mentions that accused was doing the business for selling milk and curd. The learned Appellate Judge has not at all considered the evidence of the Food Inspector wherein he has specifically deposed that the Board on the shop of the accused clearly mentions that milk and curd were sold. The learned Appellate Judge has also not considered the evidence of the hostile witness Thakorbhai Babubhai wherein he has also deposed that at the shop of the accused milk, curd and sweet-meat were kept and that the accused was selling the aforesaid articles.

8. In the case of State of Tamil Nadu v. R. Krishnamurthy : 1980 CriLJ402 the Supreme Court has considered the definition of 'sale' and it is held as under:

We have further to investigate the definition of 'sale'. Now, the definition is designedly wide. It seems a real sale as well as an 'embryonic' sale (like agreement for sale, offer for sale, exposure for sale, possession for sale, attempt at sale) are sales for the purposes of the Act. The sale may be for cash or credit or by way of exchange. The sale may be by wholesale or retail. Thus every kind, manner and method of sale are covered. Finally, the sale may be 'for human consumption or use, or for analysis'. In the context...

It has been further held as under:

To give any other interpretation to the definition of 'sale' would be to exclude from the ambit of the Act that which has been included by the definition of 'food'. Further, a sale 'for analysis' can never be a sale 'for human consumption' but it is nonetheless a sale within the meaning of the definition. It is an unqualified sale for the purposes of the Act. To insist that an article sold for analysis should have been offered for sale for human consumption would frustrate the very object of the Act. A person selling an adulterated sample to a Food Inspector could invariably inform him that it was not for human consumption and thereby insure himself against prosecution for selling adulterated food. If sale for analysis is an unqualified sale for the purposes of the Act, there is no reason why other sales of the same article should not be sales for the purposes of the Act. The question may be asked why sales for analysis should be specifically mentioned if all manner of sales are included. It is only to prevent the argument that sale for analysis is not a consensual sale and hence no sale, an argument which was advanced and

rejected in *Mangaldas v. State of Maharashtra* : 1966 CriLJ106 .

9. In view of this pronouncement of the Supreme Court, it is clear that the accused had sold curd to the Food Inspector by receiving Rs. 1-80 Ps. for 600 grams of curd and from the other evidence also on the record it is clear that the accused was selling curd at his shop at Rs. 3/- per kilogram. In view of these circumstances the inference drawn by the learned Additional Sessions Judge is without any basis.

10. The conclusion of the learned Additional Sessions Judge that Rule 16(c) of the Prevention of Food Adulteration Rules is not complied with by the Food Inspector because the code number and serial number were not mentioned by the Local Health Authority, is also without any substance.

11. The Division Bench of this Court had an occasion to interpret Rule 16(c) of the Prevention of Food Adulteration Rules, 1955 in the case of *Kamleshkumar Babulal Patel v. State of Gujarat* 22 G.L.R. 404 wherein it was observed as under:

In the instant case, it is not disputed that paper slip used by the Food Inspector bears the signature and code and serial number of Local (Health) Authority. It is however, pointed out that Code and serial number of the Local (Health) Authority were written by the Food Inspector as admitted by him in his evidence. There was, therefore, clear violation of R. 16(c). We do not see any substance in this argument. The rule only describes or specifies the type of paper slip which must be pasted by the Food Inspector on the wrapper. In other words, the rule is descriptive of the paper slip to be used. The paper slip must no doubt bear the signature of the Local (Health) Authority. There is, however, nothing in language used in the rule to suggest that code and serial number of the Local (Health) Authority must be written in the hand of the Local (Health) Authority. Mr. Patel, however, strongly relied on the judgment of Divan, C.J. in Criminal Appeal No. 1215 of 1979 decided on November 23, 1979. In that case, it was pointed out that the Food Inspector had used a blank slip with signature of the Local (Health) Authority and the code and serial numbers were filled in by the Food Inspector himself and not by the Local (Health) Authority. In view of this evidence the learned Chief Justice observed: Under the circumstances it is obvious that the

requirement of Clause (c) of Rule 16 was not complied with because what is contemplated by Clause (c) is that the signature and the Code and serial number should be put by the Local (Health) Authority and not by the Food Inspector concerned. With great respect to the learned Chief Justice we do not agree with this view taken by him. As pointed out above, the rule nowhere provides that the code and serial number should be put by the Local (Health) Authority. All that the rule requires is that the paper slip should bear the code and serial number besides the signature of the Local (Health) Authority. It is immaterial whether the code and serial number are written or filled in by the Food Inspector. Once it is proved that the paper slip affixed on the sample bears the signature and code and serial number of Local (Health) Authority, requirement of Rule 16(c) must be held to have been complied with. We, therefore, reject the first contention of Mr. Patel.

12. The alleged non-compliance in the aforesaid case and the present case is identical and in view of the clear interpretation of Rule 16(c) it is amply clear that there is no breach of Rule 16(c) and, therefore, also the order passed by the learned Additional Sessions Judge is erroneous.

13. Further the accused has not shown any prejudice caused to him by alleged non-compliance of Rule 16(c) of the aforesaid Rules. While interpreting Rule 9(j) of the Prevention of Food Adulteration Rules, 1955, the Supreme Court in the case of *Dalchand v. Municipal Corporation Bhopal* : 1983 CriLJ448 has held as under:

Was R. 9(j) mandatory or directory? There are no ready tests or invariable formula to determine whether a provision is mandatory or directory. The broad purpose of the statute is Important. The object of the particular provisions must be considered. The link between the two is most Important. The weighing of the consequence of holding a provision to be mandatory or directory is vital and, more often than not, determinative of the very question whether the provision is mandatory or directory. Whether the design of the statute is the avoidance or prevention of public mischief, but the enforcement of a particular provision literally to its letter will tend to defeat that design, the provision must be held to be directory so that proof of prejudice in addition to non-compliance of the provision is necessary to invalidate the act complained of. It is well to remember that quite

often many rules, though couched in language which appears to be imperative, are no more than mere instructions to those entrusted with the task of discharging statutory duties for public benefit. The negligence of those to whom public duties are entrusted cannot by statutory interpretation be allowed to promote public mischief and cause public inconvenience and defeat the main object of the statute.

Merely because the local authority itself had not mentioned serial number and code number on the slip it cannot be said that any prejudice is caused to the accused. The said slips are admittedly signed by the local authority. The code number and serial number were written by the Food Inspector when the slips were pasted on the bottle.

13.1 Further in the case of State of Punjab v. Devinder Kumar : 1983 CriLJ980 , while interpreting Rule 22, 22-A, 22-B of Prevention of Food Adulteration Act, 1954 it has been held as under:

(i) If there is any prejudice caused to the accused by (ii) any negligence on the part of the authorities concerned in taking or sending the true sample to the Public Analyst, the prosecution may have to fail. But there is, however, no legal requirement which compels the Food Inspector to send the sealed container as such to the Public Analyst even though it contains a quantity much larger than what is required to be taken as sample under Rule 22. Rule 22-A is only a Corollary to Rule 22, Rule 22-B sets at rest many doubts which were being raised prior to its promulgation.

Emphasis supplied.

The Supreme Court referred to the case of State of Kerala etc. v. Alaserry Mohammed : 1978 CriLJ925 and relied upon the following paragraph:

It would thus be seen that the whole object of Section 11 and Rule 22 is to find out by a correct analysis, subject to further verification and tests by the Director of the Central Laboratory or otherwise, as to whether the sample of food is adulterated or not. If the quantity sent to the Public Analyst, even though it is less than that prescribed, is sufficient and enables the Public Analyst to make a correct analysis

then merely because the quantity sent was not in strict compliance with the Rule will not result in the nullification of the report and obliterate its evidentiary value. If the quantity sent is less, it is for the Public Analyst to see whether it is sufficient for his analysis or not. If he finds it insufficient, there is an end of the matter. If, however, he finds it sufficient but due to one reason or the other either because of further test or otherwise, it is shown that the report of the Public Analyst based upon the short quantity sent to him is not trustworthy or beyond doubt, the case may fail. In other words, if the object is frustrated by the sending of the short quantity by the Food Inspector to the Public Analyst, it is obvious, that the case may end in acquittal. But if the object is not frustrated and is squarely and justifiably achieved without any shadow of doubt, then it will endanger public health to acquit offenders on technical grounds which have no substance. To quote the words of Sir George Rankin, C.J. from the decision of the Calcutta High Court in Chandra Nath Bagchi v. Nabadwip Chandra Dutt : AIR1931 Cal476 , it would 'be merely piling unreason upon technicality....' In our considered judgment the Rule is directory and not mandatory. But we must hasten to reiterate what we have said above that, even so, Food Inspectors should take care to see that they comply with the Rule as far as possible....

We may, in passing, note that the Rules have now been amended and Rule 22-B has been added in 1977...

In our opinion, the new Rule has been added for the purpose of clarifying the law and not by way of amending it. The law, as we have enunciated it, was so even without Rule 22-B and it is stated here to place it beyond any debate or doubt.

As no prejudice has been pointed out by respondent No. 1 by the alleged lapse on the part of the local authority in not mentioning code number and serial number we do not think that the learned Appellate Judge was right in setting aside the conviction and sentence imposed by the learned Judicial Magistrate, First Class.

14. In view of the certificate of test issued by the Central Food Laboratory which is at Ex. 28 on record it is clear that the sample of curd sent for analysis was adulterated. The prosecution has also relied on the evidence of Public Analyst and its report. The Public Analyst has also deposed that the curd was adulterated. In

view of this clear evidence we are of the view that the learned Judicial Magistrate had rightly convicted the accused.

15. On behalf of respondent No. 1 it was submitted by the learned Counsel that the sentence of six months imposed by the learned Magistrate was harsh. It was submitted that as the offence was committed in 1977, less than the minimum punishment should be imposed. We do not find any substance in the submission of the learned Counsel. The learned Magistrate has imposed minimum sentence and no ground was pointed out to us for imposing less than minimum sentence. Merely because the offence was committed on 28th June, 1977 it cannot be said that less than minimum sentence should be imposed.

16. In the result, we allow this appeal, set aside the order passed by the learned Additional Sessions Judge, Baroda in Criminal Appeal No. 49 of 1978 on 28th February, 1979, and restore the judgment and order passed by the learned Judicial Magistrate, First Class (Municipality), Baroda on 26th April, 1978 in Criminal Case No. 4823 of 1977. At the request of the learned Counsel for respondent No. 1 six weeks time is granted to surrender to custody. Warrant for arrest to issue Warrant for arrest not to be executed for six weeks from today.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com