

Sohan Vs. the State

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Court : Rajasthan

Decided On : Jan-17-1962

Reported in : AIR1963Raj17; 1963CriLJ221

Judge : C.B. Bhargava, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 11(3), 13, 20 and 25(2); Marwar Pure Food Rules, 1940

Appeal No. : Criminal Revn. No. 422 of 1960

Appellant : Sohan

Respondent : The State

Advocate for Def. : Amrit Raj, Adv.

Advocate for Pet/Ap. : U.R. Tatia, Adv.

Judgement :

ORDER

C.B. Bhargava, J.

1. This is an application in revision by Sohan against his conviction under Section 16 read with Section 7 of the [Prevention of Food Adulteration Act, 1954](#) (hereinafter called the Act). The trial Magistrate sentenced him to rigorous

imprisonment for three months and a fine of Rs. 500/- in default of payment of fine to further imprisonment for three months. In appeal the sentence was reduced to payment of fine of Rs. 500/- only.

2. The charge against him was that on 3rd March, 1959 at about 9 a.m., he was found selling Cows' milk near Kabootro-Ka-Chowk in Jodhpur City from which some milk was purchased by the Food Inspector of Jodhpur Municipality who divided it in three parts, filled it in three bottles, sealed them and sent one of them to the Public Analyst and on his report that it was adulterated, obtained the consent of the Chairman, Municipal Board for his prosecution and filed a complaint in the court of the Munsif Magistrate, First Class, Jodhpur. The report of the Public Analyst showed that the percentage of solid non-fat did not conform to the prescribed standard. The courts below have therefore, found that the petitioner was guilty of selling adulterated milk.

3. It is not disputed that the petitioner was offering milk for sale on 3rd March, 1959 from which Shri Pyare Nath Narhari, Food Inspector of Jodhpur Municipality purchased milk worth -/6/-and after putting it in 3 bottles and sealing them sent one of them to the Public Analyst

4. The contentions of the learned counsel for the petitioner are:

(1) that the report of the Public Analyst does not show the date on which the milk was analysed.

(2) that there was no evidence that formalin was added to milk before it was sent to the Public Analyst.

(3) that there was no proper sanction for the prosecution OL the petitioner, inasmuch as Shri Jai Lai Sharma, President Municipal Board, Jodhpur had not been authorised 'to give consent tor the prosecution and also because no particular person was named in the sanction to prosecute the petitioner.

5. As the report of the Public Analyst was silent regarding the date, on which he had examined the sample of milk., I called him for his examination in this Court. From his Statement which was recorded today, it is proved that he had examined

the milk on the same day it was sent to him by the Food Inspector i.e. 3rd March, 1959. His explanation for not mentioning the date of examination in the report is that there is no specific column for it in the prescribed form. Whether the prescribed form contains any column for the date of the examination or not, there should be something on the report to show that the articles of food sent for analysis were examined before there was chance of their disintegration. Without the date of examination in the report by the Public Analyst it becomes difficult for the Court to know as to when the articles of food were examined by him, which leaves room for the argument that by the time they were analysed the articles of food had undergone a change. It is, therefore, desirable that the Public Analysts in their report should mention the time and date of the examination of the articles of food sent to them for analysis, more so because under Section 13(5) of the Act, the report is used as evidence of the facts stated there-in without the statement of the Public Analyst in Court.

In the present case, the Public Analyst has stated that the milk was in good and analysable condition and had it not been so, he would have declared it as curdled. Therefore, the objection that milk was examined long after it was sent to the Public Analyst and that it had deteriorated in quality, has no force.

6. Absence of evidence about adding of preservative by the Food Inspector to the milk which was sent to the Public Analyst, is of no consequence in the present case because the Public Analyst has stated that at the time of examination the milk was in good and analysable condition. But generally speaking, there should be evidence on oath that preservative was in fact added to the article of food sent to the Public Analyst. Simply mentioning it in the forwarding letter is not enough. There should be proof of the addition of preservative to the article of food.

7. With regard to the contention that the consent for prosecution in this case was not valid because the President of the Municipal Board was not shown to have been authorised in this behalf, it may be pointed out that when this appeal was heard by the learned Sessions Judge it was stated at the Bar that by its resolution dated 22nd August, 1958, Municipal Board, Jodhpur, had authorised its President to accord sanction for prosecution under Section 20 of the Act. Learned counsel

for the State has produced that resolution before me, and I am satisfied that the consent given in the present case by the President of the Municipal Board was quite valid.

8. 'The next contention that the consent is bad because it does not name the person authorised to prosecute the petitioner is founded on a case decided by the Bombay High Court in *State v. Parshottam Kanaiyalal*, AIR 1960 Bom 244. This case went in appeal before the Supreme Court and has been reversed. It has been laid down by the Supreme Court in *State of Bombay v. Parshottam Kanaiyalal*, AIR 1961 SC 1 that where prosecutions are riled on the basis of written consents granted by the competent person or authority, the specification of the name of the complainant is not a statutory requirement the consent being to a specified prosecution.

9. It was also contended that immediately before the commencement of this Act, there were in force rules for Marwar known as Marwar Pure Food Rules, 1940, wherein the prescribed standard in cow's milk is fat content 3.5 and solid non-fat content 8% which should apply in the present case. The argument is that these rules were not expressly repealed or altered as laid down in Section 25 of the Act. Section 25(2) lays down:

'Notwithstanding the repeal by this Act of any corresponding law all rules, regulations and bylaws relating to the prevention of adulteration of food, made under such corresponding law and in force immediately before the commencement of this Act shall, except where and so far as they are inconsistent with or repugnant to the provisions of this Act, continue in force until altered, amended or repealed by rules made under this Act.'

It is clear that the rules immediately before the commencement of this Act made in the corresponding laws are to continue in force only if they are not inconsistent with or repugnant to the provisions of this Act.

In the present case, the rules under the Mar-war Pure Food Rules regarding the prescribed standard of fat and solid contents are inconsistent with the standard prescribed in the Rules framed under the Central Act and as such the Marwar

Pure Food Rules cannot be deemed to continue in force.

Learned counsel urges that the inconsistency should be with the provisions of the Act and not with the rules framed under it. It may be pointed out that the rules framed under the Act become part and parcel of the Act and the inconsistency with the rules is inconsistency with the provisions of the Act. Therefore, there is no force in the contentions raised by the learned counsel. It however, appears that the percentage of fat content in the milk was more than what is prescribed under the rules. It was only in the solid non-fat content that there was deficiency and that also to the extent of .5. In these circumstances, a sentence of fine of Rs. 300/- will meet the ends of justice.

10. The revision is, therefore, partly accepted, conviction of the petitioner is maintained, but the amount of fine imposed on him is reduced from Rs. 500/- to Rs. 300/-. Amount of fine deposited in excess of Rs. 300/- will be refunded to the petitioner.

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