

State Vs. Mst. Meera

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Court : Rajasthan

Decided On : Feb-09-1968

Reported in : 1969CriLJ958

Judge : L.S. Mehta and; C.M. Lodha, JJ.

Appellant : State

Respondent : Mst. Meera

Judgement :

L S. Mehta, J.

1. The accused Mst. Meera, widow of Ganesh Rawal, was prosecuted for an offence under Section 16(1)(a) read with Section 7(1), Prevention of Food Adulteration Act, 1954, in the Court of learned Sub-Divisional Magistrate, Jalore. She was convicted under the aforesaid provisions of law and was, sentenced to pay a fine of Rs. 51, in default; of payment of fine to undergo simple imprisonment for a period of one week.

2. It is alleged that on June 3, 1963, at about 6.30 a.m., Food Inspector Mohan Kishan, P. W. 2 had been on his usual round towards Surajpol gate, Jalore. He found Mat. Meera selling milk in the bazaar to the public. He gave a notice to Met. Meera in form No. VI for purchase of milk for the purpose of its test. He then bought milk worth annas seven. He put that milk in three bottles, which duly

sealed. One of those phials was given to Mst. Meera, the other was sent to the Public Analyst, Jodhpur, for laboratory test, and the third one was retained by the Food Inspector; vide Ex. P. 4. The Public Analyst analysed the sample and declared the result, of his analysis as under:

Fat contents 2.1 per cent.

Solid non-fat contents 6.3 per cent.

He was of the opinion that the sample was adulterated, as it did not conform to the prescribed standard of purity. He issued requisite certificate on August 8, 1963, and sent the same to the Food Inspector, Jalore. Thereafter, on October 31, 1968, a complaint was made on behalf of the State against the accused Mst. Meera for her prosecution under Section 16(1)(a) read with Section 7(1), Prevention of Food Adulteration Act, 1954, in the Court of learned Sub-Divisional Magistrate, Jalore. The accused denied to have committed the offence. Her plea was that the Chairman, Municipal Board, Jalore, Shri Ugam See Modi's father was not on good terms with her because of certain litigation and, therefore, she was falsely implicated. She further said that the milk in question was not meant for sale. In support of its case the prosecution examined (1) Shri A. Bhattacharya, Public Analyst, Jodhpur; (2) Food Inspector Mohan Kishan, and (3) Motbir Vijai Raj. The accused did not produce any evidence in her defence. Eventually, the Court convicted and sentenced the accused, as aforesaid. On an appeal, learned Additional Sessions Judge, Jalore, acquitted the accused on March 31, 1965, on the grounds that:

(1) the phials, in which samples of milk were taken, had not been sterilised:

(2) Samples were taken only in two bottles instead of three as required by the Rules:

(3) Sample was not examined within reasonable time by the Public Analyst ; and

(4) The provisions of Section 10(7), Prevention of Food Adulteration Act, 1954, were not duly complied with while obtaining the samples.

3. Aggrieved against the above verdict, the State Government has filed the present appeal. Learned Deputy Government Advocate seriously challenged the findings of the first appellate Court. His contention is that the Additional Sessions Judge, Jalore, did not properly appreciate the prosecution evidence and his interference with the findings of the trial Court was uncalled for. He has further argued that the provisions of Section 10(7) of the Act are not mandatory but only directory in nature and, therefore, the Court below went wrong in holding that the trial of the case was vitiated on that score. learned Counsel for the respondent supported the judgment of learned Additional Sessions Judge, Jalore.

4. As regards the cleaning of the bottles. Rule 14 of the Prevention of Food Adulteration Rules, 1955, provides that sample of food for the purpose of analysis shall be taken in clean dry bottles or jars or in other suitable containers, which should be closed sufficiently tight to prevent leakage, evaporation, or, in the case of dry substance, entrance of moisture and shall be carefully sealed. In this case, there is the positive evidence of Motbir Vijai Raj, P.W. 3 who has said that the battles in which the samples were put were clean. This evidence has not been controverted by the accused in any manner. It cannot, therefore, be said that the provisions of Rule 14 of the said Rules were not acted upon.

5. As for the sample taken in the requisite bottles, it is true that Motbir Vijai Raj, P. W. 3, has deposed that samples were taken in two phials, but this statement of his is inconsistent with the contents of the memo, prepared on the spot, Ex. P. 4. In the purchase memo, duly signed by Vijai Raj, it is mentioned that the samples were taken in three bottles. The Food Inspector Mohan Kishan P. W. 2 has stated on oath that samples of milk were put in three phials and they were duly sealed. There is no reason why the evidence of Food Inspector Mohan Kishan, the author of the said memo, should not be relied on. In our opinion, the first appellate Court fell into error in rejecting the evidence of P. W. 2 Food Inspector, which is duly corroborated by the documentary evidence referred to above.

6. In the matter of examination of the sample within a reasonable time, suffice it to say that Ex. P. 4 shows that the samples were taken on 3rd June 1963. One of the samples duly sealed was sent by the Food Inspector, Jalore, to the Public Analyst,

Jodhpur, on 18th June 1963, vide Ex. P. 1. Ex. P. 2 shows that the sample was received by the Public Analyst on 19th June 1963, and that) it was analysed that very day. Though the word 'on' before '19th June 1963, was inadvertently omitted but when Ex. P. 2 is read as a whole, it is clear that the analysis took place on 19th June 1963. From the statement of Shri Bhattacharya, P. W. 1 as also from that of Mohan Kishan, Food Inspector, it is evident that necessary formalin was mixed in the sample and that milk reached the Public Analyst laboratory intact. In the face of such an evidence on record the first appellate Court was not justified in holding that the prosecution has failed to prove that the milk reached the hands of the Public Analyst intact.

7. We now deal with the last point on the basis of which Mat. Meera mainly succeeded in securing her acquittal. The contention of learned Deputy Government Advocate is that the provisions of Section 10(7) of the Act, as they stood then, were not mandatory in nature and in spite of best endeavour having been made by the Food Inspector Mohan Kishan, he could not procure 2 witnesses. There was, therefore, no way out for him but to depend on only one witness P. W. 3 Vijai Raj. Learned Deputy Government Advocate has further argued that the statement of Vijai Raj could not, by any stretch of imagination, be said to be unreliable. learned Counsel for the respondent, on the other hand, has urged that the provisions of Section 10(7) of the Act were mandatory in nature and their violation vitiated the whole trial. He further submitted that Vijai Raj, being a municipal employee, was under the direct influence of the Food Inspector, Mohan Kishan, and, therefore, his evidence was rightly discarded by the first appellate-Court. learned Counsel also pointed out that there was litigation between the father of the Chairman, Municipal Board, Jalore, Shri Ugam See Modi, and the accused and it is on account of that animosity that this false case has been foisted on her.

8. Section 10(7) of the Prevention of Food Adulteration Act, 1954, as it stood before the Amendment Act, 49 of 1964, read as follows:

Where the Food Inspector takes any action under C1. (a) of Sub-section (1), Sub-section (2), Sub-section (4) or Sub-section (6), he shall as far as possible, call not

less than two persons to be present at the time when such action is taken and take their signatures.

Section 103(1), Criminal P.C., in its terms, prescribes that before making a search under this Chapter (Chapter VII) the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situated to attend and witness the search and may issue an order in writing to them or any of them so to do. In Section 10(7) it is not mentioned that witnesses to be called for should be respectable and independent persons. For the purpose of requirements of Section 10(7) of the Act, it was sufficient if in the presence of two witnesses the sample was taken. It was for the court to believe or disbelieve such witnesses. Every witness appearing before the court has to be reliable and for that purpose no statutory provision is necessary. If the witnesses were otherwise reliable, their evidence could not be discarded merely because they were the servants of the municipality or were under the direct influence of the Food Inspector, The mere fact that a particular witness was a servant of the municipality, that by itself is not a sufficient ground for saying that the provisions of Section 10(7) have not been complied with. Even in respect of the search and seizure under Section 103, Criminal P.C., failure to call respectable persons to witness the search does not invalidate the search or seizure. It may at the most affect the weight of evidence.

In this connection a reference may be made to *Sunder Singh v. State of Uttar Pradesh* : 1956 CriLJ801 . In that case Hon'ble Sinha J., speaking for the court, observed that assuming that the witnesses who actually witnessed the search were not respectable inhabitants of the locality, that circumstance would not invalidate the search. His Lordship further pointed that it would only affect the weight of evidence in support of the search and the recovery and at the highest the irregularity in the search in so far as the terms of Section 106, Criminal P.C., were not complied with, would not affect the legality of the proceedings.

9. The words 'as far as possible' in Section 10(7) indicate that where two witnesses could not be procured, it was open to the Food Inspector to take the sample in their absence. That shows that non-compliance with the provisions of

Section 10(7) does not go to the root of the matter and it does not vitiate the trial as a whole. It is no doubt true that in *State v. Sadhu Singh* AIR 1962 Punj 548, it was observed that the provisions of Sub-section (7) of Section 10 were mandatory and not directory and it was the duty of the Food Inspector to comply with the same unless it was impossible to secure the attendance of two persons at the time he took the sample or did any of the acts as mentioned in Sub-section(1), (4) and (6) of Section 10. The law, according to that authority, did not vest discretion in the Food Inspector to associate or not to associate two persons at the time of taking the sample but it must be due to circumstances beyond his control that his failure to call two persons to witness the taking of the sample would be excused. Similar observations were made by the Punjab High Court in a recent decision reported in *Sameshwar Das v. State* AIR 1967 Punj 132.

10. We are unable to accept the opinion of the Punjab High Court as laying down the correct law. As we have already stated the witnesses to the seizure must be reliable; they need not be independent and disinterested. Section 10(7) of the Act simply required that there would be two witnesses to the seizure 'as far as possible'. There might be a case where seizure witnesses could not have been obtained. In such a case the seizure was to be considered to be valid. In support of this proposition, we may allude to *Patna Municipal Corporation, Patna v. Dularchand Sao* : AIR1964 Pat565 . In that case it was pointed out that the provisions all Sub-section (7) of Section 10 for calling not less than two persons to be present at the time when action under Section 10 was to be taken was not imperative, in view of the use of the expression 'as far as possible' made therein. What was necessary was that wherever possible the presence of at least two persons should be secured. In the case of *Food Inspector, Cannanore Municipality v. P. Kannan Pandavalappi* : AIR1964 Ker261 , Justice Govinda Menon, held that non-compliance with the provisions of Section 10(7) was only an irregularity which did not vitiate the trial and conviction of the accused, unless it could be shown that prejudice had been caused to him.

In the case of *State of Mysore v. Udipi Cooperative Milk Society Ltd.* AIR 1960 Mys 80, a Division Bench of the Mysore High Court held that the essential test was one of the prejudice to the accused apart from the reliability of the evidence

adduced. To the same effect was the decision in Public

Prosecutor Andhra Pradesh v. Vishwanatham Chetty : AIR 1960 AP96 , in which it was ruled that mere violation of Sub-section (7) of Section 10 of the Act would not by itself affect the legality or validity of the act of the Food Inspector and that its non-compliance would be a curable irregularity which would not vitiate the trial. This was also the view taken in a decision of the Supreme Court in Radha Kishan v. State of Uttar Pradesh : (1963)11LLJ667SC . There it was said:

it may be that where the provisions of Sections 103 and 165, Criminal P.C. are contravened the search can be resisted by the person whose premises are sought to be searched, It may also be that because of the illegality of the search, the Court may be inclined to examine carefully the evidence regarding the seizure. But beyond these two consequences no further consequence ensues, and the seizure of the articles is not vitiated.

In Gopalpur Tea Co. Ltd. v. Corporation of Calcutta AIR 1966 Gal 51. P. B. Mukharji, J. pointed out that the calling of not less than two persons was possible only if they could be procured. If it was not so possible, the search or the seizure would not be vitiated. Our own High Court in Shrikishan v. State ILR (1963) 18 Raj 351 has held that the mere fact that the Food Inspector failed to call two witnesses at the time of his inspection would not vitiate the trial unless prejudice was caused to the accused.

11. From what has been discussed above, we are of the opinion that it would be sufficient if in the presence of two witnesses the sample was taken and that it was open to the court to believe or disbelieve the witnesses. If otherwise witnesses were reliable, their evidence could not be discarded merely because they were servants of the municipality or were under the influence of the Food Inspector. We are further of the opinion that the expressions 'as far as possible' in Section 10(7) indicated that where two witnesses were not available, it was open to the Food Inspector to take the sample in their absence.

12. In the instance case, it appears from the evidence of P. W 2 Mohan Kishan, Food Inspector, that despite his efforts other witnesses were not available on the

spot to be associated with the taking of the sample from the accused. In such a case it could not be said that the seizure was invalid. There is no evidence worth the name on the record that a false case was foisted on the accused on account of the enmity between her and the father of the then Chairman, Municipal Board, Shri Ugam See Modi. We cannot, therefore, associate ourselves with the reasoning given by the first appellate court in the applicability of Section 10(7) of the Act.

13. In the result, we accept this appeal, set aside the judgment of acquittal passed by learned Additional Sessions Judge, Jalore, on March 31, 1965, and restore that of the Sub-Divisional Magistrate, Jalore, dated December 8, 1964. The trial court will take necessary steps to recover the fine from the accused Mst. Meera, if the same has not so far been realised, in accordance with its judgment.

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