

Ramchand Vs. the State

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Court : Rajasthan

Decided On : Nov-13-1979

Reported in : 1981CriLJ1063

Judge : Mahendra Bhushan, J.

Appellant : Ramchand

Respondent : The State

Judgement :

Mahendra Bhushan, J.

1. The accused-petitioner was convicted by the learned Chief Judicial Magistrate, Bundi, in Criminal Case No. 120/76 under Section 7/16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the Act) and was sentenced to undergo six months R. I. and a fine of Rs. 1,000/- or in default to further suffer 3 months R. I. He preferred an appeal before the learned Sessions Judge, Bundi, who affirmed the conviction and sentence of the accused-petitioner.

2. Munnalal Verma (PW1) was Food Inspector, Bundi in the month of April, 1975. On 12-12-75 in Chhotu Bazar, Bundi at 7 A. M., he saw that the accused-petitioner was carrying about 10 Kg. of milk in two cans for being sold. He suspected the milk to be adulterated, and, therefore, he gave information in Form No. 6 and purchased 660 ml. of cow milk after paying 0.90 P. as its price vide receipt Ex. P.

2. It was divided into three parts and each part was filled in a clean phial and to each of the samples 18 drops of formalin were added. Each sample was thereafter wrapped, corked according to the rules, and the number of the sample was marked as HL/84/79. The two notaries, Jodhsineh and Gopilal were present at the time when the sample of the milk was taken. One sample duly sealed was sent to the Public Analyst along with Form No. 7, and a copy of the memo and the specimen of the seal used to seal the packet of sample was sent separately. The sample was examined on 22-12-75 and the Public Analyst found as follows:-

Milk Fat Content- 3.4% Milk Solids Non-fat- 6.28% Cane Sugar & Starch- Nil.

The Public Analyst was of the opinion that the sample of cow milk was adulterated by reason of its containing 24% of added water. A complaint was filed against the accused-petitioner in the court of the learned Magistrate, and after recording pre-charge evidence, a charge under Section 7/16 of the Act was framed against the accused-petitioner, who pleaded not guilty to the charge and claimed to be tried. Thereafter, the witnesses were further cross-examined, and the statement of the accused was recorded under Section 313. Cr.P.C. He admitted that the sample of milk was taken from him. An application was filed by the accused under Section 13(2) of the Act for sending the sample in the court to the Director, Central Food Laboratory. The Director, Central Food Laboratory, on examining the sample, found as follows:-

Milk Fat- 4% Solids Non-fat- 4.1% Cane Sugar - Absent Starch - Absent.

The Director was further of the opinion that the sample of cow milk did not conform to the standard prescribed under the Prevention of Food Adulteration Rules, and as such it was adulterated. After the receipt of the report of the Director, Central Food Laboratory, the accused was further examined under Section 313. Cr. P. C, but still denied that the milk was adulterated. The accused examined one Gopilal in defence. The learned Magistrate convicted and sentenced the accused, as aforesaid, and on appeal the same were affirmed.

3. The learned Advocate has raised a three-fold submission: (1) that the fat contents were more than the prescribed standard, and as such the article of food

was not adulterated; and (2) that in the report of the Director. Central Food Laboratory, the fat contents were found to be 4%, when as per the standard quality of the various articles of Food has been specified in Appendix 'B' to the Rules, .cow milk must contain minimum 3.5% of milk fat and 8.5% of milk solids non-fat in Rajasthan: (3) and that the written consent to prosecute the accused is not in accordance with law.

4. Under Section 13(3) of the Act. the certificate issued by the Director of Central Food Laboratory supersedes the report given by the Public Analyst. A look at the report of the Director, Central Food Laboratory dated 26-2-77 will show that the milk fat contents were found to be 4% and milk solids non-fat 4.1%. The submission of the learned Advocate is that because the milk fat contents were more than the prescribed standard, i.e. more than 3.5% the cow milk cannot be said to be adulterated as the percentage of milk solids non-fat below the prescribed standard may be for the reasons other than adulteration. In support of his submission, the learned Advocate has placed reliance on *Parasram v. State of Rajasthan*, 1978 Raj Cri C 324 in which hon'ble The Chief Justice Mr. C. Honniah was dealing with a case of cow milk, which was found to contain 4.9% that and 6.80% solids non-fat and 18% of water. It was observed as follows :-

The contention on behalf of the accused is that in view of the fact that the fat content was more than the ore-scribed standard, it is not possible to hold that the milk sold by the accused was not pure by reason merely of the shortage of the solids contained in the milk. The fat content found in the milk was much higher than the minimum prescribed by the Rules. It. therefore, leads necessarily to the inference that no water had been added to the milk, and that in such a case the mere circumstance that the non-fat solids content was below the standard could only justify the inference either that the cow wa not properly fed. or that the Public Analyst was to some extent erroneous, but not the inference that the milk in Question was not pure. When compared from the finding of the Analyst with the standard fat content of the cow milk, it is difficult to hold in this case that the milk was adulterated.

With great respect to the Hon'ble Chief Justice, it may be stated here that the learned Chief Justice has not taken into consideration a reported Division Bench authority of this Court while holding as above. In State v. Badri . a Division Bench of this Court was dealing with a similar argument, and the sample of milk contained fat content- 3.8% and solids non-fat-5.8%. The milk was goat milk, and according to the prescribed standard, it should have contained not, less than 3% of milk fat and not less than 9% of milk solids other than milk fat. The milk was thus found to be deficient in its solids non-fat, and the petitioner was found guilty under Section 7/16 of the Act. Repelling a similar contention of the accused, it was observed in para 17 as follows :-

learned Counsel next contended that the offence in this case is merely a technical one as the milk fat content was found to be higher than the prescribed standard and it is only solids other than the milk fat that the sample was found to be deficit. His argument is that though the contents of the sample did not conform to the required standard as prescribed under the Act the milk cannot be said to be adulterated, and it is the selling of the adulterated milk which is an offence under the Act. We regret. We cannot agree with the argument of the learned Counsel. If the sample of the milk taken from the petitioner does not conform to the requirements of the prescribed standard, even in one of the contents, the milk shall be treated as adulterated, and even though the sample contained better percentage of milk fat content, the petitioner shall be deemed to be an offender under the law, if it is found deficit in other contents.

5. In State of Rajasthan v. Chatar Singh 1968 Rai LW 515 : 1968 Cri LJ 1214. a Division Bench of this Court was dealing with a case of a mixed milk of cow and buffalo. In that case, the fat content was 4% and solids non-fat 7.25%. Though, it was a case of mixed milk, but it was held that the Court will like to give the benefit of lesser standard prescribed in the two types of milk to the accused, and judging the milk in question by the standard prescribed for cow milk, we still find that the milk in question contained solids non-fat 7.29% only as against the prescribed standard of 8.5%. and thus there is no escape from the conclusion that the milk in question was not of the standard prescribed even for cow milk, and was consequently adulterated. In that case, though the fat content treated the milk as

cow milk was 4%, i.e., more than the required standard, but the percentage of solids non-fat was less than the prescribed standard, the milk was still held to be adulterated.

6. It appears to me that before the learned Chief Justice these authorities, which have been referred to by me above, were not cited, and had those authorities been cited, perhaps Paras-ram's case (1978 Rai Cri C 324) (supra) would not have been decided in the manner in which it has been decided. At any rate, in view of the two Division Bench authorities of this Court. Parnassian's case (supra) cannot be said to have been rightly decided, and it cannot be said that it lays down the correct law.

7. Moreover, it may also be stated here that item A. 11.01.11 of Appendix 'B'. it is the minimum percentage of the milk fat and milk solids non-fat, which have been prescribed, and if either of them is contained in more than the minimum percentage prescribed it cannot be said that the milk is not adulterated, even if percentage of one of them is less than the minimum prescribed. Under Section 2(ia)(m). if the quality of purity of the article falls below the prescribed standard, or its contents are present in quantities not within the prescribed limits of variability, but which does not render injurious to health, the article of food has to be deemed to be adulterated. In Jagdish Prasad alias Jagdish Prasad Gupta v. State of West Bengal : 1972 CriLJ1309 . It has been held that the standard fixed in exercise of the powers conferred by the Act in Appendix 'B' to the Rules, cannot be allowed to be altered. In Municipal Committee, Asar v. Hazara Singh : [1975]3SCR914 , it was held that the standard fixed under the Act is one that is certain. If it is varied to any extent, the certainty of a general standard would be replaced by the vagaries of the fluctuated standard. Its disadvantages of the resulting unpredictability, uncertainty and impossibility of arriving at a fair and consistent decisions are great. In Smt. Mani Bai v. State of Maharashtra : 1974 CriLJ451 . its has been held that according to Section 2 of the Act, an article of food shall be deemed to be adulterated, if inter alia the quality of purity of the article falls below the prescribed limits of variability.

8. I am, therefore, of the opinion that even if one of the constituents, namely milk fat or milk solids non-fat is less than the minimum prescribed, in the Appendix to the rules, the article of food is adulterated. In the instant case therefore, the cow milk was adulterated within the meaning of Section 2 of Act.

9. It is submitted by the learned Advocate that the District Magistrate, who gave the written consent did not actually sign the consent order Ex. P. 9. and. therefore, the learned Magistrate could not have taken cognizance of an offence in the case. One Shri Daulat Singh Kothari was the District Magistrate at the relevant time. A perusal of Ex. P. will show that though the written consent does not bear the signatures of Shri Kothari, but the endorsement beneath it. under which the copies of the written consent were endorsed to the Food Inspector and Ors. bears his signature, Ex. P.. 9 is a copy which was; endorsed to the. Food Inspector, The1 original order, i. e. the written consent under Section 20 of the Act should be in the file of the District Magistrate, and it appears that during the course of arguments neither before the trial court nor before the appellate court this point was raised and had this point been raised, the original consent letter would have been produced before the learned Magistrate. In Rameshwar Dass Chhotey Lai v. Union of India 1974 F. A.C. 176 (Delhi) it has been held in connection with the appointments of Public Analyst and Food Inspector that this point should be raised before the Magistrate and be decided by that Court on the material that may be placed before it, and cannot be allowed-to be raised later on. Therefore, in this point also. I do not find any merit more so Ex. P. 9 bears the signatures of the then District Magistrate. Bundi, Shri Daulat Sineh. though under the endorsement various copies of the written consent were sent

10. Lastly, it is submitted by the learned Advocate that the sample of cow milk was taken from the accused on 12-12-75, and because the fat content were found more than the prescribed standard of purity, a lenient view in the sentence is called for. But. to my mind in view of the mandate of the Legislature contained in Section 16 of the Act that the minimum sentence of six months and a fine of Rs. 1.000/- should be inflicted in case the offence is proved, no case of leniency in the sentence is made out.

11. In the result, I find no force in this revision and hereby dismiss it. The learned Chief Judicial Magistrate, Bundi is directed to take the accused in custody to undergo the sentence awarded or any remaining part thereof.

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