

**State of Rajasthan Vs. Kachab**

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**Court :** Rajasthan

**Decided On :** Mar-06-1979

**Reported in :** 1979WLN138

**Judge :** K.D. Sharma and; S.N. Deedwania, JJ.

**Appeal No. :** D.B. Criminal Appal No. 605 of 1971

**Appellant :** State of Rajasthan

**Respondent :** Kachab

**Disposition :** Appeal dismissed

**Judgement :**

**K.D. Sharma, J.**

1. This is an appeal preferred by the State of Rajasthan against the acquittal of Kachab respondent for the offence under section 7 read with Section 16 of the Prevention of Food Adulteration Act, 1954, hereinafter referred to as the Act.

2. It will not be out of place to mention that Kachab was tried for the aforesaid offence by the Municipal Magistrate, Jodhpur, and found guilty of selling adulterated milk of cow on September 20, 1966, at 10.30 a.m. near railway station octroi-post Jodhpur. The learned Municipal Magistrate convicted the respondent under Section 7 read with Section 16 of the Act and sentenced him to undergo

rigorous imprisonment for six months and to pay a fine of Rs 1030/-, in default of payment of fine to further suffer rigorous imprisonment for three months Aggrieved by his conviction and the sentence, the respondent filed an appeal in the court of the Sessions Judge, Jodhpur, who transferred it to the court of the Additional Sessions Judge No. 2, Jodhpur, for disposal according to law. The Additional Sessions Judge No. 2 heard the appeal and came to a conclusion that the sampling of milk in the instant case was not carefully done by the Food Inspector, with the result that the sample failed to represent the milk to be tested. The Additional Sessions Judge No. 2, Jodhpur, therefore, recorded an order of acquittal of the respondent and accepted the appeal. As against this judgment of acquittal, the State has come-up this Court in appeal.

3. The short facts which are relevant for the purposes of decision of this appeal are narrated as follows : Mag Raj, Food Inspector, while patrolling the area near railway station octroi-post, Jodhpur, saw Kachao respondent unloading three con a liners full of cow's milk from a truck. The Food Inspector disclosed his identity to the respondent and asked him to give a sample of the milk contained in the container. The respondent agreed to give the sample of his milk. The Food Inspector, thereupon, purchased 750s grams, of milk from the respondent for 47 P., divided it into three equal parts and filled each part in a dry and clean bottle after adding 16 drops of formalin thereto The bottles containing the sample were then corked and sealed properly in the presence of Motbirs. On of the bottles was later on sent to the Public Analyst, Jodhpur, for examination of the milk. The Public Analyst Jodhpur, analysed the sample sent to him by the Food Inspector and found it adulterated as it did not conform to the standard of purity prescribed for cow's milk. The result of his analysis was as follows:

Fat-contents 4.2%

Solids non-fats 7 8%

Upon receipt of the report of the Public Analyst, the Food Inspector obtained requisite sanction for prosecution of the respondent from the local authority and eventually filed a complaint in the court of the. Municipal Magistrate, Jodhpur, who, convicted and sentenced the respondent, as stated above.

4. We have carefully gone through the record and heard Mr. N.S. Acharya, Public Prosecutor, for the State and Mr. S.R. Bhandari, appearing on behalf of the respondent. It has been vehemently contended before us by the learned Public Prosecutor that the Additional Sessions Judge No. 2, Jodhpur, committed error in acquitting the respondent of the offence under Section 7 read with Section 16 of the Act; on the ground that the sample of the cow's milk for examination was not taken by the Food Inspector either by stirring the milk with a long, handled dipper or by shaking it gently. It , was further urged that the Additional Sessions Judge wrongly held upon materials on the record that possibility of presence of fat globules in the sample of milk could not be ruled out, with the result that the sample failed to represent the milk to be tested Mr. S.R. Bhandari, appearing on behalf of the respondent, on the other hand, urged, that the Food Inspector, while taking the sample of the milk, neither stirred the milk in the container with a long handled dipper, for did he shake it, gently or pour it from one vessel to another, with the result that fat globule or air bubbles came, in the sample of milk. It was further urged by him that the Additional, Sessions Judge has given cogent reasons for acquittal of the respondent and this Court in an appeal against acquittal should not lightly disturb the findings of the lower court as to the innocence of the respondent unless there are some compelling reasons to do so.

5. We have considered the rival contentions. It may be observed at the outset that the Food Inspector while taking the sample of the milk did not take steps to ensure that the milk, out of which the; sample is taken is mixed thoroughly either by stirring with a long handled dipper or by pouring from one vessel to another or by shaking it gently, so that the sample may not fail to represent the milk to be tested. Reference in this connection may be made to a book 'A Laboratory Manual of Milk Inspection by A.C. Aggarwala and R.N. Sharma, Fourth Edition, 1961, wherein guide lines have been laid down for careful & accurate sampling of milk. The learned authors observed as follows at page 115 of the said book:

**General Sampling :** The careful and accurate Sampling of milk is utmost importance in all analysis of milk. Probably more errors are caused through careless preparation of samples than in the actual performance of the tests. The most important thing to bear in mind in this connection is that the whole body of

milk from which a sample is to be drawn should be uniform throughout in its composition, and any sample of milk drawn out of it for analysis must necessarily be a true representative of the whole body of milk. The factors disturbing the uniformity of composition of milk are mainly the separation and partial churning of fat. Thorough mixing of milk must first be ensured either by stirring with a long handled dipper if the container is big, or by pouring from one vessel to another or by shaking gently.

In the present case, the Food Inspector clearly admitted in his deposition that the milk in the containers might have been stirred on account of the containers having received jerks in the moving truck in which they were kept by the respondent for bringing them to Jodhpur. He further admitted that there were globules or bubbles on the milk in the containers out of which the sample was taken. Likewise, Chhagan Lal, PW 3, in whose presence the sample of milk was taken by the Food Inspector also admitted, in clear & definite terms in his cross-examination that the sample of milk had globules or bubbles in it and the bubbles remained till the sample was filled in the bottles. In view of these admissions, the learned Additional Sessions Judge No. 2, Jodhpur, committed no error in holding that possibility of fat globules or bubbles coming in the sample of milk could not be ruled out, especially when there is no evidence on the record that the Food Inspector before taking the sample thoroughly stirred the milk either by stirring it with a long handled dipper or by pouring it from one vessel to another or by shaking it gently. It is possible that the sample of milk might not have been a true representative of the whole body of milk contained in the container on account of presence of fat globules or bubbles in it. The possibility of the sample not representing the milk to be tested is further borne out by the difference of fat contents and solids non-fat contents in the sample of milk when tested by the Public Analyst, Jodhpur, and the Director Central Food Laboratory, Calcutta. As stated earlier, the Public Analyst, Jodhpur; found that the sample contained fat contents 4.2% & solids-non-fat contents 7.8% while the Director, Central Food Laboratory, Calcutta, upon analysis discovered that the sample contained milk fat 3.3% & milk solids non-fat 6.5%. In a case like the present one where sampling of milk has not been carefully done by the Food Inspector it cannot be safely held that the sample of milk sent to the Public Analyst, Jodhpur, truly represented the milk to be tested. Hence, in our view, there

are no compelling reasons to set aside the acquittal of the respondent for the offence under Section 7 read with Section 16 of the Act. The view taken by the Additional Sessions Judge appears to be reasonable and we see no justification for reversing it.

6. The result is that the appeal filed by the State fails and is hereby dismissed.

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