

**Manji Vs. the State**

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**Court :** Rajasthan

**Decided On :** Oct-31-1978

**Reported in :** 1978WLN(UC)366

**Judge :** K.D. Sharma, J.

**Appeal No. :** S.B. Criminal Jail Revision No. 225/78

**Appellant :** Manji

**Respondent :** The State

**Judgement :**

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

1. This is an application-in-revision filed by Manji through the Superintendent, Central Jail, Udaipur, against the judgment of the Sessions Judge, Banswara, dated 27th July, 1977, by which his conviction and sentence under Section 7 read with Section 16 of the Prevention of Food Adulteration Act, hereinafter referred-to as the Act, were upheld and maintained. It will not be out of place to mention that Manji was tried for the offence of selling adulterated milk of she buffalo and found guilty thereof by the Chief judicial Magistrate, Banswara who, on his conviction, sentenced him to undergo, rigorous imprisonment for six months and to pay a fine of Rs. 1000/-, and in default of payment of fine to suffer further rigorous imprisonment for three months.

2. The prosecution case against Manji petitioner was as follows : On 15th February, 1974, Gauri Shanker, Food Inspector, Banswara, inspected the milk of the petitioner at about 7p.m. on Mala Road in front of the hotel of Ram Bilas. Before inspecting the milk the Food Inspector disclosed his identity to the petitioner and expressed his desire to purchase a sample of the milk. The Food Inspector asked the petitioner to produce his licence for selling milk. The petitioner replied that he was the servant of one Ibrahim and was carrying the latter's milk for sale. The Food Inspector then purchased 660 M.Ls. of milk for Re 1/-, from the petitioner and gave him a receipt therefor. The sample of milk was divided into three equal parts and each part was filled in a dry clean bottle. The bottles were corked, sealed and labelled in the presence of Motbirs after adding 16 drops of formalin to the contents of each of them. One of the bottles containing the sample of buffalo milk was given to Manji vide receipt Ex. P.1 and the other bottle was sent to the Chief Public Analyst, Rajasthan Jaipur, for analysis. A specimen impression of the seal used to seal the bottle of the sample was sent separately to the Analyst by registered post. The Public Analyst analysed the sample and declared the result of his analysis as follows:

fat content 6.3%

solids non fat 7.04%

cane sugar and starch Nil

On the above data the Public Analyst opined that the sample was adulterated by reason of its containing about 23% of added water. The Public Analyst sent a report Ex. P.5 to the Food Inspector who, on its basis, filed a complaint against Manji petitioner and Ibrahim in the court of the Chief Judicial Magistrate, Banswara, after obtaining necessary sanction from the local authority, i.e. the Municipal Board, Banswara, to prosecute them under Section 7 read with Section 16 of the Act.

3. The learned Chief Judicial Magistrate, Banswara, tried the petitioner and Ibrahim for the aforesaid offence and convicted and sentenced both of them. Aggrieved by their conviction and sentence the petitioner and Ibrahim preferred

separate appeals in the court of the Sessions Judge, Banswara, who, after hearing the appellants and the Public Prosecutor, accepted the appeal of Ibrahim, set aside his conviction and sentence and acquitted him of the charge framed against him. The petitioner's appeal was, however, dismissed and his conviction and sentence were upheld. Hence, this revision application.

4. The revision petition was admitted by this Court on 3rd October, 1977 and the notice of the date, time and place when the revision-petition will be heard was given to the Public Prosecutor and to the petitioner. The petitioner has not appeared despite service of notice. As there was no counsel from his side to represent him in this revision-petition, Mr. B. Advani was appointed under the Legal Aid-Programme to argue the revision-petition on his behalf. Mr. B Advani agreed to represent the petitioner without demanding any fees in the case.

5. I have heard Mr. D.B. Advani & Mr. M. Purohit, Public Prosecutor, and perused the record. Upon careful review of the evidence of Gauri Shanker, Food Inspector, P.W. 1, Ranjeet Singh, P.W. 2 and Shankar Singh, P.W. 3, I am satisfied that the petitioner was rightly convicted by the trial court of an offence punishable under Section 7/16 of the Act. From the evidence of these witnesses it is established beyond reasonable doubt that the petitioner was carrying milk of she-buffalo for sale on 15th February, 1974, at about 7 p.m on Mala Road, Banswara. It is further proved by their evidence that the Food Inspector purchased a sample of the milk from the petitioner for Re. 1/-, vide receipt Ex. P 2 which bears the signatures of the petitioner. Ranjeet Singh P.W. 2 clearly stated in his deposition that at the time of purchases the sample the petitioner disclosed to the Food Inspector in his presence that the milk was of Ibrahim and that he had brought the milk for sale. Similar is the evidence of Shankar Singh P.W. 3 and Gauri Shanker P.W. 1. There is no reason to disbelieve the evidence of the Food Inspector and the Motbirs, namely, Ranjeet Singh and Shanker Singh, especially when nothing has been elicited from their cross-examination which may impeach their credit or adversely affect the credibility of their evidence. Ranjeet Singh & Shanker Singh had no enmity or personal grudge against the petitioner and there is nothing on the record to show that they have told a lie to falsely implicate the petitioner in the commission of the crime. Hence, I agree with the trial court that the testimonies of

these prosecution witnesses are true and reliable.

6. The plea of the petitioner in the trial court was that he was not carrying milk for sale at the time when the sample was taken from him by the Food Inspector. According to his plea, the milk belonged to his employer, who had directed him to take the milk to his house. In support of his above plea, the petitioner examined himself and produced D.W. 1 Fakruddin and D.W. 3 Hukha. The trial court rejected the petitioner's plea and the evidence led in support thereof for reasons with which I fully agree. The petitioner appeared in the witness-box on his own request in writing. In his statement he gave out an altogether a different version by stating that he was directed by his employer to take the milk to his daughter. Who used to pay price of the milk at the rate of Rs. 2/-, per Kg to her further Ibrahim. In his statement recorded under Section 313. Cr.P.C. the petitioner did not state before the trial court that he was carrying the milk to his employer's daughter who used to pay price thereof at the rate of Rs. 2/-, per Kg. In his statement at the trial the petitioner rarely stated that he was directed by his employer to take the milk to his house. Fakruddin D.W. 1 son of Ibrahim also did not corroborate the evidence of Manji. He deposed that the milk was not for sale and the petitioner used to carry the milk to his house. Hukka D.W. 3 clearly stated in his deposition that he had no knowledge about the milk. He merely stated that the petitioner was the servant of Ibrahim. His evidence is not helpful to the defence of the petitioner. There is no reliable evidence on the record to show that the petitioner was carrying the milk of Ibrahim or his son Fukruddin having no authority to sell. On the other hand, there is positive evidence of the Food Inspector and the Motbirs that the petitioner sold away the milk to the Food Inspector for Re. 1/-, and disclosed to him that he was carrying the milk of his master Ibrahim for sale. In view of such evidence, the petitioner was liable to be penalised as he was the agent of Ibrahim owner of the milk and had authority to sell the milk. The scope of the words. 'No person shall himself or by any other person on his behalf' used in Section of the Act is wide enough to include every person who sells adulterated food, whether such person may be an employer or an agent. If the petitioner had been a mere carrier of his master's milk having no authority to sell it he would not have sold 660 M.L. milk to Gouri Shanker, Food Inspector for Re, 1/-, vide receipt Ex. P.2. Consequently, I do not feel inclined to hold that the petitioner was a mere carrier of his master's milk

and that he could not legally be penalised for selling adulterated milk. Mr. B. Advani could not make out a case for interference with the findings of both the courts below as to the guilt of the petitioner Under Section 7/16 of the Act.

7. As regards sentence, it was urged by Mr. B. Adwani that it was a case of marginal deficiency in solid-non-fat contents, as the milk fat-contents were found to be higher than the prescribed standard and so the trial court ought to have awarded lenient sentence other than the one prescribed under the Act. The above contention has some force. From a bare perusal of the report of the Public Analyst Ex. P.5, it is evident that the milk fat-contents in the sample were found, upon analysis, to be higher than the standard prescribed for she buffaloes milk, i.e. 5.00% The fat-contents in the sample of milk were 6.3% as reported by the Public Analyst. It is only in the solids other than milk fats that the sample was found deficient by 1.96%. The deficiency in the opinion of the Public Analyst was on account of 23% water having been added to the milk. The sample of the milk purchased from the petitioner thus did not conform to the requirements of the prescribed standard, in one of the contents. It was no doubt adulterated, although it contained higher percentage of fat contents. This fact that better fat-contents were found in the sample of she-buffaloes milk could be taken into consideration by the trial court at the time of imposition of sentence on the offender or at a later stage when the appellant or the revisional court is called upon to determine whether the sentence awarded to an offender is or is not severe. A reference in this connection may be made to an authority of the Division Bench of this Court *Slate v. Badri*, wherein Hon'ble Tyagi, J. (as he then was) made the following observations in para 17 at page 155:

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 contents the petitioner shall be deemed to be an offender under the law if it is found deficient in other contents. This fact that the milk had better fat contents can, however, be considered while awarding sentence to the offender.

Apart from this, the milk which the petitioner was carrying for sale belonged to his employer or master. He was merely a servant employed by the master on petty salary to carry milk for sale. The petitioner has no previous conviction for similar offence to his discredit. He has already undergone rigorous imprisonment for more than three months since 27th July 1977. In my opinion, the ends of justice would be met if the sentence of six months' rigorous imprisonment awarded to him by the trial court is reduced to a term already undergone by him, and the sentence of fine of Rs. 1 000/-, is reduced to Rs. 500/, in default of payment of fine to undergo rigorous imprisonment for 14 months.

8. I, therefore, partly accept this revision-petition & while maintaining the conviction of Manji petitioner Under Section 7/16 of the Prevention of Food Adulteration Act, reduce the sentence of six months' rigorous imprisonment awarded to him by the trial court to a term already undergone by him. I further reduce the sentence of fine of Rs. 1000/-, in default three months' further rigorous imprisonment to a fine of Rs. 500/- in default the petitioner shall undergo rigorous imprisonment for 11/2 months. The petitioner is in jail. He shall be released forthwith if not required in connection with some other case At the oral request of Mr. B. Advani, two months' time is given to the petitioner to deposit the amount of fine of Rs. 500/-, in the trial court failing which legal action shall be taken against him.

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