

State of Rajasthan Vs. Neti

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Court : Rajasthan

Decided On : Oct-24-1975

Reported in : 1975WLN(UC)413

Judge : M.L. Jain, J.

Appeal No. : S.B. Criminal Appeal No. 813 of 1971

Appellant : State of Rajasthan

Respondent : Neti

Disposition : Appeal dismissed

Judgement :

M.L. Jain, J.

1. The facts of this appeal are, that Food Inspector R.B. Singh of circle Kalindari. District Sirchi filed a complaint under Section 16 of the Prevention of Food Adulteration Act, 1954 in the court, of the Magistrate First Class Sirohi that on 7-5-68 at 6.10 A.M. he went to village Rampura & purchased buffalo milk from the accused Neti who was selling buffalo, milk. He divided the milk into three parties and placed it into three separate phials; one phial was delivered to the accused, another was sent to the public analyst and the third was kept by him. The public analyst, Jodhpur, reported that the sample milk contained fat 4.5% and solid non

fat 8.1% and therefore, was adulterated because it did not conform to the prescribed standards of purity. The said food inspector requested the Magistrate for trial.

2. After trial the Sub-Divisional Magistrate Sirohi, acquitted the Accused on the ground that the food Inspector had not complied with the various rules. The contravention is said to have been taken place on account of the fact that the sample, was not taken in the presence of independent witnesses. The two witnesses of the purchase, made by the food Inspector, did not belong to village Rampura but were residents of Kalindari and one of them was a vaccinator and the other a ceon, both being employees of the Medical and Health Department. Second fault found in the proceedings of the, said Inspector was, that there was no evidence corroborating the sealing and labelling of the three divided samples. No sample bottle was provided in the court to enable it to prove the sample examined. The food Inspector further violated Rule 17 of the Prevention of Food Adulteration Rules, 1955 by, not sending the covering memo with the sample so that the public analyst could compare the seals, and Rule 18 was violated by not sending, a copy of the similar memo by post. It also appears that the first phial which was sent by the Public Analyst was broken, but there is no record to show that the Public Analyst was sent the second phial for examination. In view of these contraventions of the provisions of the rules, the learned Magistrate considered the case of the prosecution doubtful and dismissed the complaint and acquitted the accused by his judgment dated 29.5.1970. Hence this appeal by the State.

3. I have heard arguments and perused the record. The principles which should guide the High Court in case of appeals against acquittal are too well known to be repeated. The learned public prosecutor submitted that the impugned judgment was illegal and perverse. There was no justification for rejecting the testimony of Bhanwar Lal P.W. 2 simply on the ground that he was an employee of the Public Health Department. Even if there was no supporting witness, the testimony of the food inspector R.B. Singh P.W. 1 was sufficient to prove the prosecution case. None of these two witnesses was even cross-examined. The learned Magistrate further erred in holding that the food inspector violated the rules relating to taking of sample and relating to despatch of the same to the public analyst for

examination. It there was any such breach as pointed by the learned Magistrate, that could not provide sufficient ground for acquittal because the rules were only directory. The learned Public Prosecutor cited Shambhu Narain v. Moti Lal 1971 WLN 108 in support of his contention. In that case breach of Rule 18 was considered a mere technical irregularity.

4. I have considered over the matter. There is no provision which says that the food inspector while purchasing the milk or any other article will do so in the presence of two motbirs and whose too of the same locality What Section 10, Sub-section (7) of the Act requires is that the food inspector shall call one or more persons to be present at the time when any sample is taken and take his or their signatures. In this respect therefore the evidence of the food inspector is not only sufficient but is supported by the evidence of Bhanwarlal. Their testimony cannot be rejected because they belonged in the same department of the Government. Babulal v. State of Gujrat : 1971 CriLJ1075 may be referred to for support of this view.

5. As regards the lables Rule 15 of the Prevention of Food Adulteration Rules, 1955 provides that the bottles containing samples for analysis shall be property labelled and the parcels shall be properly addressed beating serial number, name of the sender, name of the vendor date and place of collection, nature of article and nature and quantity of preservatives etc The food inspector R.B. Singh PW 1 deposed that he put the label Ex P3 on the three phials Simply because Bhanwarlal PW 2 did not state that the bottles were pasted with labels, it cannot be held that the food inspector violated the provisions of Rule 15. Section 11(1)(c)(iii) require that, the inspector shall retain the third bottle for production in case any proceedings are taken. But she provision could not be complied with because one of the bottles was broken in transit to the Public Analyst & the second one was sent to him.

6. Rule 17 requires that the container of the sample for analysis shall be sent to the public analyst by registered post or railway parcel or air freight or by hand in sealed packet enclosed together with a memo in form VII in an outer cover addressed to the public analyst. Rule 18 requires that a copy of the memorandum

and a specimen impression of the seal which was used to seal the packet shall be sent to the public analyst separately by registered post or delivered to him or to any person authorised by him. The food inspector stated before the learned Magistrate that he sent one of the sample bottle alone with form VII Ex 5, to the public analyst. There are some decisions of the High Courts which go to show that the compliance with these rules is mandatory & non compliance will affect the evidentiary value of the certificate of public analyst but the view of this court as reported in Shambhu Narain v. Motilal 1971 WLN 108 is that a mere omission to send the sample by registered post would be a technical irregularity which will not affect the merits of the case.

7. But from the statement of the food inspector, it appears that the bottle was broken in transit and therefore he had to send the third bottle in his custody by hand. But there is no record or statement to show that the food inspector took the same precautions when he sent the second bottle because the first one was broken in transit or thereafter. As a matter of fact, if the bottle was broken, then another memo should have been sent by the food inspector as provided in form VII. The first memo along with bottle was despatched on 7-5-68 and we do not know when the second bottle was sent to the public analyst. The report of the public analyst Ex. P/6 shows that the sample was received by the public analyst on 23 5 68. The correspondence regarding the sending and non-receipt of the first bottle and then despatching of the second bottle should have been brought on record. The learned Magistrate put great emphasis upon this lacuna. Though I do not consider it a were serious matter but even then, if the learned Magistrate held the view that all this was necessary to rule out all possibility of doubt, then it is difficult for this Court to say that the judgment was perverse or against the record of evidence.

8. In this view of the matter, it appears to me that the finding of fact arrived at by the learned Magistrate cannot be interfered with.

9. I therefore, dismiss this appeal.