

Chauth Mal Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Mar-12-1984

Reported in : 1984WLN(UC)490

Judge : N.M. Kasliwal, J.

Appeal No. : S.B. Criminal Revision Petition No. 55 of 1983

Appellant : Chauth Mal

Respondent : State of Rajasthan

Disposition : Petition dismissed

Judgement :

N.M. Kasliwal, J.

1. This revision petition by the accused is directed against his conviction under Section 7/16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'the Act') and to a sentence of six months rigorous imprisonment and a fine of Rs. 1000/- and in default of payment of fine to further undergo simple imprisonment for three months. The trial Court as well as the first appellate Court have found it proved that the accused was carrying three containers on his bicycle which contained goat milk for the purpose of sale. Learned Counsel for the petitioner has contended that there was violation of Rule 18 of the Prevention of

Food Adulteration Rules, 1955 in as much as the memorandum and specimen impression of the seal sent to Public Analyst did not comply with the procedure contained in Rule 18. In his regard it was submitted that the prosecution has led no evidence to show that specimen impression of the seal was sent separately by the Food Inspector to the Public Analyst, It is thus contended that there is noncompliance of the mandatory provisions of Rule 18 and as such conviction cannot be maintained on the basis of such evidence. It has been further contended in his regard that the statement of Munnalal, Food Inspector regarding sending of the copy of memo for comparison of the specimen impression is controverted by the statement of Jodhraj Singh PW 2. I find no force in this contention. Firstly no such objection was raised before the lower courts as it does not find mention anywhere in the judgments of the lower Courts. That apart if the Food Inspector had stated that the memorandum and specimen impression of the seal had been sent to the Public Analyst, a presumption would be drawn that the same was done in accordance with the provisions of Rule 18. Even apart from that if the memorandum and specimen impression have been sent to the Public Analyst and it has been shown in the report that the same were found intact then there is sufficient compliance of Rule 18.

2. It was next contended by Mr. Mehrish that so far as sentence is concerned, the case falls within proviso one to Section 16 of the Act and there are sufficient grounds in this case for awarding an imprisonment for a term of three months which is minimum prescribed in such cases. The argument in this regard is that the case of the petitioner falls within Sub-clause (a) and (i-a) of Section 2 of the Act and not within Clause (m) of the above section. It is contended that under the above Sub-clause (a) of Section 2 of the Act an article of food shall be deemed to be adulterated if the article sold by a vendor is not of the nature, substance or quality demanded by the purchaser and to his prejudice, or is not of the nature, substance or quality which he purports or is represented to be. It is submitted that the purchaser demanded pure goat milk from the petitioner and if the same was found adulterated, then it fell within the above clause. It is then submitted that if the case falls under Sub-clause (i-a), (a) and not within Sub-clause (m), then the case of the petitioner would fall within Sub-clauses (ii) of first proviso of Section 16 of the Act. In these circumstances it is submitted that the Court may for an

adequate or special reasons impose a sentence of imprisonment for a term which shall not be less than three months and the provisions which lay down the minimum sentence of six months and a fine of Rs. 1000/- will not come into operation.

3. There is a complete fallacy in the above argument. In the present case the goat milk taken from the petitioner by the Food Inspector was not found of the purity and fell below the prescribed standard for the goat milk. The present case thus clearly falls within Sub-clause (m) of Section 2 and not Section 2(i-a)(a). It is not a case here that the petitioner accused had sold the goat milk to the Food Inspector which was not of the nature, substance or quality as demanded by the Food Inspector. The accused had sold the milk as goat milk and on analysis was found to be below prescribed standard. If that be so, then there cannot be any hesitation in holding that the case of the accused would fall within Section 16(a)(i) of the Act and not within Sub-clause (ii) of the above Section. In this circumstance the minimum punishment is six months and a fine not less than Rs. 1000/-. Mr. Mehrish also contended that even if it may be held that the offence came under Sub-clause (i) of Clause (a) of Section 16 of the Act still the goat milk being primary food and having been adulterated by human agency, the Court can for adequate and special reasons impose a sentence of imprisonment for a term which shall not be less than three months and a fine which shall not be less than Rs. 5,000/- Reliance in this regard is placed on judgment of the Kerala High Court in *State of Kerala v. A.P. Abdul Kadur* 1978(2) FAC 300.

4. Learned Public Prosecutor, on the other hand has contended that the goat milk in the present case cannot fall within the definition of primary food and as such there is no question of applying the first proviso of Section 16 of the Act in the present case. He placed reliance in this regard on a Division Bench case of Gujarat High Court *Natvarlal C. Shah Food Inspector v. Prabhotbhai Punjabhai* and *State of Gujarat* 1980 (1) FAC 489.

5. I have gone through the above two decisions and I respectfully agree with the view taken by the Gujarat High Court. Mr. Mehrish submitted that even on the basis of the ratio given in Gujarat case, the petitioner is entitled to a finding that in

the present case the goat milk was a primary food. It is submitted in this regard that the petitioner is a resident of rural area and it is further pointed out that the learned trial court while considering the question of sentence has referred to an affidavit filed by the petitioner according to which he was found to be an agriculturist. I see no force in this contention. According to the Gajarat decision, the burden lay on the accused to show that the goat milk in question was a primary food and in that regard to further show that the she-goat kept by him were wholly dependent on grazing in an agricultural field. Neither such plea was taken by the accused in his explanation nor anywhere in the courts below and in view of these circumstances there is no basis for taking such stand for the first time before this Court in the exercise of revisional jurisdiction. The above question was a question of fact for which the accused ought to have taken a clear stand and should have led evidence if he wanted to rely on this circumstance.

6. In view of these circumstances I find no force in this revision and is accordingly dismissed.