

Bhonrilal Vs. the State of Rajasthan

Bhonrilal Vs. the State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/763463

Court : Rajasthan

Decided On : Jan-30-1985

Reported in : 1985(1)WLN332

Judge : Gopal Krishna Sharma, J.

Appeal No. : S.B. Criminal Revision Petition No. 122 of 1979

Appellant : Bhonrilal

Respondent : The State of Rajasthan

Disposition : Petition dismissed

Judgement :

Gopal Krishna Sharma, J.

1. This revision petition is directed against the judgment of the Sessions Judge, Jaipur City, Jaipur, dated 18th May, 1979, by which, he dismissed the appeal of the petitioner and upheld the judgment of the Chief Judicial Magistrate. Jaipur, dated 20th September, 1978, by which, the petitioner was found guilty for the offence Under Section 7/16 of the Prevention of Food Adulteration Act, 1954 (for short, hereinafter, 'the Act') and sentenced to 6 months' SI and a fine of Rs. 1,000/-, and in default of payment of fine, to further undergo 6 months' SI.

2. Briefly stated, the facts of this case are that on 19th Nov. 1976, Babulal Sharma, Food Inspector, found the petitioner selling milk in Lalkothi locality. He had a tin container containing nearly 10 kgs. of cow and buffalo milk. The Food Inspector suspected the milk to be adulterated. After disclosing his identity, he purchased 66 mls. of milk from the accused-petitioner, and divided it in three equal parts. Each part was then filled in a dry and clean bottle, and 18 drops of formalin were added to each bottle. All the three bottles were then properly sealed. One bottle was delivered to the accused; and one bottle was sent to public analyst, for examination. After analysis, the public analyst found the milk to be adulterated. The said milk had contained 10% of added water. After obtaining due sanction from the District (sic) the petitioner was prosecuted in the court of CJM, Jaipur.

3. The learned CJM, after concluding the trial, found the petitioner guilty of the offence Under Section 7/16 of the Act, and sentenced him as mentioned above. The petitioner then preferred an appeal against that judgment, before the Sessions Judge, Jaipur City, Jaipur, who vide his order dated 18th May, 1979' dismissed the appeal of the petitioner, and maintained the conviction and the sentence of the petitioner passed by the learned CJM. Against that order, the present revision petition has been preferred.

4. Mr. Tikku, the learned Counsel for the petitioner has argued that the report of the public analyst is that the sample of mixed milk had contained solid non-fat 7.29%, which according to the standard, should have been 8.5%. Thus, in the opinion of the public analyst, the sample was adulterated due to its containing about 10% of added water. Mr. Tikku argued that Section 2(XII-a) defines 'primary food'. It means any article of food, being the produce of agriculture or horticulture in its natural form. So, according to him, milk is a primary food as defined in this sub-section mentioned above. He also referred to Rules 2(1) & 2(m), which read as under:

2(1) If the quality or purity of an article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability, which renders it injurious to health; and

2(m) if the quality or purity of article falls below the prescribed standard, or its constituents are present in quantities not within the prescribed limits of variability, but it does not render it injurious to health.

5. The Explanation to this clause was also brought to my notice, which reads as under:

Explanation-Where two or more articles of primary food are mixed together and the resultant article of food (s) is stored, sold or distributed under a name which denotes the ingredient thereof; and (b) is not injurious to health, then such resultant article shall not be deemed to be adulterated within the meaning of this clause.

While bringing the above provisions to my notice, Mr. Tikku argued that it is admitted fact the sample was of mixed cow and buffalo milk, and it is covered by the definition of primary food, and according to Explanation to Clause (m) of Section 2 of the Act, where two articles of primary food are mixed together, and if that article of food is not injurious to health, then, it cannot be said to be adulterated. In the present case, the sample was mixed cow and buffalo milk. So, the milk of cow and buffalo are primary food, and it was the duty of the prosecution to have proved that the adulterated milk, as opined by the public analyst, was injurious to health. The opinion of the public analyst is that the sample contained 10% of added water. According to the standard, the mixed milk should contain 8.5% of solid non-fat. But, the present sample contained 7.29% of solid non-fat. So, it had 10% added water in it, and according to the public analyst, this sample was adulterated.

6. From the opinion of the analyst, it is clear that the sample which was taken away from the petitioner, was below standard and had 10% of added water in it. So, it was an adulterated one. The argument of Mr. Tikku is that mere adulteration in milk is not punishable unless it is proved that it is injurious to health, as laid down in the Explanation to Clause (m) of Section 2 of the Act. The prosecution had failed to prove that the sample which was found to be adulterated, was injurious to health. Opinion could be given by the public analyst that the adulterated milk was injurious to health. As there is no such opinion by the public

analyst, the petitioner could not be convicted merely on the fact that the milk which was being sold by him, was adulterated, argued Mr. Tikku.

7. I do not agree with this argument. The petitioner was selling mixed cow and buffalo milk. Sample of it was taken and sent to public analyst for analysis. The opinion of the public analyst was that the said sample was adulterated. The milk was found containing 10% added water. It was below the standard laid down in the F.A. Rules. This is no argument that the water which was mixed in the milk, was not injurious to health. When Something is added to a pure thing, that pure thing becomes impure. No doubt, in the present case, it was cow and buffalo milk. But even in the case of mixed milk, there is a standard prescribed by the rules, and if food is found below the standard, it is an adulterated food, and it is prohibited for sale. If any person is found selling an adulterated food-he has certainly violated the provision of Section 7 of the Act. For that offence, punishment is provided in Section 16 of the Act. When water is mixed in pure milk, it cannot be said that it was not injurious to health. Where does the purity remain when water is added to it? Once the purity of water goes away, it becomes adulterated, and certainly it is injurious to health. I have no hesitation to say that addition of water to milk is certainly injurious to health, and it is not necessary for the public analyst to give opinion that the adulterated milk was injurious to health. It is for the court to judge all these things. When it found that milk was adulterated and it was mixed with and buffalo milk certainly it is injurious to health. It cannot be said that water impure milk would be beneficial to health, and it would improve health. So, the argument of Mr. Tikku has no substance. It has been clearly proved by that the milk which was being sold by the petitioner and of which sample was taken from him, was found to be adulterated. The learned Magistrate has not committed any error in finding the petitioner guilty of the offence Under Section 7/16 of the Act. The learned Sessions Judge too has not committed any error in dismissing the appeal of the petitioner and upholding his conviction and the sentence. I, therefore see no reason to interfere in the judgment of the learned Sessions Judge, as there is no illegality in it.

8. In the result the revision petition having no force, is hereby dismissed. The petitioner is on bail. The Chief Judicial Magistrate, Jaipur, is directed to get the

petitioner arrested and send him to jail to undergo the sentence of imprisonment awarded to him by the learned lower court.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com