

**Jay Narayan Vs. State of Rajasthan**

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**SooperKanoon Citation : [sooperkanoon.com/765382](http://sooperkanoon.com/765382)**

**Court : Rajasthan**

**Decided On : Oct-07-1999**

**Reported in : 2000CriLJ1054**

**Judge : Mohd. Yamin, J.**

**Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 2, 7 and 16; Prevention of Food Adulteration Rules - Rule 50; Code of Criminal Procedure (CrPC) - Sections 313**

**Appeal No. : Cr. Revn. Petn. No. 592 of 1999**

**Appellant : Jay Narayan**

**Respondent : State of Rajasthan**

**Advocate for Def. : Ramesh Purohit, Public Prosecutor**

**Advocate for Pet/Ap. : I.R. Choudhary, Adv.**

**Disposition : Petition dismissed**

**Judgement :**

ORDER

**Mohd. Yamin, J.**

1. This is a revision petition preferred by petitioner accused Jay Narayan who was convicted for offence under Section 7/16 of the Prevention of Food Adulteration Act (hereinafter referred as 'the Act') by learned Additional Chief Judicial Magistrate). Sojat vide his judgment dated 12-8-1998. He was sentenced to six months rigorous imprisonment with a fine of Rs. 1,000/- and in default to undergo one month's simple imprisonment for adulteration of mixed milk and sentenced to three months rigorous imprisonment with a fine of Rs. 500/- and in default to undergo 15 days simple imprisonment for not having licence and thus contravened Rule 50 of the Prevention of Food Adulteration Rules (hereinafter referred as 'the Rules'). Both are punishable under Section 16 of the Act.

2. Briefly stated, facts are that on 23-10-1988 Mohanlal Purohit, Food Inspector, Sojat checked the petitioner accused who was carrying two drums of mixed milk on his motorcycle No. RSL-216. One of the drums contained 25 Kg. while the other contained 40 Kg. of milk. The petitioner was not having a licence. The Food Inspector purchased 750 ml. of mixed milk from the accused petitioner, paid him Rs. 3/- and obtained receipt. A notice in form No. '6 was given to the accused petitioner which bears the signature of the petitioner. The receipt also bears signature of the petitioner accused. The inspector then divided the sample in three parts, poured in three bottles and added formaline. One of the samples was sent to the Public Analyst who gave report Ex. P/5 according to which the sample contained 3.9% milk fat and milk solids not fat 6.5%. It contained about 23% of added water. Then the Food Inspector obtained sanction from the local authority and filed complaint before the Magistrate concerned. After appearance of the petitioner, Mohan Lal PW-1 was examined. Then the charge was framed against the petitioner on 8-3-1995. He pleaded not guilty. Thereafter Food Inspector was further cross examined. Ali Ahmed PW-2 was examined as a remaining witness. The petitioner got the sample examined from the Central Food Laboratory whose report Ex. P/8 is on record, according to which the sample contained 2% milk fat and 6.9% milk solids not fat. The sample was adulterated. Learned Magistrate examined the accused petitioner under Section 313, Cr. P.C. He did not produce any evidence in defence. Learned Magistrate, after hearing both the parties, convicted and sentenced the accused petitioner as stated above. The petitioner filed an appeal before learned Additional Sessions Judge, Sojat

which has been dismissed on 21-8-1999. Hence this revision.

3. I have heard the learned counsel for the petitioner as well as learned Public Prosecutor at length and have gone through the record.

4. Learned counsel for the petitioner tried to carry me through the evidence. But when his attention was drawn to State of Kerala v. Puttumana Math Jathavedan Namboodiri (1999) 1 JT (SC) 456 : 1999 Cri Lj 1443, he limited his arguments to legal points.

5. He first submitted that the petitioner was not carrying the milk for sale and that he did not sell it to the Food Inspector either. He submitted that mere possession of large quantity of milk in containers without anything more cannot lead to the inference that the petitioner was a seller actual or potential. He relied on Municipal Council Jaipur v. Mangal Ram 1977 Raj Cir C. 4 Though the learned counsel submitted that he did not want to reappreciate the evidence, but in order to arrive to the conclusion that the milk was for sale or not. I have to see as to what is the evidence with regard to it. I may state that the accused petitioner never put any defence before the Food Inspector that the milk was being carried for any other purpose. Learned counsel did not address as to what was the occasion for the petitioner to carry milk in such a large quantity which measured 65 Kg. His contention was that the petitioner did not sell the milk to Inspector. But this, cannot be accepted in view of the finding of both the Courts below. Apart from it, there is a receipt given by the petitioner which is Ex. P/2 on record. It bears signature of the petitioner which he does not deny. Similarly, from No. 6 Ex. P-1 mentions that the Food Inspector had purchased milk from the petitioner for the purpose of analysis. This form also bears the signature of the petitioner which he does not deny. There is concurrent finding of both the Court that the petitioner sold the milk to Inspector. Word 'sale' has been defined in Section 2(xii) of the Act which is as follows:--

'Sale' with its grammatical variations and cognate expressions, means the sale of any article of food, whether for cash or on credit or by way of exchange and whether by wholesale or retail, for human consumption or use, or for analysis, and includes an agreement for sale, an offer for sale, the exposing for sale or having in possession for sale of any such article, and includes also an attempt to sell any

such article.

6. This definition is wide enough and sale for the purpose of analysis is a sale as defined under the Act. Therefore, the argument of the learned counsel that the petitioner did not sell the milk is of no help to the petitioner. The two Courts below have come to the conclusion that the milk was sold to the Food Inspector and when this sale to the Food Inspector is sale within the meaning of the Act, the argument of the learned counsel that the petitioner did not sell the milk to the Inspector or was not carrying the milk for the purpose of sale, is of no help to the petitioner.

7. His next contention is that PW-1 Mohan Lal and PW-2 Ali Ahmed had said that had not seen the petitioner selling milk to anybody and that they did not know the petitioner from before. I am afraid as per the settled law that reappraisal of evidence cannot be done by this Court. The Courts below have held that the petitioner was carrying milk for sale and the Food Inspector purchased the sample from the petitioner.

8. The next contention of the learned counsel for the petitioner was that there was difference in the results of report of Public Health Laboratory Ex. P/5 and the report of Central Food Laboratory Ex. P/8. According to the report of Public Analyst the milk fat found in the mixed milk was 3.9% while according to the report of Central Food Laboratory it was 2%. Similarly, milk solids not fat according to the report Ex. P-5 was 6.5% and the milk solids not fat according to the report of Central Food Laboratory was found to be 6.9%. Learned counsel submitted that this difference shows that the sample was not carefully taken by the Inspector and as such in view of State of Rajasthan v. Kachhab 1979 Raj LW 307: 1980 Cri LJ 894 the petitioner is entitled for acquittal. I do not agree with this contention because the law provides that the report of the Public Analyst is superseded when the certificate of the Central Food Laboratory is received. There is not such difference which may entitle the petitioner to acquittal. The report of the Central Food Laboratory also certifies that the sample which was taken from the petitioner accused was adulterated. The report Ex. P/8 was put to the petitioner in his statement under Section 313, Cr. P.C. and when the question was put he stated

that it was also incorrect. It may be stated that the report was obtained on the request of the accused petitioner himself and he simply wants to say that everything which is against him is incorrect. This report of the Central Food Laboratory is final and proves beyond doubt that the sample was adulterated.

9. Learned counsel then submitted that the difference was marginal. He relied on so many citations. When he was shown the standard prescribed for mixed milk under item No. A. 11.1.11 of the Rules, he agreed that the difference was not marginal. According to the standard prescribed for mixed milk, the milk fat should be 4.5% while milk solids not fat should be 9%. In the sample taken from the petitioner the milk fat as found by the Director of Central Food Laboratory was only 2% while solids not fat was 6.9%. This difference cannot be said to be marginal and not because of wrong analysis made by the Central Food Laboratory. The sample of milk is definitely adulterated as the same was not according to the standard prescribed by the Rules under the Act.

10. Learned counsel for the petitioner then submitted that the Sanctioning Authority did not apply mind and gave sanction in a prescribed form which is filled in by ink. He cited Sukharam alias Bhole v. State of Rajasthan 1992 Raj Cri C 240. The Food Inspector has stated that the sanction was given by the competent authority. Such a question arose in Rameshwar v. State of Rajasthan through Municipal Council Kota (1997) 1 FAC 254 : (1997) Cri LJ 2064 which is a recent judgment in comparison to. the judgment of Sukharam alias Bhole's case (supra). It was held in Rameshwar's case (supra) that there was presumption that the prescribed authority had applied mind when sanction is granted. In the case in hand there is no material on record to show that the authority giving his written consent had not applied his mind. Therefore, the argument of the learned counsel for the petitioner has no force.

11. Learned counsel for the petitioner did not address the Court about conviction of the petitioner on the point of non-compliance of Rule 50 of the Rules relating to the licence. Therefore, the finding of fact for non-compliance of Rule 50 of the Rules made under the Act cannot be set aside.

12. In the end, learned counsel for the petitioner submitted that a lenient view may be taken and the petitioner may be sentenced to the period already undergone or since the milk was a primary food, he may be given benefit of proviso to Section 16(i) of the, . Act. He also cited AIR 1999 SC 1482 : 1999 Cri LJ 603. Haripada Das v. State of West Bengal in which accused was convicted for selling adulterated mustard oil and was acquitted by the trial Court. He was convicted by the High Court and in the circumstances the Supreme Court held that to meet the ends of justice, sentence of imprisonment already undergone was sufficient in that case. This case was decided on 3-3-1998 by Hon'ble Supreme Court. But the Hon'ble Supreme Court in State of Haryana v. Pawan Kumar (1998) 8 SCC 521 and Jagdish Prasad v. State of U.P. 1998 SCC (Cri) 1433 : 1999 Cri LJ 602 held that no leniency should be given to the accused in such cases. Learned counsel for the petitioner then cited a number of judgments of this Court reported and unreported in which leniency was shown to the accused persons in cases of Prevention of Food Adulteration Act so far as sentence was concerned. Even my own judgments were cited. But I may state that the latest judgment of the Rajasthan High Court: reported in, 1999 Cri LR (Raj) 539, State of Rajasthan v. Ramlal, judgments of Supreme Court have been followed and this Court has repelled the arguments of taking lenient view in such cases. I myself did so in SB Cr. Revision Petition No. 616/99, Bal Kishari v. State of Rajasthan, decided on 4-10-1999 and refused to take lenient view so far as sentence is concerned. There are no mitigating circumstances in the present case. The petitioner adulterated the milk which is primary food for children and is also used by elders for every day use in every home. No leniency should be shown to the petitioner.

13. In view of above discussion, there is no force in this revision and it is hereby dismissed.