

**Bhika Ram Vs. State**

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**Court :** Rajasthan

**Decided On :** Dec-06-1985

**Reported in :** 1985WLN(UC)391

**Judge :** Farooq Hasan, J.

**Appeal No. :** S.B. Criminal Revision No. 150 of 1979

**Appellant :** Bhika Ram

**Respondent :** State

**Judgement :**

**Farooq Hasan, J.**

1. This is a revision petition under Section 397 r/w Section 401 Cr.P.C. against the judgment of Sessions Judge, Balotra, in criminal appeal No. 36/78 dated May 4, 1979 where by he upheld the conviction and sentence of the petitioner passed by the Chief Judicial Magistrate Banner under Section 7 r/w Section 16 of the Prevention of Food Adulteration Act and sentenced to six months' rigorous imprisonment and a fine of Rs. 1000/-, in default to undergo three months' rigorous imprisonment.

2. Briefly stated the facts of the case are that on April 2, 1976 Food Inspector Shri Hansraj Parihar purchased milk weighing 660 ml. from the accused at Tilwara

Cattle Fair. The milk purchased by the said Inspector was sent for analysis to the Public Analyst after observing formalities as required under the Prevention of Food Adulteration Act. According to the report of Public Analyst the sample was containing 66% of the added water and, therefore, there was abstraction of 34% of the original fat. A complaint was filed in the court of Chief Judicial Magistrate who charged the accused petitioner under Section 7/16 of the Prevention of Food Adulteration Act. The accused-petitioner denied the charges and claimed trial. Evidence was recorded by the Chief Judicial Magistrate and statement of the accused-petitioner was also recorded under Section 313 of the Criminal Procedure Code. The Learned Chief Judicial Magistrate found the accused guilty and awarded the sentence as aforesaid. Aggrieved by this order of the learned Chief Judicial Magistrate, the accused-petitioner tiled an appeal before the Sessions Judge, Balotra, but without any success. Hence this revision.

3. Heard the learned counsel for parties and perused the record.

4. The learned counsel for the petitioner raised the following objections in this revision:

(i) that no complaint was filed by the Enforcement Inspector against the accused-petitioner. In the absence of a complaint the accused-petitioner cannot be convicted;

(ii) that in the instant case it has not been proved that the milk kept by the accused petitioner was meant for the purposes of sale and unless it is proved the accused-petitioner cannot be convicted.

In support of his contention the learned counsel placed reliance on Sardara v. State 1984 SCC 301 and State of Maharashtra v. Uday Ram 1977 Cr. L.J. 1807.

5. The learned Public Prosecutor on the other hand supported the judgment passed by the trial court as well as the appellate court.

6. I have seriously considered the arguments advanced by both the learned counsel.

7. As stated above, the conviction is upheld by the Appellate Court and there is a concurrent finding of fact against the accused-petitioner. We are dealing with a revision petitioner wherein concurrent finding of fact cannot be interfered with lightly. This is possible only when the findings of fact is erroneous or say against the record. In the instant case before me the contention of the learned counsel that no complaint was filed by the Enforcement Inspector against the accused-petitioner is not tenable. In Sardara's case (supra) the complaint was filed in the court by the Additional Public Prosecutor who was not authorised to file the complaint as per the order of the District Magistrate. In the instant case before me sanction to file a complaint has been given by the District Magistrate on 5-7-1976 wherein Shri Hansraj Parihar is authorized to file the complaint. In the trial court file there exists a complaint under Section 16 of the Prevention of Food Adulteration Act 1954 which appears at page A. 2. This complaint is signed by Shri Hansraj Parihar in the order-sheet dated July 10, 1976. If this complaint was directed to be registered and it was further directed that the accused-petitioner be summoned through bailable warrants in the presence of this complaint which appears at page A. 2 of the trial court file, it is very difficult to conclude that the proceedings against the accused petitioner were initiated without any complaint. The facts of the case before me are quite different from the one reported in Sardara's case (supra).

8. I thus conclude that in the instant case before me complaint was filed by a person authorized under Section 20 of the Prevention of Food Adulteration Act.

9. As regards the second contention of the learned counsel to this effect that it has not been proved against the accused-petitioner that he kept the milk for sale. This objection of the learned counsel is not tenable.

10. In his statement under Section 313 Cr. PC the accused petitioner has stated that he and Omprakash had opened a shop in partnership in the fair and he himself was selling Cococola and it was Omprakash who was running a tea stall there. Accused-petitioner further admitted that the Food Inspector had purchased milk from him but at the same time he stated that at that time Omprakash was not present. About the payment of price, accused-petitioner has pleaded the loss of

memory. He has admitted that the report of the Public Analyst was conveyed to him. The accused-petitioner has further admitted that Ex. P. 3 receipt of the price paid bears his signatures. Accused has also admitted presence of Motbirs and Shri Hansraj. In the light of this admission by the accused person, this much is clear that the Enforcement Inspector did purchase the milk from accused-petitioner. It was contended by the learned counsel for the petitioner that admittedly the accused petitioner along with Omprakash opened a Tea-stall in the cattle fair. The milk in question was certainly mixed with water because the accused-petitioner was about to prepare tea for the customers but at that time the Enforcement Inspector arrived. From this contention this much is also clear that the milk in question was not pure. From the perusal of the statement of the witnesses it is also clear that milk in large quantity was there in the possession of accused-petitioner. It has been fully proved that the accused had sold 660 ml. of milk to the Food Inspector. Besides the admission of the accused on this point, there is a testimony of Food Inspector Shri Hansraj that in the Cattle Fair at Tilwara he had purchased the milk from the accused-petitioner. His testimony is fully corroborated by the statements of PWs Muknaram and Premchand. It is therefore, fully proved that the Food Inspector had purchased the milk for analysis from the accused.

11. In the light of the observations made by their Lordship of the Supreme Court in case *Mangaldas Raghavji and Ors. v. State of Maharashtra* reported in : 1966 CriLJ106 it can be held that sale of any commodity to the Enforcement Inspector shall be construed as sale within the purview of Prevention of Food Adulteration Act, 1954. The relevant observation of the Hon'ble Judges in the aforesaid case is reproduced below:

The Act gives a special definition of sale in Section 2(xiii) which specifically includes within its ambit a sale for analysis. A sale for analysis must be regarded as sale even if the transaction contains an element of compulsion.

A contract comes into existence by the acceptance of a proposal made by one person to another by that other person. The latter is not bound to accept the proposal. It may not, however, necessarily follow that where that other person had

no choice but to accept the proposal the transaction would never amount to a contract.

12. In the light of the observations made above, I am of the opinion that the case against the accused-petitioner has been proved by the prosecution.

13. As stated above, that the accused is convicted on April 3, 1978 for an offence which is committed on April 2, 1976. This is correct to say that the offence committed by the accused-petitioner is covered by the Prevention of Food Adulteration Act and generally it has been observed that in such cases leniency should not be shown while awarding the sentence. But in the instant case before me if the sentence passed by the trial court is upheld then certainly the accused has to surrender himself for serving the sentence after about 7 years. Throughout this period the petitioner remained on bail. The petitioner earns his livelihood by running a Tea-stall as is apparent from the perusal of the record. This shows that his economic condition is not good. If the accused-petitioner is sent to jail to serve out the sentence there may be a great hardship for his family members.

14. Taking into consideration all the above mentioned facts, I am of the view that it will not be just and proper to send the accused-petitioner in jail to serve out the sentence as awarded by the trial court and so upholding the sentence of fine only will be sufficient to serve the ends of justice.

15. In the light of the observations made above, the revision petition is partly accepted, the conviction of the accused-petitioner is upheld, but his sentence to rigorous imprisonment for a period of six months is set aside and the sentence of fine is upheld. The petitioner is directed to deposit the fine within one month from today. In default of payment of fine, the accused petitioner shall undergo two month's rigorous imprisonment.