

State of Rajasthan Vs. Mega

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Court : Rajasthan

Decided On : Sep-04-2001

Reported in : RLW2003(3)Raj1834; 2002(1)WLN588

Judge : Sunil Kumar Garg, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 7 and 16

Appeal No. : S.B. Criminal Appeal No. 351 of 1987

Appellant : State of Rajasthan

Respondent : Mega

Advocate for Def. : S. Sarupria, Adv.

Advocate for Pet/Ap. : Ramesh Purohit, Public Prosecutor

Disposition : Appeal dismissed

Judgement :

Sunil Kumar Garg, J.

1.This appeal has been filed by the State of Rajasthan against the judgment and order dated 31.12.86 passed by the Learned Chief Judicial Magistrate, Chittorgarh in Cr. Case No. 115/84 by which he acquitted the accused respondent for offence under Section 7/16 of the [Prevention of Food Adulteration Act, 1954](#).

2. This appeal arises in the following circumstances :

(i) P. W. 1 Shankar Lal filed a complaint on 19.3.84 in the court of Chief Judicial Magistrate Chittorgarh alleging that on 4.10.83 while patrolling the area near Bus-stand, Bhadsora, he saw accused respondent having milk and thereafter PW. Shankar Lal, Food Inspector disclosed his identity to the accused respondent and asked him to give a sample of the milk found with him. The respondent agreed to give sample of the milk. The Food Inspector Shankar Lal (PW.1) thereupon purchased 660 ml. milk from the respondent for consideration of Rs. 1.60/- and divided it into 3 equal parts and filled each part in a dry and clean bottle after adding 18 drops of formalin thereto. The bottles containing samples were then corked and sealed properly in the presence of motbirs. The fard of taking sample was prepared and the same is Ex.P/3.

3. One of the bottles was later on sent to public analyst, Udaipur for examination. The Public Analyst analysed the sample sent to him by the Food Inspector Shankar Lal (PW.1) and found it adulterated as it did not conform to the standard of purity prescribed and it contained about 30% of added water. The report of the public analyst is Ex.P/5.

4. Upon receipt of the report of the Public Analyst, the Food Inspector Shankar Lal (PW. 1) also obtained requisite sanction for prosecution of the respondent from the local authority and eventually filed the said complaint.

5. After examination of PW.1 Shankar Lal before charge, the learned trial Magistrate on 11.4.85 framed charges for offence under Section 7/16 of the [Prevention of Food Adulteration Act, 1954](#) who pleaded not guilty and claimed trial.

6. During trial, as many as 4 witnesses have been produced on behalf of the prosecution and statement of accused respondent was recorded under Section 313 Cr.P.C. and 2 witnesses were examined in defence.

7. After conclusion of the trial, the learned trial Magistrate acquitted the accused respondent through his judgment and order dated 31.12.86 on three grounds and

one of the grounds was that when the sample was taken by P.W. 1 Shankar Lal, the accused respondent was not selling the milk and he was carrying the milk for the purpose of giving it to D.W. 1 Roshan Lal Mahajan.

8. Aggrieved from the said Judgment and order, the present state appeal has been filed.

9. In this appeal, it has been argued by the learned P.P. that the reasonings given by the learned Chief Judicial Magistrate in his judgment dated 31.12.86 are erroneous one and thus, the appeal of the State be allowed.

10. On the other hand, the learned counsel for the accused respondent vehemently argued that the judgment and order of the trial Magistrate are based on correct appreciation of evidence and the same do not call for interference by this Court,

11. I have heard both and perused the record.

12. PW.1 Shankar Lal, the Food Inspector has admitted in his cross-examination that to whom the accused respondent was selling the milk, he cannot say and even he did not ask the name of the person to whom the accused respondent was selling the milk.

13. PW.3 Mohan Lal is the stock witness. He has admitted that whenever P.W. 1 Shankar Lal (Food Inspector) goes, he always goes with him. Thus, he is in interest witness.

14. The defence of the accused respondent from the very beginning is that he was taking milk for Roshan Lal D.W. 1. The accused respondent has also produced D.W.1 Roshan Lal and D.W.2 Ganesh in his defence to prove the fact that the milk which was being carried on by the accused respondent was to be given to D.W.1 Roshan Lal and was not meant for sale and the learned trial Magistrate has accepted the statements of these two witnesses and after analysing whole evidence, he came to the conclusion that the prosecution has failed to prove that at the time when sample was taken by P.W. 1 Roshan Lal, the accused respondent was not selling the milk.

15. In my opinion, these findings of the learned Sessions Judge are based on correct appreciation of evidence and they do not call any interference by this Court.

16. To make a person guilty for offence under Section 7/16 of the Prevention of Food Adulteration Act, the prosecution has to prove that at the time when the sample was taken, he was selling the milk as storage of article of food though adulterated is not an offence. Since in the present case, it has been substantially proved by the defence evidence that the storage of milk by the accused respondent was not meant for sale.

17. Apart from that, it may further be stated here that the words 'for sale' in Section 7 of the Prevention of Food Adulteration Act should be read into the words 'stores' and 'distribute' appearing in the section and it is clear that storage for sale only is prohibited and not storage simplicitor.

18. Therefore, basic ingredients of offence are not established in this case. Hence, from every point of view, the order of acquittal passed by the learned Chief Judicial Magistrate is in accordance with law and the same is liable to be confirmed one.

For the reasons mentioned above, the present state appeal is dismissed after confirming the judgment and order dated 31.12.86 passed by the learned Chief Judicial Magistrate, Chittorgarh.