

In Re: Raju Konar

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Court : Chennai

Decided On : Mar-24-1958

Reported in : AIR1959Mad118; 1959CriLJ336; (1958)2MLJ194

Judge : Somasundaram, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 10(7)

Appeal No. : Criminal Revn. Case No. 78 of 1958 and Criminal Revn. Petn. No. 74 of 1958

Appellant : In Re: Raju Konar

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : S.K. Ahmed Meeran and ;M. Khaja Mohideen, Adv.

Disposition : Revision allowed

Judgement :

ORDER

Somasundaram, J.

1. This is a criminal revision against the conviction and sentence of the petitioner for an offence under Section 16(1)(a)(ii) read with Section 7 of the Prevention of Food Adulteration Act, (Act 37 of 1954). There is no doubt that the milk which the

accused (petitioner) was carrying in his can contained 23 per cent., of added water as certified by the Analyst in his report, Ex. P. 3, and therefore, it is adulterated milk. He was convicted by the trial court and sentenced to simple imprisonment for two years and also to a fine of Rs. 2000.

In appeal the learned Additional Sessions Judge reduced the term of imprisonment to one year but maintained the fine of Rs. 2000. This punishment is given because he was once before convicted of a similar offence. Under Section 16(g)(ii) for a second offence the punishment shall be imprisonment for a term which may extend to two years and also fine and under the proviso to that section the minimum punishment shall not be less than one year and such fine shall not be less than two thousand rupees.

2. The point that is taken before me is that the provisions of Section 10(7) have not been complied with. Under the provisions of Clause (7) of Section 10 the food inspector shall as far as possible call not less than two persons to be present at the time when action is taken under Section 10(1)(2) and take their signatures. In this case the accused was found carrying milk on a cycle and he was stopped on the way by the Sanitary Inspector. P. W. 1. He wanted to take sample of the milk. The accused refused to give it and so he was taken to the nearest police station where not only the sub-inspector but also some constables were present.

It is only in their presence that the Sanitary Inspector purchased sample of the milk from the accused according to the provisions of Section 10(1)(a)(ii) of the Act and obtained a voucher Ex. P. 1 signed by the accused but in the voucher he obtained the signature of one person only by name Khasim who has been examined as P. W. 2 in the case. This Khasim is a sanitary maistri under P. W. 1.

He accompanied P. W. 1 at the time. Notwithstanding the fact that there were a number of persons present at the police station including the Sub-Inspector and some constables (and the Sub-Inspector also questioned the accused as to why he refused to sell sample milk to the Sanitary Inspector) no attempt was made by the Sanitary Inspector to comply with the provisions of Section 10(7) of the Act.

This is not the first occasion when such disobedience of the provision of Clause (7) of Section 10 of the Act is brought to the notice of this court. According to the provisions of the section the food inspector shall 'as far as possible' call not less than two persons to be present at the time he takes the sample and take their signatures. The expression 'as far as possible' is intended to obviate the necessity of the presence of two persons and securing their signatures if the circumstances under which he takes the sample were such that there could not possibly be two persons present at the time.

Suppose on a solitary road in the evening or on any occasion when it is not likely that any person will be present at the time the food inspector purchases sample milk from the vendor, then there will be no persons available to be present at the purchase. It is to provide for such occasions the expression 'as far as possible' is used to obviate the necessity of calling two persons to attest the purchase when the sample is taken. It does not mean that when two persons are available he can dispense with them and take protection under the clause 'as far as possible'. In this case according to the evidence, the Sub-Inspector and some constables were present in the police station where the accused was taken by the Sanitary Inspector and his maistri. The evidence further shows that there were a number of other persons also present at the time. Under such circumstances the mandatory provisions of Sub-section (7) of Section 10 of the Act should be complied with.

The Sanitary Inspector, P. W. 1, was either aware or not aware of the provisions of Sub-section (7) of Section 10. If he was aware of the provisions then no explanation is forthcoming as to why he did not comply with the provisions of the sub-section by taking the signature of two persons. If on the other hand he is not aware of the provisions, then the sooner he is made aware of the provisions the better.

This provision has been enacted as a safeguard to the accused because a severe punishment is sought to be inflicted for a second offence. The more severe the punishment the greater must be the care shown in observing the procedure laid down in the statute. The Parliament after taking into consideration all the circumstances, has enacted that salutary provision; it is not intended to be

honoured by its breach. Such disregard of the mandatory provisions produces an irritating effect on court.

I have pointed out more than once as to how this provision is sought to be made a dead letter in the statute book. I am satisfied that the milk is adulterated. But still for the deliberate disobedience of the mandatory provisions by the Sanitary Inspector I have to reluctantly set aside the conviction and sentence and acquit the accused.

3. Municipalities and Panchayat Boards will do well to see that Sanitary Inspectors or other officers who are entrusted with this duty of detecting offences relating to adulteration of food stuffs under the Act observe and follow the provisions contained in Sub-section (7) of Section 10 strictly as otherwise the provisions of the section will be a dead letter on the statute book and non-compliance with the provisions will result in the acquittal of the offenders. The revision is allowed. The fine amount, if paid, will be refunded.

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