

**Public Prosecutor Vs. Ramachandran**

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**Court :** Chennai

**Decided On :** Jul-15-1961

**Reported in :** 1964CriLJ243

**Judge :** Kailasam, J.

**Appellant :** Public Prosecutor

**Respondent :** Ramachandran

**Advocate for Def. :** Mr. Athanasius

**Judgement :**

**Kailasam, J.**

1. This is an appeal by the Public Prosecutor against the acquittal of the respondent by the Additional Sessions Judge, Tirunelveli, for an offence under Sees. 7 and 16(1) of the Prevention of Food Adulteration Act.

2. On 22-10-1960, at about 9 a.m. the accused brought milk in three cans to the Government Hospital at Srivaikuntam. The three cans were placed before the Medical Officer for check. P. W. 1 purchased 3/8 measures from the accused out of one of the cans. The accused told that the milk was a mixture of cow and buffalows milk. P. W. 1 paid 0.42 no and obtained a receipt, Ex. P-I, attested by the doctor and his maistry, who were present at the time of sampling. P. W. 1 also

explained that some independent people, who were also present, refused to attest. P. W. 1 divided the sample in three equal parts and sent one for analysis. The analyst sent a report, Ex. P-3, according to which, the sample contained 4.3% of fat and 6.8% of solids-not-fat. The sample contained' 24% of added water as calculated from solids not-fat. P. W. 2, the doctor also corroborated the evidence of P. W. i. The accused pleaded that the milk was not taken in his presence, and that he was not guilty, and that the case was foisted on him due to enmity.

3. The Sub Divisional Magistrate, who tried the case, accepted the evidence of P. Ws. 1 and 2 and the Analyst's certificate, and found that the accused was guilty of an offence punishable Under Section 16(1)(a) of the Food Adulteration Act read with Rule 44(b) of the Rules framed thereunder. He convicted and sentenced the accused to pay a fine of Rs. 200, and in default, to undergo rigorous imprisonment for three months. On appeal, the Irarneri Additional Sessions Judge acquitted the accused. He found that the standard prescribed for buffalo-milk cannot be applied for a mixture of cow's milk and buffalo's milk, and that the trial Court was wrong in its conclusion.

4. Appendix B-A-11-01 to the Prevention of Food Adulteration Act provides that 'milk' means the normal clean and fresh secretion obtained by complete milking of the udder of a healthy cow, buffalo, goat or sheep. A.II-01-01 provides that cow's milk shall contain not less than 3-5% of milk fat and that milk solids other than fat shall not be less than 8-5 per cent. A-II-01-02 provides that buffalo's milk shall contain not less than 5-0% of milk fat and that milk solids other than milk fat shall not be less than 9 per cent. Where milk, other than skimmed milk, is sold or offered for sale without any indication as to whether it is derived from cow, buffalo, goat or sheep, the standard prescribed for buffalo milk shall apply.

5. In this case, the milk was sold as a mixture of buffalo and cow's milk. The Rules prescribe the amount of fat and milk solid other than fat that should be present in cow's milk, buffalo's milk, goat's milk and, sheep's milk. If milk is sold without any indication, as to whether it is derived from cow, buffalo, goat or sheep, the standard prescribed for buffalo's milk is to be applied. From a reading of the relevant provisions, it is clear that if milk is sold as cow's milk, it should contain 3-

5% of milk fat and 8-5% of milk solid, and if milk is sold as goat or sheep milk, it should contain 3-0 per cent of milk fat, and 9 per cent of milk solid other than milk fat, and if it is sold as buffalo's milk, or without any indication as to whether it is derived from Icon, buffalo, goat or sheep, it should contain not less than 5-0% of milk fat and not less than 9-0 per cent of milk solids other than milk fat.

6. Sadasivam J., in Crl. R. C. No. 1138 of 1961, has arrived at the same conclusion and has held:

Even in cases where a vendor of milk states that tie is selling a mixture of cow's milk and buffalo's milk, this rule (standard prescribed for buffalo's milk) will apply.

I am in respectful agreement with the learned Judge's J conclusion. The conclusion arrived at by the lower appeal ate Court is erroneous and has to be set aside.

7. Mr. Athanasius, appearing for the respondent, sought to derive some support for his case from the judgment of Anantanarayanan J. in Public. Prosecutor v. Sangammal : AIR1961 Mad198 . In that case, the plea of the respondent was that she sold only goat's butter. The learned Judge expressed the view that even if there was some admixture of goat butter with other butter, such Stuff would not fail within the definition of butter as laid down in A. 11.05. By the word 'butter' is meant the prodtrct prepared exclusively from the milk or cream or curd of cow, buffalo, or both, containing not less than 89 per cent of milk fat and not more than 16 per cent of moisture. Under Section 2(i), an article of food shall be deemed to be adulterated, (a) if the article sold by a vendor is not of the nature, substance or quality demanded by the purchaser and is to his prejudice, or is not of the nature, substance or quality which it purports or is represented to be and Clause (e) provides that if the quality or purity of the article falls below the prescribed standard, or Its constituents are present in quantities which are in excess of the prescribed limits of variability. The word 'prescribed' is defined in 'as prescribed by rules and made under the Prevention of Food Adulteration Act.'

8. Therefore, if any substance is sold as 'butter' it should conform to the definition under the Act and should be butter prepared exclusively from the milk or cream of

cow or buffalo, or both. The decision in : AIR1961 Mad198 can be distinguished, on the ground that in that case the butter was sold as goat's butter. If any commodity is sold as butter, it should conform itself to the standard in Appendix B-A-II-05. The decision cited is not applicable to the present case.

9. Next, it was contended by Mr. Athanasius that the requirements of Section 10(7) of the Act have not been complied with. The trial Court has considered this aspect and found that there was no force in the contention, as P. W. 1 requested independent persons who were, present at the snotty attest Ex. P-1, but they refused to do so. P. W. 1 had called not less than two persons, at the time of the sampling for obtaining their signatures. I agree with the trial Court that there has been no breach of the provisions of Section 10(7) of the Act.

10. In the result, the judgment of the lower appellate Court is set aside and that of the trial Court is restored. The conviction and sentence passed by the trial Court is confirmed<sup>1</sup>, and this appeal is allowed. Time for payment of fine is one month.

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