

**In Re: Ramaswami**

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**Court :** Chennai

**Decided On :** Mar-07-1968

**Reported in :** (1969)1MLJ385

**Appellant :** In Re: Ramaswami

**Judgement :**

ORDER

**N. Krishnaswamy Reddy, J.**

1. The Criminal Revision Case is a reference by the District Magistrate, Madurai, and the Criminal Appeal has been preferred by the Public Prosecutor against the order of acquittal of the respondent by the Sub-Divisional Magistrate, Usilampatti. The order of acquittal by the Sub-Divisional Magistrate cannot at all be supported and the reasons given by the Magistrate are quite unsatisfactory.

2. The facts of the prosecution case are briefly these. P.W. 1, the Food Inspector, filed a complaint against the respondent under Section 7(1) read with Section 16(1) (a) and Section 2

(1)

(1) of the Prevention of Food Adulteration Act for having exposed for sale and sold a mixture of cow and buffalo's milk at Vanji Odai Street, Bodi, on 25th April, 1967, which on analysis was found to contain 33 per cent. of added water as calculated

from the freezing point. The sample was taken by the Food Inspector from the respondent on 25th April, 1967. He added 16 drops of formalin in each of the three sample bottles of milk in the presence of P.W.

2. He gave one sample bottle to the accused (respondent), sent one bottle to the Public Analyst and retained the third one himself. The Public Analyst in his report Exhibit P-4 certified that the sample was preserved with formalin and that no change had taken place in the constitution of the article. He has stated the analysis was done by him according to Hortvet's method of freezing point and he found that the sample contained 33 per cent. of added water. The Sub-Divisional Magistrate acquitted the respondent on the grounds

(1) that the quantum of water in terms of litre or millilitres has not been stated in the Analyst's report and

(2) that the Food Inspector did not keep the sample of milk in refrigeration or ice before and during despatch of milk to the Analyst and therefore the report of the Analyst about adulteration cannot be safely relied upon. The learned Sub-Divisional Magistrate relied upon the decision in *Gwalior Municipality v. Kishan Swaroop* : AIR 1965 MP180 , which has no bearing at all to the facts of this case. On the other hand, in *In re, Ayyavoo* (1964) 1 M.L.J. 443 : (1964) M.L.J. 357 : A.I.R. 1964 Mad. 490, it was held that the certificate of the Public Analyst that no change had taken place in the constitution of the article that would interfere with the analysis would be sufficient. It appears that this decision was not brought to the notice of the learned Sub-Divisional Magistrate. In the case relied on by the Sub-Divisional Magistrate, Rule 20 of the Prevention of Food Adulteration Rules was not complied with and the quantity of formalin added to the sample of milk was only half of the strength prescribed by the said rule. In the instant case, 16 drops of formalin were added to each of the sample bottles. If formalin is added as a preservative in prescribed quantities there cannot be any justification for any inference that the sample seized might have undergone such alteration by natural causes as to render the analysis unreliable with regard to proof of adulteration. It is also clear from the Analyst's report that he has applied the recognised method of analysis, namely, the freezing point method.

3. In these circumstances, the order of acquittal has to be set aside. The respondent is convicted under Section 7 (1) read with Sections 16 (1) (a) and 2 (1) (1) of the Prevention of Food Adulteration Act, and taking the circumstances of the case, I impose a sentence of fine of Rs. 25, in default to undergo two weeks simple imprisonment. Time for payment of fine three weeks . The appeal is accordingly allowed and the reference is accepted.

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