

State of H.P. Vs. Siri Ram

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Court : Himachal Pradesh

Decided On : Aug-09-2005

Reported in : 2006CriLJ1008

Judge : Surjit Singh, J.

Acts : Prevention of Food Adulteration Act - Section 7, 10(7), 13, 13(2), 16(1); ;
[Constitution of India](#) - Article 21

Appeal No. : Cri. A. No. 158 of 1999

Appellant : State of H.P.

Respondent : Siri Ram

Advocate for Def. : K.D. Sood, Adv.

Advocate for Pet/Ap. : H.K.S. Thakur, Dy. Adv. General

Judgement :

Surjit Singh, J.

1. The State of Himachal Pradesh has preferred this appeal against the judgment dated 21-12-1998 of the learned Sessions Judge, Bilaspur, whereby judgment dated 26-5-1993 of the Additional Chief Judicial Magistrate, Bilaspur convicting and sentencing respondent-Siri Ram, hereinafter called accused of an offence,

under Section 16(1)(a)(i), read with Section 7 of the Prevention of Food Adulteration Act, has been set aside and the said accused has been acquitted.

2. Facts relevant for the disposal of the appeal may be summed up thus. On 27-9-1990, Food Inspector, P.W. 1 Sh. I.D. Verma, took a sample of milk from the accused. The sample was divided into three parts and each part was poured into a separate dry and clean bottle and the bottles were labelled and sealed, as per requirement of law. One part of the sample was sent to the Public Analyst along with Form No. 7. The Public Analyst reported that the milk did not conform to the minimum prescribed standards and as such it was adulterated. On the receipt of the report, sanction for prosecuting the accused was applied for by the Food Inspector. The Chief Medical Officer granted the sanction. Thereafter complaint was filed against the accused. The Additional Chief Judicial Magistrate, who tried the accused for the offence of selling adulterated milk, found him guilty and accordingly convicted him for the offence under Section 16(1)(a)(i) read with Section 7 of the Prevention of Food Adulteration Act, and sentenced him to undergo rigorous imprisonment for six months and to pay a fine of Rs. 1,000/- and in default of payment of fine to undergo rigorous imprisonment for a further period of three months.

3. Accused filed an appeal in the Sessions Court. The learned Sessions Judge through the impugned judgment, accepted the appeal and set aside the conviction and sentence of the accused and acquitted him, holding that there was non-compliance of Section 10(7) of the Act, inasmuch as, no independent witness had been associated, the sanction to prosecute the accused had been accorded without application of mind and the sample had not been made homogeneous.

4. Appellant's grievance is that the learned Sessions Judge has not appreciated the evidence and the law correctly and this has led to wrong acquittal of the accused.

5. I have heard the learned Deputy Advocate General representing the appellant and the learned Counsel representing the respondent-accused.

6. To prove that the Chief Medical Officer had accorded the sanction after application of mind, the Food Inspector has examined an official from the office of Chief Medical Officer, namely Sh. R.L. Gupta, Assistant, who testified that the sanction. Ex. P.W. 1/M had been written by him on the dictation of the Chief Medical Officer and that the Chief Medical Officer had read all the documents and written the word 'seen' on each document and put his initial on each document before dictating sanction to him. There does not seem to be any reason to disbelieve the testimony of this witness. In view of this evidence, the contrary view taken by the learned Sessions Judge is not justified.

7. The finding of the learned Sessions Judge that the milk was not made homogeneous is also not based on proper appreciation of evidence. The Food Inspector and the witnesses, who were present, on the spot, namely P.W. 3 Kadsu and P.W. 4 Dila Ram fully corroborated the version of Food Inspector Sh. I.D. Verma, P.W. 1 that there was five litres of milk in a can and the entire quantity of milk in that can was poured into a plastic container and that from that plastic container the entire quantity was shifted to the can and from can it was again shifted to plastic container and the process was repeated two-three times and thereafter 750 ml. of milk was purchased. That means the milk was made homogeneous.

8. The Hon'ble Supreme Court in Food Inspector, Municipal Corporation, Baroda v. Madanlal Ramlal Sharma 0065/1982 : 1983 CriLJ337 has held that for making the milk and milk preparations including curd homogeneous and representative, churning is one method. But there is nothing in the Act or the Rules which prescribes that churning must be done by some instrument and that churning done by hand could not provide homogeneous and representative sample. It has further been held that common sense dictates that articles of food like milk and curd when churned with hand would properly mix up from top to bottom. From this judgment it is clear that making the sample homogeneous means mixing it up from top to bottom. Now when the milk was poured from one container into the other and then back to the first one and the process was repeated two-three times, it can unhesitantly be concluded that the milk had been properly mixed up and made homogeneous and hence the sample was representative of the entire quantity of

milk in that particular container. So the contrary view taken by the learned Sessions Judge can not be upheld.

9. Learned Counsel representing the accused argued that there was non-compliance of Section 10(7) of the Prevention of Food Adulteration Act, inasmuch as no independent witness had been associated. It is true that the so-called independent witness, namely P.W. 3 Kadasu was not an independent witness as he himself was a milk vendor and once sample of his milk was taken and on that sample having not been found to conform to the minimum prescribed standards he was prosecuted and punished, as admitted by the said witness as also P.W. 1 Sh. I. D. Verma, Food Inspector, but the accused cannot be acquitted on this count alone because no prejudice has been shown to have been caused to him on account of non-association of an independent witness.

10. The learned Counsel then argued that the accused had moved an application under Section 13 of the Prevention of Food Adulteration Act, praying that another sample of the milk supposed to be available with the Local Health Authority be got analysed from the Central Food Laboratory, but that application was dismissed and this has materially prejudiced the accused. The said application was moved on 17-6-1992. By then the evidence of the prosecution had already been recorded. The case was fixed for the evidence of the accused on the date when that application was moved. The learned Additional Chief Judicial Magistrate dismissed the application, with the observation that it was belated and that the sample milk might have become unfit for analysis.

11. In my considered view, the learned Additional Chief Judicial Magistrate ought not to have dismissed the application. Right to defend at criminal trial, which implies the opportunity to prove one's innocence, is a Fundamental Right. The right has been guaranteed by Article 21 of the [Constitution of India](#). This right is absolute and cannot be restricted by prescribing time limit within which it may be exercised. If any statute fixes time limit for exercising such a right, that statutory provision itself may be liable to be struck down on the ground of being ultra vires of Article 21. It is in this backdrop that the provisions of Section 13(2) of the Prevention of Food Adulteration Act, providing for the supply of copy of the report

of the Public Analyst to the accused, along with intimation that he has right to have another part of the sample analysed from a Central Food Laboratory, by making an application within 10 days, to the Court concerned, is required to be construed. This time limit is not to bar the right of an accused on the expiry of the prescribed period to prove his innocence, by getting another part of the sample analysed from a superior Food Laboratory. In fact, the time limit is to enable the accused to exercise the right effectively. If the sample is sent to the Central Food Laboratory at the earliest, there are less chances of the sample being reported unfit for analysis, on account of decomposition due to time lag and in such an event, there will be definite opinion whether the food article is adulterated or unadulterated and if it is reported to be unadulterated, the accused would be entitled to acquittal. Similarly, if the sample is sent immediately, that is to say within the time limit prescribed by Section 13(2) of the Act, and still the sample is found to have decomposed, the accused will get the benefit and will be entitled to acquittal, because on account of no fault on his part he is deprived of his right to have a report, from the superior laboratory, which could have been favourable to him. But, if there is delay on his part in getting another part of the sample analysed and the Director of Central Food Laboratory reports that the sample is decomposed and unfit for analysis, in that event he (accused) will not be entitled to the benefit. It is in this context that the time limit, prescribed in Section 13(2) of the Prevention of Food Adulteration Act is relevant. It, however, does not bar the right of the accused to get a part of the sample analysed from the Central Food Laboratory, after the expiry of the prescribed time limit of ten days. If the time limit were to bar the right, the provisions itself would have been ultra vires of Article 21 of the [Constitution of India](#). Now suppose if the samples were sent to the Central Food Laboratory, as per application of the accused and the Director of the said Laboratory would have reported that the sample conformed to the minimum prescribed standard, could the trial Court have still convicted the accused, ignoring the report on the ground that the application had been moved after the time limit mentioned in Section 13(2) of the Act. Definitely the trial Court not have ignored that report and convicted the accused. If it could not have convicted the accused in this supposed situation then it ought to have allowed the application. By rejecting it the trial Court in fact denied the accused his fundamental right to defend himself at

criminal trial, which is guaranteed by Article 21 of the [Constitution of India](#).

In view of the position, stated in the just preceding paragraph, the appeal is dismissed and the judgment of the Sessions Court acquitting the accused-respondent is upheld, though for the reasons different from the ones recorded by the learned Sessions Court.

The appeal stands disposed of accordingly.

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