

**(1979) 08 AHC CK 0021**  
**In the Allahabad High Court**  
**Case No : Criminal Revision No. 2109 of 1978**

Hari Krishna

APPELLANT

Vs

State

RESPONDENT

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**Date of Decision :** 28-08-1979

**Acts Referred:**

Companies Act, 1948 — Section 332(3)  
Prevention of Food Adulteration Act, 1954 — Section 16, 2, 7  
Prevention of Food Adulteration Rules, 1955 — Rule 9

**Citation :** (1980) AWC 20

**Hon'ble Judges :** S.J. Hyder, J

**Bench :** Single Bench

**Advocate :** Palok Basu and Shamsuddin Ahmad, for the Appellant;

**Final Decision :** Allowed

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## Judgement

S.J. Hyder, J.—The applicant Hari Krishna was tried for the offence punishable u/s 7/16 of the Prevention of Food Adulteration Act (hereinafter referred to as "the Act"). He was found guilty of the said offence by the Judicial Magistrate and was sentenced to undergo six months" R. I. and a fine of Rs. 1,000/-was also imposed upon him. In case of default in payment of fine, he was directed to undergo R. I. for a further period of two months. Hari Krishna appealed to the court of Sessions. The said appeal was dismissed by the VI Additional Sessions Judge, Fatehpur by his order dated 22-11-1978.

2. At about 12.50 PM on 23-4-1977, Food Inspector S. K. Misra took sample of curd from the applicant. At the time of the taking of the sample, the applicant was carrying on business of selling sweets. After making the purchase of the sample, one bottle of the commodity purchased was sent to the Public Analyst who reported that the fatty contents in the sample of curd was short by 2.60 per cent. The Public Analyst found the shortage on the assumption that the curd had been prepared with buffalo milk. These facts are not in controversy between the parties.

3. It is also not in dispute that the Food Inspector complied with all the formalities at the time of making the purchase and in preparing the sample for sending the same to the Public Analyst. The sanction for the prosecution given by the Public Health Authority has also not been challenged on behalf of the applicant. It may, however, be mentioned that in the receipt issued for the purchase and also in the notice issued to the applicant, the Food Inspector only mentioned the name of the commodity as "Dahi". The said documents did not state that the Dahi had been prepared with cow's milk or buffalo's milk.

4. The two courts below have also decided the case on the assumption that the curd which had been found deficient in fatty contents by the Public Analyst had been prepared with the milk of buffalo. It is not in dispute that if the analysis had been made on the basis applicable to curd prepared by cow's milk, the sample would have fulfilled the standard prescribed under the law, and there would have been no shortage in the fatty contents.

5. On behalf of the applicant, it has been strongly contended that the assumption made by the two courts below that the curd had been prepared with buffalo's milk was wholly erroneous and the conviction of the applicant based on such assumption is not warranted by law. On behalf of the State, the assumption made by the two courts below has been supported. The State counsel relied on Entry No. A. 11.01.11 and also on Entry No. A. 11.02.04 contained in Appenndix B to the rules framed under the Act. Note (i) in the first entry mentioned above lays down that when milk is offered for sale without any indication of the class, the standard prescribed for buffalo milk shall apply. The second paragraph of the second entry, referred to above, lays down that where Dahi or curd other than skimmed milk Dahi is sold or offered for said without any indication of class of milk, the standard prescribed for Dahi prepared from buffalo milk shall apply. In other words, according to the learned Counsel for the State, there is a presumption with regard to Dahi that it is prepared by buffalo milk unless there is an indication to the contrary. He submitted that in the instant case, the applicant did not give any contrary indication and, as such, the courts below were right in applying the standard applicable in the case of Dahi prepared "from buffalo's milk. The argument thus presented on behalf of the State appears to be tempting.

6. Before deciding the controversy referred to above, reference to two fundamental principles which are often invoked in construing a penal statute is necessary. Ordinarily, every crime which is created by a statute, howsoever comprehensive and unqualified the language used, is always understood as requiring the element of mens rea of a blame worthy state of mind on the part of the actor. In the case of *Brend v. Wood* (1946) 175 ALT 306, it has been observed:

It is of the utmost importance for the protection of the liberty of the subject that a court should always bear in mind that, unless a statute, either clearly or by necessary implication, rules out mens rea as a constituent part of a crime, the

court should not find a man guilty of an offence against the criminal law unless he has a guilty mind.

7. From the above observation, it is evident that there may be cases in which the legislature completely rules out the principle of mens rea while providing for a penalty. One class of cases in which the Legislature may insist on strict liability rule, excluding the applicability of mens rea, are statutes which deal with public welfare. Maxwell on the Interpretation of Statutes, 12th Edition has quoted at page 124 with approval the following dictum of Lord Evershed in *Lim Chin Aik v. R.* (1963) AC 160;

Where the subject-matter of the statute, is the regulation for the public welfare of a particular activity-statutes regulating the sale of food and drink are to be found amongst the earliest examples-it can be and frequently has been inferred that the legislature intended that such activities should be carried out under conditions of strict liability. The presumption is that the statute or statutory instrument can be effectively enforced only if those in charge of the relevant activities are made responsible for seeing that they are complied with. When such a presumption is to be inferred, it displaces the ordinary presumption of mens rea.... But it is not enough...merely to label the statute as one dealing with a grave social evil and from that to infer that strict liability was intended. It is pertinent also to enquire whether putting the dependent under strict liability will assist in the enforcement of the regulations. That means that there must be some thing he can do, directly or indirectly...which will promote the observance of the regulations. Unless this is so, there is no reason in penalising him, and it cannot be inferred that the legislature imposed strict liability merely in order to find a luckless victim.

8. The above dictum, according to Maxwell, postulates two conditions. Before presumption as to mens rea is to be displaced, strict liability must be required to give practical effect to the legislative intention and the person charged with the breach of statutory requirements must have had some opportunity of furthering its observance.

9. This rule of strict liability was applied by the Supreme Court in the case of *M.V. Joshi Vs. M.U. Shimpi and Another*, . This was also a case which dealt with a prosecution u/s 7/16 Prevention of Food Adulteration Act, 1954. Subba Rao, J., speaking for the court stated:

But in the Indian Act selling butter below that prescribed standard is deemed to be adulteration. If the standard is not maintained, the butter, by a fiction, becomes an adulterated food. A dealer in such butter cannot adduce evidence to prove that notwithstanding the deficiency in the standard, it is not adulterated.

10. The other principle is that statutes imposing criminal or other penalties should be construed narrowly and in case there is any doubt or ambiguity, the same should be resolved in favour to the person charged. In other words, if two reasonable constructions are possible, the more lenient one should be preferred.

In *Director of Public Prosecutions v. Schildkamp* 1969 (3) All. E.L.R. 1640 the House of Lords was dealing with an offence created by Section 332 (3) of the Companies Act, 1948. Lord Hodson, with whom Lord Reid and Lord Upjohn agreed, observed:

In my opinion, even if there is room for doubt, that doubt should be resolved in favour of the accused.

In *Rosenbaum v. Burgoyne* 1964 (2) All. E.L.R. 988, Lord Evershed stated:

It has been well settled by authority that the terms of a statute imposing penalties must be construed strictly and if the meaning of the words used is doubtful the doubt should be resolved in favour of the subject.

11. There is no evidence worth the name on either side from which it may be concluded that while making the purchase, the Food Inspector made any enquiries from the applicant about the milk from which the curd had been prepared. There is also no reliable evidence from which it may be concluded that the applicant himself held out that the curd had been prepared from the buffalo's milk or that he had refused to disclose the nature of the milk from which the curd had been prepared. As already stated, in the receipt and the notice issued by the Food Inspector to the applicant, the commodity purchased by him is indicated as "curd" only.

12. The question which, then, falls to be considered is whether in these circumstances, the prosecution can fall back on Entries Nos. A 11 01 11 and A 11 02 04, and ask the court to presume that the curd had been prepared from the buffalo's milk and press for the conviction of the applicant on the ground that he had failed to maintain the prescribed standard and the curd should be deemed to be adulterated.

13. No provision of the Act or the rules framed thereunder has been brought to the notice of the court which makes it obligatory on the vendors of the articles of food to put up a notice board indicating the components which have gone into the making of a particular commodity. Similarly, no other provision of law has been cited from which it can be concluded that it is obligatory on the part of the vendors of the article of food to give such information to the customers orally without being asked. On the other hand, Rule 9 of the rules framed under the Act deals with the duty of the Food Inspector. The said rule, inter alia, provides that it shall be the duty of the Food Inspector to make such enquiries or inspection as may be necessary to detect the manufacture, storage or sale of articles of food in contravention of the Act, or rules framed thereunder. This rule, therefore, makes it obligatory on the part of the Food Inspector to make necessary enquiries from the vendors of articles of food in order to enforce the provisions of the Act. If on making such enquiries, the vendor does not make any disclosure, only then the question of raising a presumption under the above said Articles of Schedule B of the Rules would arise. On the other hand, if the Food Inspector does not make any enquiry or if the vendor voluntarily does not state that the milk or curd, as

the case may be, is buffalo's milk or has been made out of buffalo" milk, there can be no question of raising a presumption referred to in the aforesaid Articles. In my opinion, the language of Articles A 11 01 11 and A 11 02 04 is absolutely free from any doubt and does not suffer from any ambiguity. Even if there is any ambiguity or doubt about the meaning of the aforesaid Articles, the same has to be resolved in favour of the subject. In these circumstances, the curd could not have been said to be adulterated.

14. In this connection, reference may also be made to the definition of "adulteration" as contained in Section 2(ia). The definition of "adulteration" in so far as it is relevant to the instant case, is given below:

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15 From the facts stated above, the curd purchased from the applicant cannot be said to be adulterated within the meaning of Clause (a). It can not also be said to be below the standard prescribed for curd prepared from cow's milk. As already stated, according to the report of the Public Analyst, the specimen of curd sent to him for analysis contained more milk fat and more milk solid non-fat than that which is prescribed for curd prepared from cow's milk. The applicant can not, therefore, be held to be guilty of adulteration within the meaning of the Act.

16. The result is that this revision succeeds and is hereby allowed. The conviction of the applicant is set aside. He is acquitted of the charge u/s 7/16 of the Prevention of Food Adulteration Act, 1954. The applicant is on bail. His bail bonds are discharged and he need not surrender. Fine, if paid by the applicant, shall be refunded to him.