
(1979) 09 AHC CK 0008
In the Allahabad High Court
Case No : Criminal Revision No. 1105 of 1977

Kashi Ram

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 20-09-1979

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16, 7

Citation : (1980) AWC 15

Hon'ble Judges : P.N. Bakshi, J

Bench : Single Bench

Advocate : B.P. Gupta and S.N. Mulla, for the Appellant;

Final Decision : Dismissed

Judgement

P.N. Bakshi, J.—The applicant has been convicted u/s 7/16 of the Prevention of Food Adulteration Act and sentenced to six months R. I. and a fine of Rs. 1000/-. In default of payment of fine he is to undergo further rigorous imprisonment for a period of three months. His conviction and sentence have been maintained in appeal by the Sessions Judge, Saharanpur. Hence this revision, which was admitted on the question of sentence only.

2. The prosecution case is that the Food Inspector on 24th July, 1974 at about 10 a. m. visited the shop of the accused situate in Chowk Purani Mandi, Saharanpur and purchased 660 mls. sample of warm mixed cow and buffalo milk in the proportion of 50 per cent for Rs. 1/50 in, accordance with the procedure prescribed by law. He gave a notice to the accused in Form VI, which is Ex. Ka-1 on the record and also obtained a receipt in token of payment which is Ex. Ka-2 on record, the said sample was divided in three phials and duly sealed on the spot. One phial was given to the accused. One of the phials, which were in possession of the Food Inspector, was sent for analysis to the Public Analyst, whose report indicated that the sample contained 3-6 per cent fat and 12.3 per cent non-fatty solids. After obtaining the requisite sanction the applicant has been prosecuted and convicted as above.

3. Both the courts below have on a consideration of the evidence on record held the prosecution case fully established. This revision was admitted on the question of sentence only, but the learned Counsel has argued the same on merits.

4. The sole point which has been argued by the applicants' counsel is that there is no standard prescribed for boiled milk. He has elaborated his argument by urging that if milk is being boiled in a pan, then the water contents evaporate and the fat accumulates on the surface and in such milk the constituents of fatty and non-fatty solids are bound to be different to the standard prescribed. I have very carefully examined the argument as well as the oral and documentary evidence on the record.

5. It is no body's case that the sample of milk which was purchased by the Food Inspector on the date in question was being boiled in Kadhayee and that the sample of milk was taken from the Kadhayee in boiling state. The statement of the Food Inspector which has been relied upon by the courts below and which I have no reason to disbelieve, is to the effect that he had purchased warm mixed cow and buffalo milk "Gaay Bhains ka mila huwa garam doodh baichtay huyay paya". Suspecting the milk to be adulterated, he disclosed his identity and gave a notice of his intention to purchase the sample of the milk, to the accused, in Form VI vide Ex. Ka-1. This has been signed by Kashi Ram applicant. The entry in this receipt is "Gaay Bhains ka garam kiya doodh 50 percent." In the receipt Ex. Ka-2, which has also been signed by Kashi Ram the description of the milk is also given as "Gaay Bhains ka garam kiya doodh wazan 660 ml. 50 percent". Reading the statement of the Food Inspector along with the documentary evidence, I have no doubt that the specification of milk which was purchased by the Food Inspector was such as had undergone a process of beating. In common parlance such milk is very often known as "Kadhayee ka paka doodh", or "Garam Doodh" which is very often sold at the milk-vendor's shop. It would thus not be correct to argue that in the instant case the sample of milk was taken in a boiling condition, while it was in the process of being boiled in the Kadhayee, and had undergone a change in its constituents.

6. Under serial No. A-11-01-04 of Appendix B, "boiled milk" means milk which had been brought to boil. For such milk also a standard has been prescribed under serial No. A-11-01-11 in my opinion, milk which had been once brought to boil and which is subsequently sold while it is still warm "Garam" cannot be excluded from the purview of the expression "boiled milk" as described above. By notification No. GSR 205 dated 13/2/1974 which became effective from 23rd May, 1974, a standard has been prescribed for "standardised or mixed milk which is raw, Pasteurised, boiled, flavoured and sterilised." It must contain 4-5 percent fat and 8.5 per cent non-fatty solids. As such even milk which has been boiled and sold subsequently must prescribe to the requisite standard. It would be an impossible task if the standard to be prescribed varies with the reading of the thermometer. Since sometimes the milk may be boiling hot, hot, tolerably

hot, warm, lukewarm, tepid or cold, after the process of boiling had been undertaken. The legislature in its wisdom has sought to include such milk in the category of boiled milk, as laid down in serial No. A-11-01-04 of Appendix B. In my opinion, therefore, no illegality has been committed by the courts below in holding that the fat contents of the boiled milk "Garam Doodh" which was purchased by the Food Inspector was deficient according to the prescribed standard.

7. As per report of the Public Analyst the fat contents of the sample in question were 3.6 per cent whereas the requirement of law was that it should have been 4.5 per cent. Calculating on this basis the sample in question was deficient in fat contents by about 20 per cent on being judged from the statutory standard prescribed for cow milk and buffalo milk mixed in the proportion of 50 per cent. These facts clearly established the guilt of the accused. Merely because non-fatty solids were in excess of the prescribed minimum, would not in any way exonerate the accused. A deficiency of 20 per cent in fat contents is by no means marginal. Therefore, the accused cannot get the benefit of Rajanlal's case also decided by brother Hari Swamp. In this connection reference may also be made to the observations of the Supreme Court in Municipal Committee, Amritsar Vs. Hazara Singh, . The standard fixed under the Act is one that is certain. If it varied to any extent the certainty of general standard would be replaced by the vagaries of fluctuating standard. The disadvantages of the re-suiting unpredictability, uncertainty and impossibility of arriving at fair and consistent decision are great.

8. Adulteration of food is becoming a very popular offence which severely affects the life and health of the citizens and provides illegitimate pecuniary profit to the business community. As such it has to be suppressed with a stiff hand.

9. No other point was argued before me.

10. There is no merit in this revision which is hereby dismissed. The applicant is on bail. He shall be taken into custody forthwith to serve out the unexpired portion of the sentence of imprisonment. The stay order granted by this Court on 18th August, 1977 is hereby vacated.