
(1989) 12 P&H CK 0033
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 505 of 1986

Lekh Rai

APPELLANT

Vs

U.T.Chandigarh

RESPONDENT

Date of Decision : 18-12-1989

Acts Referred:

Citation : (1990) 1 AICLR 334 : (1990) 1 RCR(Criminal) 479

Hon'ble Judges : J.S.Sekhon, J

Advocate : Sh. H. S. Brar, Sh. G. S. Gill, Advocates for appearing Parties

Judgement

J.S. Sekhon, J.

1. The revision petitioner was convicted by the trial Court for an offence under Sec. 7 (1) read with section 16 (1) (a) (i) of the Prevention of Food Adulteration Act, 1954 (the Act in short) and sentenced to undergo rigorous imprisonment for six months besides to pay a fine of Rs. 1,000/ or in default thereof to further suffer RI for four months. The appeal filed by the petitioner before the Additional Sessions Judge Chandigarh, was dismissed. Still feeling aggrieved against the said order of conviction and sentence, he has come up in revision.

2. Brief facts relevant for the disposal of this revision are that on 22101984, at about 2.50 p.m., Government Food Inspector Balbir Singh (PW 1) took a sample of toned milk from a `Patila" containing 10 kg of milk, from the tea stall of the petitioner and duly scaled it. The sample was sent to the Public Analyst who found it to be deficient in milksolids not fat than the minimum prescribed standard which resulted in prosecution of the petitioner for the above referred to charges.

3. The trial Court, believing the evidence of the Govt. Food Inspector Balbir Singh (PW 1) convicted and sentenced the petitioner, as referred to above. The version of simple denial of the accusedpetitioner and that of Rajendra Kumar (DW1) to the effect that the milk was boiled one and kept for petitioner's own consumption did not find favour with the trial Court.

4. Shri G.S. Gill, Advocate learned counsel for the petitioner has assailed ;the impugned order of the trial Court, as well as of the first appellate Court, firstly, on the ground that the milk was not properly stirred before taking the sample, contending that the very factum of fat contents being higher than the prescribed standard, supports this conclusion. Shri H.S. Brar, Advocate, appearing, on behalf of the respondent, on the other hand, maintained that the reports of the Public Analyst, Punjab and of the Director, Central Food Laboratory, Ghaziabad being consistent regarding the percentage of milk fat and milk solids not fat, in the two samples, clearly show that the milk was properly stirred before taking the sample.

5. There is no plausible explanation on the file as to how fat contents will be more than the prescribed Standard for toned milk, while at the same time milksolids not fat would be lesser than the prescribed standard, because a milk vendor is not expected to add fats in the milk contents, being, costlier than the milk itself. If a milk vendor adds water to milk, it will result in reducing fatcontents also, provided the sample is taken after proper stirring. This situation is explainable on reasonable hypothesis that milkcontents of the Patila, containing 10 kg of milk, were not property stirred before taking the sample, as in that case only the fat contents being lighter that the milk solids would be more than the prescribed standard if the sample of milk is taken from the upper layers of milk in the Patila without properly stirring it. The assertion of the Govt. Food Inspector that he had stitted the contents of Patila with a milkmeasure is not sufficient to conclude that the milk was properly stirred unless the milk is stirred with a deep probe or by transferring the milk in the Patila to another vessel and stirring it in the said process. On the other hand, the stirring of the milk with a milk measure would result in blowing it and separating the fat contents from the milk solids. It appears that the lower appellate Court had wrongly appreciated this controversy by holding that it was for the accused petitioner to stir the milk properly before giving the sample. Thus, the appellate Court instead of giving benefit of doubt to the petitioner has given it to the prosecution agency. The aforesaid view is supported by a decision of Division Bench of the Rajasthan High Court in State of Rajasthan v. Kachab, 1979 (11) FAC 359. In that case also the sample was found to contain more. fats than the proscribed, while it was deficient in milksolids not fat. Under these circumstances, it was held that the sample of milk was not taken after properly stirring it. Thus it cannot be said that the milk which was being sold by the petitioner was found deficient in milksolids qua the prescribed standard. In that case, reference was made to "A Laboratory Mannual of Milk Inspection by, A.C. Aggarwal and R.N. Sharma, Fourth Edition, 1961, it page 115, as under

"General Sampling : The careful and accurate sampling of milk is of utmost importance in all analysis of milk. Probably more errors are ensued through careless preparation of samples than in the actual performance of the tests. The most important thing is to bear in mind in this connection is that the whole body of milk from which a sample is to be drawn should be uniform throughout in its

composition, and any sample of milk drawn out or it for analysis must necessarily be a true representative of the whole body of milk. The factors disturbing the uniformity of composition of milk are mainly the separation and churning of fat. Through mixing of milk must first be ensured either by stirring with a long handled dipper if the container is big, or by pouring from one vessel to another or by shaking gently."

6. The mere factum that the percentage of fats and non fat solids in the two samples by two different laboratories was the same is of no consequence to conclude that the milk was properly stirred before taking its sample, as, at the most. It would imply that the sample was properly stirred before dividing it into three parts and transferring the same into three different containers by the Govt. Food inspector.

7. There is however, no force in the second contention of Shri Gill that the milk contained in the Patila was boiled one, as during cross-examination. The Govt. Food Inspector Balbir Singh (PW 1) had refuted such a suggestion of the learned counsel for the defence. Simply because in the complaint, there is no specific mention, whether the toned milk was boiled or not, it cannot be said that the sample was taken out of the boiled milk. The evidence of Rajendra Kumar (DW 1) in this regard is of no consequence, as he appears to be siding with the petitioner, especially when he was not expected to observe, whether the milk was boiled one or not, although he was present at the time of taking of sample and had attested the seizure memo. If that is so, even then although in Appendix B of Rule A.11 01 11 of the Prevention of Food Adulteration Rules, 1955. no standard has been prescribed for boiled toned milk, it would be of no help to the petitioner.

For the foregoing reasons, the impugned JUDGMENT of conviction and sentence, being not sustainable. is hereby set aside by accepting this revision. Fine, if paid, shall be refunded to the petitioner.