

(2002) 04 SC CK 0048

In the Supreme Court Of India

Case No : Criminal Appeal 1146 of 1993

Mahendra Kumar G. Patel and Another

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 30-04-2002

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16, 7
Prevention of Food Adulteration Rules, 1955 — Rule 9

Citation : (2002) 3 ACR 2294 : AIR 2003 SC 4058 : (2003) AIRSCW 3004 :
(2002) 2 ALD(Cri) 408 : (2003) CriLJ 3531 : (2002) 1 JT 512 Supp : (2002) 5
Supreme 349

Hon'ble Judges : R. P. Sethi, J; Doraiswamy Raju, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. On proof of the facts that the appellants were selling adulterated curd, they were convicted u/s 7 read with Section 16 of the Prevention of Food Adulteration Act (hereinafter referred to as "the Act") and sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs. 1,000/- each. In default of the payment of fine, they were to further undergo two months' simple imprisonment. The appeal and the revision filed by them were dismissed, hence this appeal by special leave.

2. Learned counsel appearing for the appellants has vehemently argued that as the food inspector had not discharged his duties strictly in accordance with Rule 9 of the rules framed under the Act, the appellant should have been given the benefit of the lapses and the seized curd be deemed to have been prepared out of the cow's milk. Rule 9 of the rules refers to the duties of the food inspector and does not provide that in all cases, where sample is taken, the food inspector should ascertain the source of the article seized and if he fails to note the origin of the food product, the benefit of the same should be given to the accused.

3. Reliance is placed on a judgment of the single judge of the Allahabad High

Court in Hari Krishna v. State 1980 (I) PFAC 452 wherein it is held that Rule 9, inter alia, provides that it shall be the duty of the food inspector to make such enquiries or inspections as may be necessary to detect the manufacture, storage or sale of articles of food in contravention of the Act, or rules framed thereunder. The rule thus makes it obligatory on 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 abovesaid articles of schedule B 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 the curd, as the case may be, is the buffalo's milk or has been made out of buffalo's milk, there can be no question of raising a presumption referred to in the aforesaid articles of the schedule. The view taken by the learned single judge of the Allahabad High Court, apparently, appears to be against the mandate of law and contrary to the provisions of the Act and the rules. Perusal of Rule 9 shows that no duty is cast upon the food inspector to hold enquiries and give a finding that he had ascertained that the curd was prepared out of the buffalo's milk and not from the cow's milk. The Allahabad High Court appears to have completely ignored entry No. 11.02.04 in appendix B of the Prevention of Food Adulteration Act which provides as under:

"A. 11.02.04 'dahi or curd means the product obtained from pasteurised or boiled milk. By souring, natural or otherwise, by a harmless lactic acid or other bacterial culture, dahi may contain added cane sugar, dahi shall have the same minimum percentage of milk-fat and milk solids non-fat as the milk from which it is prepared.

Where dahi or curd is sold or offered for sale without any indication of class of milk, the standards prescribed for dahi prepared from buffalo milk shall apply. Milk solids may also be used in preparation of this product."

4. In the absence of any explanation offered by the person from whom the article of food is purchased and samples taken, the milk or its product has to be deemed to be milk or the product (curd) made out of the buffalo's milk. On facts, the public analyst has found that the fat contents of the curd was 3.867% and the solid non-fat was 7.487% as against the required content of 6.0% and 9.0% respectively. The curd has thus rightly been found to be adulterated and the appellants committed offence punishable u/s 7 read with Section 16 of the Act. The High Court of Gujarat has taken a correct view on the subject and rightly held that the view taken by the Allahabad High Court was not in accordance with the provisions of the Act or the rules made thereunder.

5. Learned counsel for the appellants alternatively submitted that even if the conviction is upheld, the sentence requires to be reduced under the special circumstances of the case. We feel that in view of the mandatory provisions of Section 16 of the Act, no sentence lesser than the sentence provided by the statute can be awarded. The appellants have already been awarded the minimum

sentence requiring no further reduction.

6. There is no merit in this appeal which is accordingly dismissed. Bail bonds furnished by the appellants shall be cancelled and they be taken into custody for undergoing the rest of the sentence, if any.