

(1982) 05 SHI CK 0003

In the High Court Of Himachal Pradesh

Case No : Criminal Revision No. 1/31 of 1982

Mohan Lal Behal

APPELLANT

Vs

State of H.P. and Another

RESPONDENT

Date of Decision : 21-05-1982

Acts Referred:

Penal Code, 1860 (IPC) — Section 95

Prevention of Food Adulteration Act, 1954 — Section 16(1), 20A

Citation : (1982) 11 ILR HP 275

Hon'ble Judges : V.D. Misra, C.J

Bench : Single Bench

Advocate : Lakshmi Chand Sood, for the Appellant; L.S. Panta, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

V.D. Misra, C.J.—This revision is directed against the order of Judicial Magistrate 1st Class (II), Simla, allowing the application of Respondent No. 2 for impleading the Petitioner as a co-accused u/s 20A of the Prevention of Food Adulteration Act, 1954 (referred to as the Act).

2. Kuldip Chand (referred to as the accused) was found selling deshi ghee. Food Inspector of Municipal Corporation, Simla, took a sample of this ghee for analysis on 25th April, 1972. On analysis the sample was found to be adulterated because of deficiency of 0.37 in the reichert value. The Food Inspector filed a complaint u/s 16(1)(a) of the Act against the accused. The accused was duly summoned. During the course of proceedings the accused made an application u/s 20A of the Act praying that the present Petitioner be impleaded as an accused. It was contended that he had purchased deshi ghee from the accused.

3. Mr. Lakshmi Chand Sood, learned Counsel for the Petitioner, contends that there is no evidence on the record to show that the accused had sold the deshi ghee in the same state in which it was purchased. Now it is not denied before me that the accused had purchased the ghee from the Petitioner. The ghee was sold

in sealed tins to the accused who is a retailer. The Food Inspector in his statement deposes that the accused had in his possession deshi ghee in sealed tins of 1/2 kg. These tins were branded as "Mohan Ghee Laboratories, New Delhi". He also deposes that the sealed tin was opened in his presence and from it the sample of ghee was sold to him. There is thus prima facie evidence to show that the ghee was sold in the same state in which it was purchased by the accused.

4. The next contention of Mr. Sood is that the deficiency being negligible, the prosecution should be quashed. Various decisions are cited by the learned Counsel of the parties on this question. I will now examine them.

5. In *Municipal Committee, Amritsar v. Hazara Singh* 1975 (1) F.A.C. 271, the accused was a milk seller whose sample of milk when analysed was found adulterated because "milk solids not fat" were less than the minimum. The trial Court convicted him. However, the Sessions Judge acquitted him on the ground that the deficiency was minor. This acquittal was up-held by the High Court. The Supreme Court observed that the plea of the milk vendor that there might have been a marginal error while the analysis was conducted was rightly rejected by the Magistrate who convicted the milk vendor. The Supreme Court also observed that the reference of Hidayatullah, J., in the unreported decision of the Court in the *Malva Co-operative Milk Union Ltd., Indore v. Behari Lal and Anr.* decided on 14th August, 1967, to the microscopic difference from the standard was not to lay down the law. On the other hand, the Court cited with approval the following passage from the judgment of the Kerala High Court in the *State of Kerala v. Vasudevan Nair* 1975 F.A.C. 8:

The standard fixed under the Act is one that is certain. If it is varied to any extent, the certainty of a general standard would be replaced by the vagaries of a fluctuating standard. The disadvantages of the resulting unpredictability, uncertainty and impossibility of arriving at fair and consistent decisions are great.

It is thus obvious that the Supreme Court did not lay down the law that marginal difference from the prescribed standard should not be taken into consideration and the accused should be discharged.

6. A learned single Judge of the Allahabad High Court in *Kunwar Pal v. The State of U.P.* 1981 (1) F.A.C. 135, following the case of *Hazara Singh* (supra), up-held the conviction of the milk vendor ignoring his plea that the milk was slightly deficient in "milk solids not fat".

7. A Full Bench of the Punjab and Haryana High Court in the *State of Punjab v. Teja Singh* 1976 (2) F.A.C. 44, ruled that (1) the Court is not entitled to assume a slight or reasonable margin of error in the conclusions recorded by the Public Analyst during the course of analysis of milk; and (2) a negligible or marginal deviation from the prescribed standard laid down by the Act cannot be ignored and an acquittal recorded on that basis. The following passage was quoted with approval:

Food pollution, even if it be only to the slightest extent, if continued in practice, would adversely affect the health of every man, woman and child in the country. Hence even marginal or border-line variations of the prescribed standards under the Act are matters of serious concern for all and as public interests are involved in them, the maxim *De Minimis Noh Curate Lex*, Law does not concern itself about trifles, does not apply to them.

8. Mr. Sood cites *B.K. Verma v. Corporation of Madras* AIR 1971 Mad 40, in support of his contention that where adulteration is negligible, Section 95 of the Indian Penal Code would become applicable and the accused, should be discharged. I am afraid this cannot be treated as good law specially in view of the judgment of the Supreme Court in the case of *Hazara Singh* (supra). This contention of the Petitioner has, therefore, to be rejected.

9. The revision is, therefore, dismissed. The parties are directed to appear before the trial Court on 27th May, 1982. Since the case has become very old, the Magistrate is directed to give it top most priority and try to dispose it of within three months as far as possible.