

(1968) 04 AHC CK 0006
In the Allahabad High Court
Case No : Criminal Appeal No. 2591 of 1965

Municipal Board, Meerut

APPELLANT

Vs

Brij Behari

RESPONDENT

Date of Decision : 29-04-1968

Acts Referred:

Prevention of Food Adulteration Rules, 1955 — Rule 43

Citation : (1968) 38 AWR 622

Hon'ble Judges : D.P. Uniyal, J; C.B. Capoor, J

Bench : Division Bench

Advocate : D.G.A. and D.P. Mittal, for the Appellant; N. Lal for Respondents, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal by Special Leave is directed against an appellate order of the learned Additional District and Sessions Judge Meerut whereby the Respondent was acquitted of an offence u/s 16 of the Prevention of Food Adulteration Act. The Respondent Brij Behari admittedly sells butter. On 9-4-1964 a sample of the butter exposed for sale at the shop of the Respondent was taken by the Food Inspector concerned and a sum of Rs. 1-88 np. was paid to the Respondent. As required by the rules the sample was divided into three parts and placed in three phials one of which was sent to the Public Analyst. The report of the Public Analyst was that in the sample the moisture (water-content) exceeded the prescribed maximum limit of 16 per cent and the milk fat content was less than the prescribed minimum limit of 80 per cent. The butter sold by the Respondent was wrapped in a wrapper Ex. D1 which contained the following declaration:

This butter contains an admixture of not more than 26% of moisture.

2. As a result of investigation the Respondent was prosecuted and was convicted by the learned trial Magistrate. The Respondent preferred an appeal against the order of conviction and was acquitted by the learned appellate court. It has not

been disputed on behalf of the Respondent that the butter exposed for sale by him on the aforesaid date was not upto the standard laid down in the rules (table-Creamery Butter).

3. The contention put forward on behalf of the Respondent in the courts below and reiterated in this Court is that as he had made a declaration on the wrapper of the butter he was not liable to be convicted and Rule 43 of the Prevention of Food Adulteration Rules protected him.

4. The main question therefore which crops up for decision is whether the declaration made by the Appellant on the wrapper was in accordance with the rules.

5. The relevant portion of Rule 43 of the Prevention of Food Adulteration Rules reads as below:

43--(i) Every advertisement and every price or trade list or label for an article of food which contains an addition, admixture or deficiency shall describe the food as containing such addition, admixture or deficiency and shall also specify the nature and quantity of such addition, admixture or deficiency. No, such advertisement or price or trade list or label attached to the container of the food shall contain any words which might imply that the food is pure....

(a) ...

(b) ...

(2) Every package, containing a food which is not purpose by reason of any addition, admixture or deficiency shall be labelled with an adhesive label which shall have the following declaration:

Declaration.

This (a)....contains an admixture/addition of not more than (b)....per cent of (c)....

(a) Here insert the name of food.

(b) Here insert the quantity of admixture which may be present.

(c) He insert the name of the admixture or the name of the ingredient which is deficient.

Where the context demands it, the words "contains an admixture of shall be replaced by the woolds "contains an addition of or "is deficient in".

6. It will be noticed that in the Declaration made by the Respondent on the wrapper the only indication made was that the moisture content was not more than 26 per cent. No declaration whatsoever was made with respect to the deficiency as to the milk fat content.

7. It has firstly been contended on behalf of the Respondent that the indication

that the butter did not contain more than 26 per cent of moisture necessarily indicated that the milk fat content was not more than 74 per cent. We are, however, unable to accede to that contention. The content of moisture in butter in our opinion has no relation to the content of the milk fat therein. Stated differently the percentage of milk fat content of butter does not vary with the percentage of the moisture content. The Learned Counsel for the Respondent was unable to invite our attention to any authority or of book reference to indicate that the content of moisture in butter reflects the content of milk fat therein. Indeed if the content of moisture in butter were a correct indication of the content of milk fat therein the rule making body in laying down the standard of quality of table butter would have prescribed either the maximum of the moisture content or the minimum of the fat content. The contention advanced on behalf of the Respondent that, the indication of the moisture content in the butter exposed for sale by the Respondent necessarily indicated the milk fat content also has no substance and is repelled.

8. The second contention advanced on behalf of the Respondent is that the form of declaration referred to in Sub-rule (2) of Rule 43 contemplates the indication of either addition or admixture or deficiency and as the declaration on the wrapper in question indicated she admixture the declaration was in Conformity with the prescribed form. Rule 43 has been quoted in the earlier portion of this judgment. It will be noticed that both in sub Rules (1) and (2) of Rule 43 the expression "addition, admixture or deficiency" has been used. It is a well established canon of interpretation that where words are separated by the disjunctive "or" the separated words, unless they are mutually exclusive, have both a disjunctive and a cumulative sense. As for example, if a right of action is conferred on the happening of more events than one and those events are separated by the word "or" the right of action will be available not only when only one of those events happens but also when more than one or all events take place. There is nothing in the language of Rule 43 to indicate that the words "addition, admixture or deficiency" were mutually exclusive. The word "admixture" according to Chambers Twentieth Century Dictionary revised Edition means the action of mixing what is added to the chief ingredient of an admixture and the word "addition" means the act of adding, a thing added. It would thus appear that the words addition and admixture far from being mutually exclusive are more or less synonymous. It is again quite conceivable that an article of food, as was in the case of the sample taken in the case under consideration may contain admixture and one or more, of its ingredients also be deficient. The contention advanced on behalf of the Learned Counsel for the Respondent that the words "addition, admixture or deficiency" were mutually exclusive has not appealed to us and is repelled. The form of declaration is however, not happily worded and the direction at "c" is susceptible of the interpretation that either the name of the admixture or the name of the ingredient which is deficient is to be mentioned. It has already been noticed that an article of food may contain an admixture and one or more of its ingredient may also be deficient. It were much

better if in the form of declaration there were one more clause marked "d" and a direction that in that clause the deficiency, if any, in any one of the ingredients of the food and its percentage be indicated. According to the well established canons of interpretation a harmonious construction has to be placed on Rule 43 read as a whole and on a plain reading of the rule there can be no doubt that the object underlying it is that the admixture, addition or deficiency in an article of food should be clearly indicated on the container or the package so that the purchase may know the quality of the stuff he is purchasing and may not be deceived. The non mention on the wrapper of the milk fat content of the butter exposed for sale by the Respondent may well induce a purchaser to think that the butter contained the required quantity of the milk fat.

9. Even if the inconsistency between the main body of Rule 43 and the form of declaration is held to be irreconcilable the form of declaration will be controlled by the main body of the rule and will not override it. It was thus obligatory on the part of the Respondent if he wanted to take shelter under Rule 43 to indicate on the wrapper the percentage of the milk fat content also.

10. The Respondent was thus not entitled to seek the protection of Rule 43 and he was liable to be convicted u/s 14 of the Prevention of Food Adulteration Act. We accordingly allow the appeal, set aside the order of acquittal and restore the order of conviction and sentence recorded by the trial court.