

(1978) 02 DEL CK 0011

In the Delhi High Court

Case No : Criminal Revision Appeal No. 225 of 1976

Municipal Corporation

APPELLANT

Vs

Mahbir

RESPONDENT

Date of Decision : 15-02-1978

Acts Referred:

Citation : (1978) RLR 365

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

Bench : Single Bench

Advocate : B.T. Singh and N.K. Parmar, for the Appellant;

Judgement

V.D. Misra, J.

(1) This revision for enhancement of sentence is directed against the judgment of Mr. J.D. Kapoor, Metropolitan Magistrate, who awarded a sentence of fine of Rs. 1,000.00 only for an offence u/s 7/16, Prevention of Food Adulteration Act.

(2) The relevant facts, in brief, are that Food Inspector R.S. Avasthi found the respondent carrying boiled cow's milk for sale in a milk can on May 14, 1975 at about 10.15 A.M. on Ajmal Khan Road, Karol Bagh, Delhi. The Food Inspector bought 660 mls of milk for analysis. After going through the requisite formalities, one of the sample bottles was sent to the Public Analyst who found it to be highly adulterated because of deficiency to the tune of 90.4% in the milk fat. The Municipal Corporation of Delhi filed a complaint on the basis of the report of the Public Analyst.

(3) The defense of the respondent was that he was not a milk seller and was not carrying milk for sale. According to him it was skimmed boiled milk for the purpose of delivering it to Ram Naresh, D.W.I, who needed it for preparing coffee in connection with the marriage ceremony of his brother.

(4) The prosecution produced Food Inspector R.S. Avasthi as well as other Food Inspector Public Witness . 3, Udhey Singh, and Public Witness . 4, S.K. Bhardwaj,

who had witnessed the taking of the sample. The respondent produced in defense Ram Naresh, D. W. 1, and Ram Sanjiwan Pandey, D.W. 2. The learned Magistrate, after recording the evidence of the parties, came to the conclusion that the respondent was guilty of selling highly adulterated cow's milk. But keeping in view the advanced age of the respondent he decided not to award any sentence of imprisonment. He only levied a fine of Rs. 1,000.00.

(5) While Mr. B.T. Singh, learned counsel for the petitioner Corporation has canvassed for enhancement of sentence, Miss Naresh K. Parmar, learned counsel for the respondent has asked for acquittal of the respondent.

(6) The prosecution case is supported by three witnesses. Food Inspector R.S. Avasthi appeared as Public Witness . 2. The accused had disclosed to him that he was carrying boiled cow's milk for sale. He was having only one can which contained only 14 litres of milk. Food Inspector Udhey Singh (P.W.3) categorically states that the milk was so hot that it had to be cooled down before it could be poured into the three bottles. Admittedly no public witness was joined at the time the sample was taken. The respondent produced Ram Naresh (D.W.1) who deposed that there was a marriage in the family. His brother was being married a second time. The wife of the respondent works as a maid-servant in his house. Ram Naresh works in Allahabad Bank and there is no reason to doubt his testimony. His testimony has been accepted by the trial court also. The learned Magistrate in his judgment observed thus : "However, the defense of the accused that he is not a regular milk vendor and was bringing skimmed boiled milk from public dairy has only been supported by two witnesses whose credibility has not been marred by way of cross-examination." I find that the trial court's judgment is contradictory. When he came to the conclusion that the respondent has been able to prove the defense with the help of the two defense witnesses, the necessary corollary was that he was not carrying the milk in question for sale. After coming to that conclusion there would have been no occasion to find whether the milk was adulterated or not.

(7) Counsel has strenuously contended (that though the judgment on this aspect is contradictory, the trial court was perhaps swayed with the very advanced age of the respondent and for that reason was not willing to give him the punishment of imprisonment. Either the trial Magistrate was convinced that the accused is guilty of the offence charged or he was not guilty, the question of advanced age should have come up after a person is found guilty. It is not for me to delve into the mind of the trial court as to what weighed with him when he came to the conclusion that though the defense evidence is free from any blemish, still he held that the respondent was selling the milk in question.

(8) It is no doubt true that sale of milk, an article of food, to the Food Inspector for analysis, amounts to sale. But each case has to be decided on its own facts. Now this is the first time I have heard that hot boiled milk was being carried in a milk can for purposes of sale. On the other hand, the fact that the milk was very hot shows that it was meant for delivery to D.W. 1. Ram Naresh, who had

deputed the respondent to buy milk for him. The absence of a license for selling milk, in the case, goes to support the version of the respondent that he was not a milk vendor.