
(1972) 11 DEL CK 0009

In the Delhi High Court

Case No : Criminal Revision Appeal No. 453 of 1971

Municipal Corporation, Delhi

APPELLANT

Vs

Ganpat Ram

RESPONDENT

Date of Decision : 03-11-1972

Acts Referred:

Citation : (1973) RLR 58

Hon'ble Judges : R.N. Aggarwal, J

Bench : Single Bench

Advocate : Yogeshwar Dayal and Ghansham Das, for the Appellant;

Judgement

R.N. Aggarwal, J.

(1) The facts and circumstances giving rise to this revision petition are that on 25th May, 1967, at about 6.00 A.M., Food Inspector Shri S L.Malik visited the premises of Bharat Dairy Farm situated at 3-UA, Jawahar Nagar, Delhi. The respondent Ganpat Ram was the owner of the business "Bharat Dairy Farm". The Food Inspector disclosed his identity and purchased 660 ml. of cow's milk from the respondent on payment of 70 Paisa as its price for the purpose of analysis. The Food Inspector divided the sample in three parts and poured it in three clean and dry bottles. The Food Inspector added 18 drops of Formalin in each bottle and sealed the bottles. One part of the sample was sent to the public Analyst one part was given to the accused and the third part was retained by the Food Inspector. The Public Analyst analysed the sample on 26th May, 1967. On receipt of the report of the Public Analyst, the Municipal Prosecutor filed a complaint u/s 7/16 of the Prevention of Food Adulteration Act (hereinafter called the "Act") against the respondent.

(2) The respondent was found guilty of the offence charged with and he was sentenced to imprisonment till the rising of the court and a fine of Rs. 1,000.00 and in default of payment of fine, to undergo rigorous imprisonment for four months, by Shri B.L.Anand, Judicial Magistrate by an order dated 31st October,

1970 The Municipal Corporation went in revision, to the Sessions Judge. The case of the Corporation before the Sessions Judge was that the proviso to Sections 16(1) was not applicable and, the respondent was liable to be sentenced to the minimum sentence of imprisonment and fine, provided u/s 16(1) of the Act. The learned Additional Sessions Judge was of the view that, the proviso to Section 16(1) was applicable and the sentence awarded by the Court could not be called, inadequate. On this finding, the Additional Sessions Judge dismissed the petition. Against this order, the Municipal Corporation has come in revision to this Court.

(3) In this petition before this Court, the arguments that were raised before the Sessions Judge, have been reiterated. The sample of cow's milk in question, was found to be deficient by 040 per cent in non-fatty contents and adulterated due to the presence of cane sugar (sucrose) without declaration. Rule 44 (1) of the Food Adulteration Rules, 1955 (herein after referred to as the "Rule") provides that no person shall sell milk or a milk product specified in Appendix B containing a substance not found in milk, except as provided in the rules. It may be stated here that cane sugar (sucrose) is not one of the constituents of cow's milk according to the standards of quality prescribed by Rule A. 11,01.11, to Appendix "B". Thus there can be no doubt that the adulteration found in the sample in question was in contravention of Rule 44 (1) and this adulteration would fall u/s 2(i)(a) of the Act. Section 7 of the Act provides that no person shall himself or, by any person on his behalf manufacture for sale, or store, sell or distribute "any adulterated food" or any article of food in contravention of any other provision of the Act, or of any rule made there under. Section 16 of the Act provides that if any person sells or distributes any article of food (i) which is adulterated or misbranded or the sale of which is prohibited by the Food (Health) authority in the interests of public health, (ii) other than an article of food referred to in sub-clause (1) in contravention of any of the provisions of the Act or of any rule made there under, he would be liable to be punished with a minimum sentence of imprisonment of not less than six months and a fine of rupees one thousand. The proviso to Section 16(1) gives discretion to the court in (he matter of sentence, in case the offence is under sub-clause (1) of the clause (a) and is with respect to an article of food, which is adulterated under sub-clause (1) of clause (i) of Section 2 or misbranded under sub-clause (k) of clause (ix) of that Section or if the offence is under sub-clause (ii) of of clause (a).

(4) Shri Ghansham Das, learned counsel for the respondent contended that the offence would fall under sub-clause (ii) of clause (a) of section 16(1) and, Therefore, the proviso to section 16 would be attracted. I regret, I am unable to accept this contention, of the counsel. Sub-clause (ii) of clause (a) will not apply to an article of food, which is adulterated u/s 2(i)(a). This view finds support from two decisions of this Court (1) Municipal Corporation of Delhi v. Ram Labhaya, Cr. A. No. 19/66, decided on 18th August, 1970, by S.N.Shankar Rangarajan, Jj and (2) Cr. No. 61/68 Municipal Cor. portion of Delhi vs. Chela Ram, decided on 16th March, 1970, by Jagjit Singh, J. In the first case, the facts were, that Haldi (turmeric) was seized and the sample was found to be

adulterated with foreign starches .Rule 44 (h) prohibits the sale of turmeric containing foreign substances. The Magistrate acquitted the accused on the ground that the Food Inspector had failed to comply with the provisions of sub-section (7) of Section 10 of the Act. Against the order of acquittal, the Corporation came in appeal to the High Court. S. N. Shankar and S. Rangarajan, Jj, who heard the appeal, after holding that the provisions of sub-section (7) of Section 10 are only directory and not mandatory, on the question of sentence held that the article in question falls under rule 44 (h) and is adulterated with in the meaning of section 2(i)(b) and there is no imposing a sentence of less than six month's rigorous imprisonment. Same view was taken in the second case. In my view, the rule laid down in the two cases mentioned above would apply to the case in hand.

(5) Shri Ghansham Das contended that, sugar is one of the prescribed preventatives and the respondent had added cane sugar to the milk, only to preserve the milk and the addition of the suger to the milk will not be vocative of Rule 44 (1). This contention to my mind is without merit. Rule 52 of the Rules defines "Preservative" and it reads as :

"PRESERVATIVE means a substance, which, when, added to food, is capable of inhibiting, retarding or arresting the process of fermentation, acidification or other decomposition of food."

RULE 53 classifies the preservatives. Sugar finds place in Class I preservatives. Rule 53 (1) provides that addition of Class I preservatives in any food is not restricted unless, otherwise, provided in the Rules. Rule 44 (1) specifically prohibits the sale of milk or a milk product containing a substance not found in milk. From reading of Rule 44 (1), it is clear that no substance can be added to the milk which is not one of its constituents. My view is that sugar cannot be added as a preservative to milks, and it is a substance entirely foreign to the ingredients of cow's milk. Moreover, there is no material on the record to show that sugar is used in the milk, as a preservative. For the reasons stated above, I am of the view that proviso to Section 16(1) will not be applicable to the case in hand.

(6) Shri Yogeshwar Dayal contended that he would not press for the enhancement of the sentence on the facts and circumstances of this case and that he only wanted to have the point of law involved in the case. namely whether the addition of sugar to milk, would amount to adulteration and, if so, whether the proviso to section 16(1) would be attracted decided. The sample was found to be deficient by 0.40 per cent in non-fatty contents, and further, cane sugar to the extent of 1.71 per cent was found in the sample.

(7) On the facts and circumstances of this, case, I find no compelling reason to interfere with the order, of sentence, passed by the courts below. The petition is dismissed.