

(1975) 01 DEL CK 0005

In the Delhi High Court

Case No : Criminal Appeal No. 51 of 1971

Municipal Corporation of Delhi

APPELLANT

Vs

Altaf

RESPONDENT

Date of Decision : 17-01-1975

Acts Referred:

Citation : (1975) CriLJ 1073 : (1975) ILR Delhi 650 : (1975) RLR 252

Hon'ble Judges : Jagjit Singh, J;A.B. Rohtagi, J

Bench : Division Bench

Advocate : N.K. Jain and Nemo, for the Appellant;

Judgement

Jagjit Singh, J.

(1) On July 3, 1969 Shri O. P. Gupta, a Food Inspector of the Municipal Corporation of Delhi, found in Kucha Dakhni Rai, Darya Ganj, Delhi, one Altaf carrying on a cycle two cans of milk. The milk was for sale and was indicated to be cow-milk. The Food Inspector purchased 660 milligrams of the milk for purposes of analysis.

(2) On one of the parts of the milk being analysed by the Public Analyst it was found to contain 5.9 per cent of milk fat and 7.42 per cent of milk solids not fat. As the milk solids not fat were below the prescribed standard by 1.08 per cent the sample was reported to be adulterated and on its basis prosecution was instituted against the vendor of the milk.

(3) During the trial of the case the sale of milk by the respondent to the Food Inspector was not disputed. The only contention raised was that the total solids found in the sample of milk were more than the prescribed minimum of 12 per cent and that the fat content was also in excess of the prescribed minimum of 3.5 per cent and, Therefore, the variation from the prescribed standard was only borderline. By accepting that contention the learned trial Magistrate, on February 4, 1970, acquitted the accused. It is against that order of acquittal that the present appeal was filed, with special leave, on behalf of the Municipal

Corporation of Delhi.

(4) It would be noticed that under clause (1) of the definition of adulterated", as given in section 2 of the Prevention of Food Adulteration Act, 1954, an article of food is to be deemed to be adulterated if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities which are in excess of the prescribed limits of variability. As provided by rule 5 of the Prevention of Food Adulteration Rules, 1955 standards of quality of various articles of food have been specified in Appendix B to the said rules. It follows that if the standard of quality of any particular article of food falls below the prescribed standard the article irrespective of the fact whether the variation is small has to be deemed to be adulterated. In *M.V. Joshi Vs. M.U. Shimpi and Another*, (1) also their Lordships of the Supreme Court observed that under the Prevention of Food Adulteration Act if the prescribed standard is not maintained the article of food, by a fiction, becomes an adulterated food and the dealer in such article of food cannot adduce evidence to prove that notwithstanding the deficiency in the standard it is not adulterated.

(5) The standard of quality prescribed for cow's milk in Delhi by item A.11.01.11 of Appendix B to the Prevention of Food Adulteration Rules is that the minimum percentage of milk fat should not be less than 3.5 and minimum percentage of milk solids not fat should not be less than 8.5. Thus there is no bar to the percentage of either milk fat or milk solids not fat exceeding the prescribed minimum. Only when the percentage of the milk fat or milk solids not fat or of the both falls below the prescribed minimum percentage that the milk has to be deemed to be adulterated. In other words merely because the percentage of milk solids not fat in any particular sample of cow milk is found to be in excess of 8.5 per cent it has still to be deemed to be adulterated if the percentage of milk fat is less than 3.5.

(6) In acquitting the accused reliance was placed by the learned trial Magistrate on the case of the *Malwa Co-operative Milk Union Ltd. v. Behari Lal and another* 1973 F.A.C. 375, (2). In that case the Supreme Court totalled up the percentages of milk fat and milk-solids not fat which were found in the samples of buffalo milk and after referring to item A. 11.01.02 (as it stood before amendment in July 1963) of Appendix B to the Prevention of Food Adulteration Rules, 1955 made the following observations:-

"It would, Therefore, appear that the solids in the milk should be of the order of 14 per cent minimum. In the samples they were almost 14 per cent in the one case being only .1 per cent less and in the other .4 per cent less. The fat content appears to be proportionately less. It is not clear whether the analyst was able to isolate the fat content so successfully as not to have left room for this slight variation. The variation was thus borderline. What is generally extracted is cream and not the other solids.

(7) As was pointed out by a full Bench of this Court in *Municipal Corporation of*

Delhi Vs. Bishan Sarup etc., (3) the question under consideration of the Supreme Court was not on the merit of the order of acquittal but with reference to the border issue, namely, the power of the High Court in revision to set aside acquittals in a case where the variation was marginal or borderline.

(8) It seems to us that the learned trial Magistrate was clearly in error in holding that the accused was not guilty of the sale of an adulterated article of food. The case of Malwa Co-operative Milk Union Ltd. (supra) could be of no help in coming to that conclusion. Whenever it is found by a trial Court that the sample of an article of food sold by a person falls below the prescribed standard of quality the article has to be regarded as adulterated and, Therefore, its sale to be an offence u/s 16(1)(a)(i) read with section 7 of the Prevention of Food Adulteration Act.

(9) The respondent having sold cow's milk which was below the proscribed standard, as the percentage of milk solids not fat in it was 7.42 against the prescribed minimum of 8.5 per cent, was certainly guilty of selling an adulterated article of food and was liable to punishment u/s 16(1)(a)(i) read with section 7 of the Prevention of Food Adulteration Act. It, however, remains to be considered that though the order of acquittal by the learned trial Magistrate was not legally justified would it be proper at this stage, after more than five years of the commission of offence, to interfere by setting aside the order of acquittal.

(10) As may have been noticed the percentage of milk fat was 5.9 against the prescribed minimum of 3.5 while the percentage of milk solids not fat was 7.42 against the prescribed minimum of 8.5 per cent. The total percentage of solids was thus 13.32 per cent against the prescribed minimum of 12 per cent. Keeping that circumstance in view and in the light of the observations made in the case of the Malwa Co-operative Milk Union Ltd. (supra) the deficiency of 1.08 per cent in milk solids other than fat can be regarded as marginal. The offence of the sale of the adulterated milk was also committed more than five years ago and even the order of acquittal was made more than four years back. Keeping all these facts in view we are not inclined to interfere with the order of acquittal at this stage and, Therefore, dismiss the appeal.