
(1980) 01 AHC CK 0090
In the Allahabad High Court
Case No : Criminal Rev. No. 1043 of 1979

Nabi Hasan alias Naththu

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 24-01-1980

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 9
Penal Code, 1860 (IPC) — Section 396
Prevention of Food Adulteration Act, 1954 — Section 10(2), 15, 16(1), 2(5), 7
Prevention of Food Adulteration Rules, 1955 — Rule 44

Citation : (1980) ACR 183

Hon'ble Judges : P.N. Bakshi, J

Bench : Single Bench

Advocate : Girish Chandra Saxena, for the Appellant;

Final Decision : Dismissed

Judgement

P.N. Bakshi, J.—The applicant has been convicted under Sections 7/16(1)(b) of the Prevention of Food Adulteration Act and sentenced to 1 year's R. I. and a fine of Rs. 1000/- His conviction and sentence has been maintained in appeal by the Sessions Judge, Shahjahanpur. Hence this revision.

2. I have heard learned Counsel for the applicant and have also perused the impugned orders. I have also examined the record of the case. The Food Inspector had purchased a sample of Milk from the shop of the applicant at about 12.15 p.m. on 25th July, 1977 in accordance with the procedure prescribed by law. One of the sample phials which was sent for analysis to the Public Analyst disclosed that the sample of milk was deficient in fat contents by 25 per cent and in non-fatty solids by 39 per cent. After obtaining sanction the applicant has been prosecuted and convicted as above.

3. On the question of fact both the courts have concurrently held the offence proved against the applicant, as per the prosecution case. The point argued by

the applicant's counsel is that the milk of which the sample was taken from the shop of the applicant was not meant for sale, but was meant for being used in the preparation of tea. As such, he argues that the Food Inspector was not authorised to take a sample of milk for the purposes of analysis. In his statement u/s 313 Code of Criminal Procedure, the accused has also taken the plea that he sells tea at the stall and not milk. A witness is also produced on behalf of the accused to support this case. Accepting the position that the applicant sells tea at his stall, the question which arises for determination is whether it is permissible for the accused-applicant to mix in tea milk which is already adulterated by the addition of water. Counsel for the applicant has placed reliance upon a decision of the Kerala High Court in *State of Kerala v. A.P. Abdul Qadeer* 1977 ACC 245. I have carefully perused this decision. This case proceeds on the basis that milk is primary food. As a matter of fact justice Poti has held therein that milk is primary food, the Food Inspector would be prohibited from taking such a milk under the proviso to Section 10, Sub-section (2) which is as follows:

Provided that no sample of any article of food being primary food shall be taken under this Sub-section, if it is not intended for sale as such food.

4. I have already held in *Deputy Lal Vs. State of U.P.*, that milk is not primary food. I do not agree with brother Poti in the contrary view expressed by him. As such in my opinion, the proviso to Section 10(2) is not attracted in the instant case. Section 7 of the Prevention of Food Adulteration Act has been amended a number of times. By Act No. 34 of 1976, an explanation has been added.

Section 7:

No person shall himself or by any person on his behalf manufacture for sale or sell, store, or distribute--

(i) any adulterated food ;

(ii) any misbranded food ;

(iii) any article of food, for the sale of which a licence is prescribed, except in accordance with the conditions of the licence ;

(iv) any article of food the sale of which is for the time being proscribed by the Food (Health) Authority in the interest of Public health ;

(v) any article of food in contravention of any other provision of this Act or of any rule made thereunder ;

(vi) any adulterant.

Explanation:-

For the purposes of this section, a person shall be deemed to store any adulterated food or misbranded food or any article of food referred to in Clause (iii) or Clause (iv) if he stores such food for the manufacture therefrom of any

article of food for sale.

5. A perusal of the explanation indicates that a person shall be deemed to store adulterated food, if such food is used for the manufacture, therefrom, of any other article of food for sale. It cannot be disputed that tea is an article of food. Learned Counsel has tried to argue that tea is not an article of food, but to my mind the definition of food as embodied in Section 2(5) of the P. F. Act includes within its purview an article used as food or prescribed for human consumption. Therefore, it will be clearly covered by the definition of food. I, therefore, disagree with the learned Counsel that the tea would not be an article of food. It appears to me that the explanation has been purposely inserted by Act No. 34 of 1976 for meeting such situations wherein an article is kept in a shop for the preparation of any other article of food. For instance Ghee might be kept at the shop of a seller of sweetmeat and may be used for the preparation of sweets, it will be no defence for a seller of sweet to say that because he was not selling Ghee at the shop, he could adulterate the Ghee and use it for the purpose of manufacturing another article. In a like manner, in view of the explanation which has been inserted, it is not open even to a tea stall holder who is selling tea at his stall to urge that the milk that he kept at his stall, even though mixed with water, was not meant for sale, and therefore, no offence has been committed by him by mixing such adulterated milk with tea. Rule 44(b) framed under the Prevention of Food Adulteration Act prohibits the addition of water to milk and the explanation to Section 7 of the P. F. Act prohibits the storage of such milk with added water being used for the manufacture of another article of food for sale. In my opinion, therefore, the applicant by adding water to the milk stored by him, which was subsequently added for the preparation of tea, an article of food for human consumption, has clearly committed an offence punishable under the Act. The analysis report of the Public Analyst discloses that the milk was very heavily adulterated, but since there is nothing on the record to indicate that the applicant is a previous convict, I am of the opinion that the cause of justice would be served by maintaining the conviction of the applicant for the offence u/s 7/15 of the P. F. Act, but by reducing the sentence of imprisonment from 1 year to 6 months" R. I. The sentence of fine of Rs. 1000/- is however, maintained.

6. With this modification in sentence, this revision is hereby dismissed. The applicant is on bail. He shall be taken into custody forthwith to serve out the unexpired portion of the sentence of imprisonment.