
(1963) 11 MAD CK 0024
In the Madras High Court
Case No : Criminal Appeal No. 457 of 1963

Public Prosecutor

APPELLANT

Vs

Kalloor Rayavaram Co-operative Milk Supply Society Ltd.

RESPONDENT

Date of Decision : 22-11-1963

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 13, 17, 17(1), 7

Citation : AIR 1964 Mad 301 : (1964) CriLJ 39 : (1964) ILR (Mad) 398 : (1964) 77 LW 62

Hon'ble Judges : Kailasam, J

Bench : Single Bench

Advocate : V.V. Radhakrishnan, for the Appellant; G. Gopalaswami and A.S.M. Sahul Hameed, for the Respondent

Judgement

Kailasam, J.—This is an appeal by the Public Prosecutor against the acquittal of the respondent (accused I) by the Additional First Class

Magistrate, Devakottai, of an offence u/s 7 read with Section 16(1) of the Prevention of Food Adulteration Act. The respondent is the Kallur-

Rayavaram Co-operative Milk Supply Society Ltd., Kallur-Rayavaram. Accused 2 was the secretary of the Society and accused 3 was the

carrier of milk for the society. Accused x and a were acquitted, and accused 3 was found guilty and sentenced to pay a fine of Rs. 25. The appeal

is preferred against the acquittal of accused I alone.

2. The food inspector of Karaikudi Municipality stopped accused 3 at about 10 a. m. on 14-9-1962, who was carrying a tin can, and enquired

him. He stated that he had cow's milk belonging to Kallur Rayavaram Milk Supply Co-operative Society and that he was taking it for delivery to

the Karaikudi Co-operative Society for sale. The milk can was locked. P. W. 1, the

food inspector, sent word to the Karaikudi Co-operative

Society for the key through the maistry and the key of the can was brought. The can was opened by accused 3. P. W. 1 purchased 3/4 litre of

milk from accused 3. The necessary receipts were prepared. P. W. 1 added formalin to the milk as preservative. One bottle was sent on the same

day with a letter to the Public Analyst, Guindy for analysis. The Analyst examined the milk on 5-10-1962 and gave a certificate Ex. P-4. The result

of the analysis was as follows:

Fat 4 ...7%

Solids-not-fat 8 6%

Freezing point

(Rortvet)

O-495.C Whereas genuine cow milk has a

freezing point of 0-535,0.

The certificate stated that the analyst was of opinion that the sample contained seven per cent of added water as calculated from the freezing point.

He also certified that no change had taken place in the constitution of the article that would interfere with the analysis.

3. The learned Magistrate accepted the case for the prosecution and found that accused 3 was having the milk for sale and was therefore guilty of

an offence under Sections 7 and 16(1) of the Prevention of Food Adulteration Act and sentenced him to pay a fine of Rs. 25. He found that

accused 2, who was the Secretary of the Society, was not liable, as the addition of water appeared to have taken place without his knowledge. He

also acquitted accused 1 the society.

4. The learned Public Prosecutor, submitted that u/s 17 of the Prevention of Food Adulteration Act, when an offence is committed under the Act

by a company, persons who are: responsible to the company for the conduct of the business of the company as well as the company shall be

deemed to be guilty of the offence, and therefore, contended that the acquittal of accused I was erroneous in law. Mr. G. Gopalaswami, the

learned counsel for the respondent, submitted that Section 17(1) of the Act should be construed to mean that only when persons responsible for

the conduct of the business of the company are found guilty, the company can be

punished, and not otherwise. He also submitted that on the evidence of the analyst it cannot be safely found that the milk was adulterated with added water.

5. Section 17(1) of the Act deems the person responsible to the company for the conduct of the business of the company as well as the company, to be guilty of the offence. When an offence under the Act is committed by the company, both the persons responsible to the company for the conduct of the business of the company as well as the company are deemed to be guilty of the offence. The section does not require that the person in charge of the company should be found guilty before the company is held liable. The contention of the learned counsel cannot be accepted.

6. The Government Deputy Analyst was examined as P. W. 4. He deposed that he received a sample of cow's milk from the food inspector of the Karaikudi Municipality on 19-9-1962 and his assistant analysed the milk on 24-9-1962. The sample was found to contain 4-7 per cent fat and 8-6 per cent solids-not-fat. The freezing point of the sample was found to be 0.494 C. whereas genuine cow's milk has a freezing point of 0.535 C.

On the basis of the freezing point, P. W. 4 reported that the sample contained 7 per cent of added water. He also stated that at the time of analysis no change had taken place in the constitution of the sample, because of the addition of formalin. According to P. W. 4 the freezing point test is the clinching proof of adulteration. In cross-examination P. W. 4 admitted that so far as the fat content was concerned, there was an excess of 1-2 per cent and so far as solids-not-fat was concerned there was an excess of one per cent than the required minimum. He also stated that the freezing point does not vary with the food given to the animal. On this evidence the learned counsel for the respondent submitted that it was not safe to hold that the milk, contained 7 per cent of water.

7. David Pearson in his book "The Chemical Analysis of Foods" 5th Edn. 1962, describes the freezing point test at page 336. It is stated that it is inadvisable to certify a milk as containing extraneous (or added) water merely on the basis of a low N. F. S. figure alone but confirmation should be sought from the freezing point. It has been definitely established that the circumstances, which affect the N. F. S. markedly, do not alter the

cosmetic pressure of the milk and hence the freezing point is approximately a constant. The freezing point of genuine milk usually falls within the range 0-510 to 0.560 C. Depressions below 0.530 have been reported, under exceptional circumstances. In spite of such possibilities, according to the learned author, a minimum depression of 0-530 is usually assumed for legal purposes. As the depression increases as the milk gets sour, the determination should be made when the milk is as fresh as possible. The presence of preservative also affects the freezing point and correction in the case of samples, where preservative are added, is also given.

8. C. R. A. Martin in his book ""Practical Food Inspection"" 5th Edn. 1959, mentions at page 438 that the freezing point test is gradually being accepted in Courts as a reliable test. According to him, the freezing point of pure milk varies from 0-51 to 0-56 with a mean of 0-53 C. The milk conforming to the legal standard exactly as it comes from the cow, always freezes between these points, any excess or addition of water causing the milk to freeze at a higher temperature and nearer to the freezing point of water i. e., zero. The author also mentions that one important precaution necessary with the freezing test is that the milk should be quite fresh. Dealing with the presumption that if the milk does not contain 3 per cent fat or 8.5 non-fatty solid cream is extracted or water is added the author states that none of the methods of chemical analysis is capable of differentiating between genuine pure milk and adulterated milk. In the Analyst, Volume 80 of the year 1955 at page 625 it is mentioned that a depression of 0-530 C may still generally be regarded as the minimum for such milk. Harvey and Harvey Mill in their book "Milk Production and Control"" 2nd Edn. 1946, at page 404 mention that the freezing point test is the generally accepted laboratory method for proving the addition of water to milk. The authors also state that it is impossible to differentiate between watered milk and milk which is naturally poor in fatty or non-fatty solids. After mentioning that the approximate percentage of water may be found by multiplying solids other than fat below 8-5 by 12 and by assuming that the milk containing solids other than fat was below 8-5 as containing added water, the authors state that though the method is sufficiently accurate for practical use, it is not sufficient for legal purposes, and for this reason the freezing point method of testing added water is

now employed in analytical laboratories. The freezing point of milk is generally accepted to be 0.550 C and the addition of water brings the

freezing point closet to zero. The authors at page 407 state that for the test to be entirely successful, the milk must be fresh.

9. From the text books above mentioned it can be taken that the freezing point test is accepted by Courts as the fair and safe method of

determining the added water in milk and that the freezing point of milk varies from 0-510 to 560 with a mean of 0-530. It has also to be noted that

it is difficult to distinguish a sample of milk with added water and a sample of pure quality milk by determining the specific gravity or the percentage

of solids alone. The test also should be conducted, when the milk is fresh and before it gets sour. The addition of preservative as formalin also

affects the freezing point. In the present case the freezing point was found to be 0-495 C, and according to the analyst the sample contained 7 per

cent of added water. The sample contained more than the minimum amount of fat and solids not-fat. Mr. G. Gopalaswami, the learned counsel for

the respondent, submitted that though the milk was taken by the Food Inspection 14-9-1962, it was analysed on 24-9-1962 and it cannot be said

that the milk was fresh. P. W. 4 stated that at the time of analysis no changes had taken place in the constitution of the sample, because of addition

of formalin. It was not suggested to the expert that, even if formalin had been added, the milk would not have been fresh for the purpose of freezing

point test. It was also not suggested that the addition of formalin would have reduced the freezing point to 0-495. C. On record there is no basis

for holding that. by the addition of formalin and by the milk being examined ten days after the sample was taken, the freezing point would have

fallen to 0-495 C even if the sample was of genuine milk. According to the authorities, the freezing point of genuine milk seldom goes below 0.53.

Even in very rare cases it does not fall below 0-51. The freezing point may be taken as 0-53 and some allowance may be made for addition of

formalin etc. Still if the freezing point is found to be lower it can be safely presumed that the milk is adulterated with added water unless the defence

rebutts the presumption.

10. Mr. G. Gopalaswami referred to a decision in City Corporation Trivandrum v. Antony, 1963 Mad LJ Cri. 191 : (1963 (1) Cri LJ 124, where

it was held that a mere certificate of an analyst was not enough to establish that the milk contained added water. In that case the certificate for the analyst was that the freezing point according to Hortvet's method was 0-49 C. The learned Judge observed that the opinion of an expert by itself might be relevant but would carry little weight with a Court unless it was supported by a clear statement of what he noticed and on what he based his opinion and that the expert should put before the Court all the materials which induced him to come to his conclusion So that the Court, although not an expert, might form its own judgment on those materials. In the case before the Kerala High Court the certificate alone was filed and the analyst was not examined. In the present case the analyst was examined and he gave his reasons for coming to the conclusion that the milk contained added water. The analyst stated that the freezing point of genuine cow's milk is 0-535 C. and as the freezing point of the sample was 0-495 he came to the conclusion that the sample contained. 7 per cent added water. He also stated that no change had taken place in the constitution of the sample, because of the addition of the formalin. The reasons for his conclusion were placed before the Court in this case and in the circumstances the decision" cited above is not applicable.

11. The decision in Dattappa v. Buldana Municipality, AIR 1951 Nag 191 was then referred to. The learned Judge referring in extenso to passages in ""Milk Production and Control"" by Harvey and Hill found that the milk was analysed" by the analyst a week after the sample was taken, and in the absence of proof of the manner in which the samples were sent and the condition in which the milk was when the samples were sent the value of the certificate was detracted. In that case the analyst's report showed that the milk contained 3 per cent fat and G-74 solid other than fat. It was not the case of the prosecution that the milk contained added water. Moreover, in that case there was no evidence regarding the condition of the milk at the time when the sample was analysed.

12. Learned counsel next referred to a Full Bench decision reported in Prem Das Vs. State, . From this decision it does not appear that the freezing point test was relied on by the prosecution in the case. Therefore this decision will not be of any help in deciding this case.

13. In the result I find that the prosecution has satisfactorily established that the

sample contained 7 per cent of added water. The respondent,
Kallur Rayavaram Co-operative Milk Supply Society Ltd., will be guilty u/s 17(1)
of the Prevention of Food Adulteration Act. I set aside the
order of acquittal passed by the lower Court and convict the respondent u/s 7
read with Section 16(1) of the Prevention of Food Adulteration Act
and sentence it to pay a fine of Rs. 50 (fifty only). Time for payment 4 weeks
from this date.