

(1985) 09 GUJ CK 0008
In the Gujarat High Court

Ranchhodbhai Keshavlal Kadia

APPELLANT

Vs

Damodar Veljibhai Mistry and Another

RESPONDENT

Date of Decision : 11-09-1985

Acts Referred:

Evidence Act, 1872 — Section 114

Prevention of Food Adulteration Act, 1954 — Section 16(1), 16(1), 16(1)(a)(i), 16(1)(a)(i), 7(1)

Citation : (1986) 2 GLR 867

Hon'ble Judges : A.P. Ravani, J

Bench : Single Bench

Judgement

A.P. Ravani, J.—Despite innumerable built in checks against the conviction and sentence of offenders of food adulteration and despite meticulously woven safeguards providing for the easy escape on technical grounds, if an offender is convicted for an offence of food adulteration and if he is ordered to undergo sentence of RIGOROUS IMPRISONMENT instead of simple imprisonment, heavens may fall and probably the social equilibrium may be disturbed. This appears to be the underlying approach of the lower courts when they have preferred to impose sentence of simple imprisonment on the accused convicted of an offence of food adulteration. Such soft attitude is not permissible in view of the clear cut legislative mandate and the pronouncements by the Supreme Court.

2. The petitioner of Criminal Revision Application No. 670 of 1978 is the original accused of Criminal Case No. 36 of 1977 of Metropolitan Magistrate (6th Court), Ahmedabad. He was charged for the offence u/s 16(1)(a)(i) read with Section 7(1) of the Prevention of Food Adulteration Act and was convicted for the aforesaid offence and ordered to undergo simple imprisonment for a period of six months and to pay a fine of Rs. 1,000/- in default of payment of fine to suffer further simple imprisonment for the period of four months. It was alleged that he sold the cow milk to the Food Inspector which was not as per the prescribed standard and therefore it was adulterated. It was found that the sample contained 5% milk fat and 7.6% milk solid non-fat and that there was addition of

water to the extent of 10%. This was confirmed by detection of nitrates.

3. The complaint was filed on the ground of deficiency in the required percentage of milk solid non-fat which was less by 0.9% and on the ground of addition of water to the extent of 10%. After examination of the witnesses and after hearing the parties the learned Magistrate passed an order of conviction and sentence as stated above as per his order dated September 13, 1977. The petitioner-original accused preferred Criminal Appeal No. 255 of 1977 in the Court of City Sessions Judge, Ahmedabad. The learned City Sessions Judge who heard the appeal confirmed the finding of conviction given by the learned Magistrate but in his opinion the proviso to Section 16(1) of the Act was attracted because he considered that the milk was primary food and, therefore, for adequate and sufficient reasons, the sentence less than minimum of six months could be imposed and he reduced the sentence of six months to the simple imprisonment of three months and fine of Rs. 1,000/- to Rs. 1,500/- and in default of payment of fine it was ordered that the accused should undergo further S.I. for fifteen days. The learned City Sessions Judge delivered his judgment and order on October 23, 1978. Criminal Revision Application No. 670 of 1978 has been filed by the petitioner-accused while Criminal Revision Application No. 37 of 1979 has been filed by the original complainant, the Food Inspector challenging the order of reduction of sentence passed by the learned City Sessions Judge and prayed for enhancement of sentence.

4. On the earlier occasion when the matter came up for hearing the Counsel for the petitioner accused raised a contention that the contents of the report of the Public Analyst should also be taken into consideration and the prosecution explain the discrepancy between the two reports. It was submitted that if the discrepancies were not explained the prosecution must fail. Under the relevant provisions of the Act, a sample of cow milk was also sent to the Director, Central Food Laboratory. According to his report also the sample of cow milk was adulterated. But there was variance between the report of the Public Analyst and that of the Director Central Food Laboratory. Hence the contention as stated hereinafter. The question was ultimately referred to the Full Bench of this Court. The question referred to was:

Whether, after the report of the public analyst gets superseded by the certificate of the Director, Central Food Laboratory who examines the part of the sample of food article collected under the relevant provisions of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as "the Act"), it is open to the accused to plead that if there is any variance between the aforesaid two reports, the prosecution must explain the said variance or otherwise fail?.

The Full Bench of this Court in the case of Pramodbhai Ambalal Patel v. The State of Gujarat and Anr. reported in 1984 G.L.H. page 413 1984 (2) G.L.R. 1380 has held as follows:

Once there is supersession of the report of the public analyst by a superior

certificate of the Director, the superseded report gets totally effaced and is excluded from evidence whole-hog. Under these circumstances, it would not be open to the court to try to salvage the situation by making exercise with a view to finding out as to whether any materials from the report of the public analyst are retrievable in so far as they are not inconsistent with what is stated in the superior certificate of the Director. In our view, once the public analyst's report is superseded, it goes by the board. Nothing contained in the said report thereafter can be looked into by the court.

Thereafter the matter has been sent back to the single Judge for determination in accordance with law.

5. The learned Counsel appearing for the petitioner has submitted that in the instant case the provisions of Rule 16(c) of the Prevention of Food Adulteration Rules, 1955, have not been complied with. The provisions of Rule 16(c) read as follows:

16. Manner of packing and sealing the samples.- All samples of food sent for analysis shall be packed, fastened and sealed in the following manner:

xx xx xx xx xx (c). A paper slip of the size that goes round completely from the bottom to top of the container, bearing the signature and code and serial number of the Local (Health) Authority, shall be pasted on the wrapper, the signature or the thumb impression of the person from whom the sample has been taken being affixed in such a manner that the paper slip and the wrapper both carry a part of the signature or thumb impression. Provided that in case, the person from whom the sample has been taken refuses to affix his signature or thumb impression, the signature or thumb impression of the witness shall be taken in the same manner.

xx xx xx xx xx

According to the Counsel for the petitioner, the paper-slip pasted on the bottle of the sample did not contain serial number of the Local (Health) Authority and, therefore, there was no "compliance with the provisions of this Rule and hence the prosecution must fail. In support of this contention the learned Counsel for the petitioner has relied upon the unreported decision of this Court in the case of Criminal Appeal No. 862 of 1978 decided on February 7, 1980 (Coram: V.V. Bedarkar, J.). The aforesaid decision has been rendered by Bedarkar, J. placing reliance on the decision in the case of Jethalal Lallubhai v. Baroda Muni. Corporation and Anr. reported in 19 G.L.R. 448. The Counsel for a petitioner has also relied upon the Division Bench Judgment of this Court in the case of The State of Gujarat v. Keshavlal Kalidas Patel and Shri D.V. Mistry reported in 1980 (2) Prevention of Food Adulteration Cases p. 232.

6. There is no dispute with regard to the fact that the aforesaid three decisions have been rendered in connection with the unamended: provisions of the Rules. The present provision of the Rules which applies to this case have not been

discussed in the aforesaid three decisions. Therefore, it is not necessary to go into details of the aforesaid three decisions.

7. Rule 16(c) as it stands, today, came up for interpretation before the Division Bench of this Court in the case of M.B. Raisaldar v. Deviram Chhitamal and Ors. reported in 25(1) G.L.R. 228. In that case it was alleged that the Food Inspector himself had written the code and serial number on the paper-slip and this detail was not written by the Local (Health) Authority himself. Hence it was contended that there was non-compliance of Rule 16(c) of the Rules. While dealing with this contention the Division Bench after referring to various decisions of the Supreme Court has held that it was not necessary that the code and serial numbers on the slip be written by the Local (Health) Authority himself and non-compliance was not fatal. The Division Bench has further observed as follows:

As no prejudice has been pointed out by respondent No. 1 by the alleged lapse on the part of the local authority in not mentioning code number and serial number, we do not think that the learned Appellate Judge was right in setting aside the conviction and sentence imposed by the learned Judicial Magistrate First Class.

8. In view of the aforesaid decision of the Division Bench which dealt with the provisions of Rule 16(c) of the Rules what is to be seen is, was there any prejudice caused to the petitioner-accused on account of non-mentioning of serial number on the paper-slip affixed on the sample bottle?

9. In the instant case, the Food Inspector in his deposition has, in detail, stated that after giving intimation to the accused he purchased the milk. The accused signed in taken of the receipt of the intimation. He has further stated that he had divided sample of milk purchased by him in three equal parts and filled in the bottle after adding the requisite quantity of formally. Thereafter it was pasted with two paper-slips and the sample bottle was properly sealed. At the end of the slip, the panch and the accused had put their signatures. He has further stated that on the labels of all the three bottles he wrote the necessary details and the accused and the panch put their signatures below the same. Thereafter he has also stated that the slip bearing signature of the local authority was pasted and wrapped with thread. In cross-examination he has stated that the paper-slip bore signature of the local authority and the code number was written by him. He has also stated that serial number of the Commissioner (i.e. local authority) was not there on the slip. From this state of evidence it cannot be said that there was no serial number whatsoever on the paper slip. The Food Inspector has only stated that there was no serial number of Commissioner on the slip. On the contrary in view of the provisions of Section 114 of the Indian Evidence Act which raises the presumption that all official acts are presumed to have been performed regularly, a presumption has to be raised that a serial number must have been written on the paper slip. Whether the serial number was that of the Commissioner or it was written by the Food Inspector himself, pales into insignificance. In the cross-examination of the Food Inspector it has not even been suggested that there was

total absence of serial number. In view of this state of evidence, necessary presumption has got to be raised that there was a serial number. That serial number may not be that of the Commissioner and it may be that of the Food Inspector. But this is not fatal to the prosecution. Moreover it is an admitted and proved position that the paper slip bore the signature of the local authority and it also bore the code number of the local authority. It may also be noted that the evidence of the Food Inspector that on the paper slip the signatures of the panch and the accused were taken, has not been controverted at all. This part of the evidence of the Food Inspector has remained unchallenged. Therefore, assuming that no serial number whatsoever was written by the Food Inspector on the paper slip containing the signature and the code number of the local authority, the name would not be fatal to the prosecution case.

10. The subject underlying the provisions of Rule 16 is to see that there is no tampering with the sample and the interests of the accused are not adversely affected during the course of transit and till it is received by the Public Analyst and/or the Director, Central Food Laboratory. In the instant case it can never be said by any stretch of reasoning that the interests of the accused have been adversely affected on account of alleged non-mention of serial number on the paper slip pasted by the Food Inspector, because the slips affixed on the sample bottles by the Food Inspector, also contained the signatures of the panch and the accused himself. This part of evidence of the Food Inspector has remained unchallenged. In view of this state of evidence, the learned City Sessions Judge has rightly held that no prejudice has been caused to the accused. Hence the contention raised by the Counsel for the petitioner on the basis of the provisions of Rule 16(c) has got to be rejected.

11. The Counsel for the petitioner submitted that the provisions of Section 10(7) of the Prevention of Food Adulteration Act have not been complied with and, therefore, the prosecution must fail. Section 10(7) of the Act provides that whenever Food Inspector exercises his powers conferred upon him under the provisions of Section 10 of the Act, he shall call one or more persons to be present at the time when such action is taken and it also provides that the Food Inspector shall also take his or their signatures. In the instant case the Food Inspector has clearly deposed that the panchas were kept present when he purchased the sample milk from the accused. He has also stated that necessary intimation was given to the accused and the signature of the accused was obtained on the duplicate of the intimation slip. He has also stated that in presence of the panchas all formalities of dividing sample milk into three equal parts and sealing the same in bottles had been carried out. As per his evidence, at necessary places the panch and the accused had put their signatures. This part of evidence of the Food Inspector has not been controverted at all in the cross-examination of the Food Inspector. Therefore, it is very clear that there was compliance with the provisions of Section 10(7) of the Act. Hence the contention that there was no compliance with the provisions of Section 10(7) of the Act and hence the prosecution must fail, has no merits and the contention

has got to be rejected.

12. The Counsel for the petitioner submitted that the panch has not been examined by the prosecution and, therefore, there was noncompliance with the provisions of Section 10(7) of the Act. This contention cannot be accepted. Section 10(7) of the Act requires the Food Inspector to keep a person or persons present when he exercises his powers under the relevant provisions of Section 10 of the Act. This section does not enjoin a duty upon the prosecution to examine panchas as witnesses. In the instant case it was not at all necessary to examine the panchas because the evidence of Food Inspector, has not been challenged at all in the cross-examination by the accused. Therefore, this contention also fails.

13. The Counsel for the petitioner submitted that the authority granting sanction under the provisions of Section 20 of the Act, had no power to grant sanction and, therefore, the prosecution launched against the accused was not in conformity with the provisions of Section 20 of the Act and hence the prosecution must fail. Section 20 of the Act provides that no prosecution for an offence under the Act, not being an offence u/s 14 or Section 14-A of the Act, shall be instituted except by, or with the written consent of, the Central Government or the State Government or a person authorised in this behalf, by general or special order, by the Central Government or the State Government. In the instant case the Food Inspector has stated in his deposition that after drafting the complaint he had placed the same before the local authority for his sanction and the local authority had put an endorsement granting sanction. He identified the handwriting of Shri Ankleshwaria who was Municipal Commissioner at the relevant time. He has further stated that for the local area of City of Ahmedabad Municipal Commissioner was the local authority and sanctioning authority and he has been appointed as such as per Government Notification dated May 13, 1976 which has been published in Government Gazette. This part of evidence of the Food Inspector has not been challenged at all. Moreover this question has not been raised either before the Trial Court or before the learned City Sessions Judge. The question is sought to be raised for the first time in Revision before this Court. This question being a pure question of law, has been permitted to be raised. It is contended by the Counsel for the petitioner that in Notification, Municipal Commissioner has been appointed as the sanctioning authority, while in the complaint, below the signature of Shri Ankleshwaria, it is written "local authority". I have examined the original complaint and in the complaint below the signature of Shri Ankleshwaria it is mentioned as follows:

Local authority. Municipal Commissioner, Municipal Corporation, Ahmedabad.

The words "Medical Officer of Health" have been deleted. Therefore, the contention that the designation "Municipal Commissioner" has not been mentioned below the signature of Shri Ankleshwaria, has also no merits. Even assuming for a moment that the designation "Municipal Commissioner" is not written below the signature, then even the sanction given by the authority who is otherwise empowered to give sanction, would not become defective or invalid on

the ground that the description of his designation, has not been written below his signature. Unless it is factually proved that at the relevant time he was not holding the post of Municipal Commissioner, mere absence of description of the designation below his signature would not make sanction defective and invalid. Hence this contention also has no merits, and it has got to be rejected.

14. The Counsel for the petitioner submits that Revision Application filed by the Food Inspector for enhancement of sentence is not maintainable. This contention is based on the provisions of Section 377 of the Criminal Procedure Code. Section 377 of the Code enables the State Government to file appeal to the High Court against the sentence on the ground of its inadequacy. It is not the case of the petitioner Food Inspector that he has preferred appeal under the provisions of Section 377 of the Code. Section 377 of the Code does not say that revision by a private party for enhancement of sentence under the provisions of Section 401 of the Code, is barred. As provided u/s 404 of the Code, the High Court can call for the record of the case by itself or which otherwise comes to its knowledge. If the High Court can exercise its power suo motu it is not understood as to why the High Court cannot exercise powers when the matter is brought to its knowledge by the Food Inspector who is the original complainant in the case. On this point a reference may be made to a decision of the Supreme Court in the case of *Nadir Khan Vs. The State (Delhi Administration)*, . In that case the petitioner who was found with 7 kgs. of contraband opium was convicted and sentenced only to two months' imprisonment. While dismissing his revision application, the High Court felt the sentence to be grossly inadequate and invoking its revisional powers suo motu enhanced the sentence to six months. Therefore, the petitioner had preferred appeal before the Supreme Court and the Supreme Court inter alia held that the provisions of Section 377 of the Code which conferred right in the State Government to prefer an appeal against inadequacy of sentence, did not exclude the revisional jurisdiction of the High Court to act suo motu under the provisions of Section 401 of the Code. The Supreme Court further observed:

The High Court is not required to act in revision merely through a conduct application at the instance of an aggrieved party. The High Court, as an effective instrument for administration of criminal justice, keeps a constant vigil and wherever it finds that justice has suffered, it takes upon itself as its bounden duty to suo motu act where there is a flagrant abuse of the law. The character of the offence and the nature of disposal of a particular case by the subordinate court, prompt remedial action on the part of the High Court for the ultimate social good of the community, even though the State may be slow or silent in preferring an appeal provided for under the new Code. The High Court in a given case of public importance, e.g. in now too familiar cases of food adulteration, reacts to public concern over the problem and may act suo motu on perusal of newspaper reports disclosing imposition of grossly inadequate sentence upon such offenders.

15. In the above view of the settled legal position there is no bar to entertain

revision application for enhancement of sentence preferred by the Food Inspector, the original complainant. Hence what is required to be seen is "Is there proper compliance with the provisions of law or not?"

16. The learned City Sessions Judge reduced sentence by invoking proviso to Section 16 of the Act. In his opinion the milk was primary food and, therefore, proviso was applicable. However, the learned City Sessions Judge was wrong in holding that the milk was primary food. "Primary food" has been defined in Section 2(xii-a) which reads as follows:

(xii-a) "Primary food" means any article of food, being a produce of agriculture or horticulture in its natural form.

As laid down by a Division Bench of this High Court in the case of *Natvarlal C. Shah, Food Inspector, Ahmedabad v. Ex. Prabhatbhai Punjabhai and Anr.* reported in 22 G.L.R. 76. It is not shown by the accused that the milk sold by him was of the type which would fall within the ambit of "primary food" as held by the Division Bench of this Court. On this point there is no dispute and hence it is not necessary to discuss this point at length. Thus it is clear that the learned City Sessions Judge has committed error in invoking the proviso to Section 16(1) of the Act. In this view of the matter the order passed by the learned City Sessions Judge directing to reduce the sentence is not in accordance with law and that part of the order has got to be quashed and set aside, and the order passed by the trial Court will have to be resorted with the modification regarding the nature of imprisonment.

17. It is an admitted position that the offence falls within the provisions of Section 16(1) (a) (i) of the Act and the same is not covered by proviso to Section 16(1) of the Act. On this point there is no dispute. Therefore, it is clear that the accused has committed an offence which is punishable with imprisonment for a term which shall not be less than six months, but which may extend to three years, and with fine which shall not be less than one thousand rupees. The trial Court has rightly imposed the minimum sentence of imprisonment and that of fine. But it is not understood on what principles the lower courts thought it fit to impose sentence of simple imprisonment and not that of rigorous imprisonment. The object of the Act is to eliminate the danger to human life and health from the sale of unwholesome articles of food, (see *Municipal Corporation of Delhi v. Shiv Shanker* reported in AIR 1971 815). It may be noted that the Act is meant for the protection of the society and the Parliament has by repeated amendments emphasized the statutory determination to stamp out food adulteration offences by severe sentences. It appears that being dissatisfied with the indulgent exercise of judicial discretion, the legislature has deprived the court of its discretionary power in the matter of imposition of sentence. It is observed by Supreme Court in the case of *Pyareli K. Tejani v. Mahadeo Ramchandra Dange and Ors.* reported in AIR 1974 Sc278. It is unfortunate that both the courts did not take into consideration the legislative mandate and took lenient view towards the accused and preferred to award sentence of simple imprisonment. When

accused is awarded sentence of simple imprisonment he becomes a "State guest" in the prison. In modern days the prisoners are given almost all facilities in prisons which are available to an ordinary middle class family outside the prison. It may also be noted that when an accused is ordered to undergo sentence of rigorous imprisonment he is required to work in jail for limited number of hours and he does not work without remuneration being paid to him of course the remuneration which may be paid to the prisoners will be as per the prescribed standards and it may not be according to the market rate of wages. But all the same, for the work done by him he gets some remuneration. When sentence of simple imprisonment is imposed no work whatsoever can be taken from the prisoner by prison-authorities. The prisoner is required to be provided shelter and other facilities also at the cost of the society. Thus, one who plays with the health of the society and becomes a health hazard by playing with the lives of poor and unwary people, when sent to jail, gets all facilities available to a middle class family and he is confined to "forced rest" rather than deterrent punishment. He is deprived of his liberty for a very short period but he lives in comforts, forgetting all his worries of outside life. He enjoys rest and also enjoys other facilities at the expenses of the society. For what? Because he plays with the health of people? Is this the object of the Act? Surely not. The Act has been enacted with a view to see that this wide-spread evil of adulteration in articles of food is eradicated. Such evil cannot be eradicated by giving soft treatment to the persons who play with the lives of people for satisfying their greed and lust for money. In this view of the matter it is clear that the lower court failed to take into consideration the legislative mandate and also failed to perceive the spirit and object underlying the Act. There is no reason why an accused who is found guilty of an offence of adulteration of food should be awarded sentence of simple imprisonment instead of rigorous imprisonment. To do so, would amount to punishing the society rather than the offender. The argument that the accused is a petty trader and, therefore, deserves mercy, has also no merits. It must be realised that from petty traders, only the poor, ignorant and unwary people, purchase their articles of food. Well to-do people with sufficient means are never required to purchase their milk and other articles of food from hawkers and petty traders. They get their requirements supplied in packed condition i.e. in pouches or bottles or in tinned and sealed packing from dairies and departmental stores. When a petty trader is shown mercy, innumerable poor, ignorant and unwary people are penalised.

18. In the result Criminal Revision Application No. 670 of 1978 filed by the petitioner-accused is rejected. Rule discharged. Criminal Revision Application No. 37 of 1979 filed by the Food Inspector- original complainant is partly allowed. The judgment and order of conviction passed by the lower courts for the offence punishable u/s 16(1)(a)(i) read with Section 7(1) of the Prevention of Food Adulteration Act, is confirmed. The petitioner accused is ordered to undergo R.I. for six months and to pay a fine of Rs. 1000/- in default to undergo rigorous imprisonment for a further period of two months.

Rule made absolute accordingly.

At this stage the Counsel for the petitioner-accused requests that the petitioner-accused be given time to surrender. Time to surrender is granted upto October 16, 1985.