
(1985) 02 P&H CK 0009
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 110 of 1985

Sham Lal

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 06-02-1985

Acts Referred:

Citation : (1985) 2 CurLJ 254

Hon'ble Judges : Surinder Singh, J

Advocate : Vinod Kataria, Manohar Lal, Advocates for appearing Parties

Judgement

Surinder Singh, J. (Oral)

1. This Revision Petition has been filed by Sham Lal Prisoner through Jail against his conviction under sections 16 (1) (a) (i) and 16 (1) (a) (ii) of the Prevention of Food Adulteration Act, 1954 (for short, the Act). On the former count, the petitioner was sentenced to one year's Rigours Imprisonment and fine of Rs. 1,000/, in default to undergo further Rigorous Imprisonment for three months and on the latter count the petitioner was ordered to pay a fine of Rs. 250/, in default to undergo Rigorous Imprisonment for one month. The appeal filed by the convict was dismissed by the Sessions Judge, Kapurthala. The present Revision Petition seeks to impugn the verdict of the two Courts below.

2. The allegation against the petitioner is that on August 31, 1982 the Food Inspector Dr. S.S. Gill (P.W.1) intercepted the petitioner on KapurthalaSultanpur Road near Civil Hospital, Kapurthala, while the latter was carrying 15 Kgs. of cow's milk for sale, stored in two drums. The petitioner did not possess any valid licence for the sale of the milk. The Food Inspector obtained a sample of the milk and after observing the necessary formalities for preservation of the milk, put the same in three bottles which were labelled and sealed. One of the bottles on being sent to the Public Analyst Punjab, came back with the report that the milk was adulterated in that, the milk fat was found to be 5.4.% while milk solids not fat were found to be 7.5%. The deficiency was in respect of the latter item which was to the extent of 12%. Evidently, milk fats were more than the prescribed

standard of 4%. The petitioner was prosecuted and tried with the result already noticed.

3. At the time of the hearing this Revision Petition, the learned counsel Amicus Curiae for the petitioner made two submissions. The first contention is that the petitioner could not under the law be convicted for both offences, i.e. under section 16 (1) (a) (i) and 16 (1) (a) (ii). The matter is not res integra. In a decision of this Court reported as Jagat Ram v. The State of Haryana, 1981 CLR 684, it was held that even where a person is prosecuted for selling adulterated milk without the licence, he cannot be prosecuted for both the above mentioned violations, but could be tried only for a charge under section 16 (1) (a) (i) of the Act, because the moment he is charged for the said offence, one of the necessary ingredients of the other offence is eliminated. The authority is based upon an earlier decision of this Court and I am in respectful agreement with the same. The learned counsel for the State has nothing to say on this point. Accordingly, the conviction of the petitioner under section 16 (1) (a) (ii) of the Act is set aside and so also the sentence imposed upon him for that offence.

4. As regards the charge of adulteration, it is indeed true that the deficiency was found only in respect of the solids not fat, while the fat contents of the milk were more than the prescribed standard. However, this would not mean that the food conformed to the prescribed standard. The learned counsel Amicus Curiae has submitted that the petitioner is a first offender and the benefit of probation may be afforded to him. However, under section 20AA of the Act is a complete bar against the application of the probation of Offender Act, 1958, in cases of the present type, except when a person is under the age of 18 years which the petitioner is not. The counsel has then submitted that some leniency may be shown in the matter of sentence as the violation was more or less technical. The minimum sentence prescribed for an offence under section 16 (1) (a) (i) of the Act is six months Rigorous Imprisonment and a fine of Rs. 1,000/. The sentence of the petitioner is consequently reduced to six months Rigorous Imprisonment. The sentence of fine of Rs. 1000/ is however, maintained. In default of payment of fine, the petitioner shall undergo further Rigorous Imprisonment for three months, as ordered by the Courts below.

5. The Revision Petition succeeds partly to the extent, indicated above.