
(1977) 09 BOM CK 0020
In the Bombay High Court

Sheshrao Topaji Shep

APPELLANT

Vs

The State of Maharashtra and Another

RESPONDENT

Date of Decision : 09-09-1977

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16(1)(b)

Citation : (1978) CriLJ 217

Hon'ble Judges : Naik, J

Bench : Single Bench

Judgement

Naik, J.—The revision petitioner challenges the order of the learned Additional Sessions Judge, Bhir, dated 17th Jan. 1977 confirming the order of the learned Judicial Magistrate, First Class, Ambajogai, dated 30th July 1976 by which the learned Magistrate convicted the petitioner-accused for an offence u/s 16(1)(b) of the Prevention of Food Adulteration Act and sentenced him to suffer RI. for six months and to pay a fine of Rs. 300/-.

2. The allegations on which the prosecution was founded are briefly these: On 16th July 1974 at Ambajogai at about 6.15 a. m., Patankar (P. W. 1) the Food Inspector accompanied by Joshi (P. W. 2) another Food Inspector and two panchas including Sadashiv (P. W. 3) were proceeding from Albela Stores near the Fashion Centre. At that time they noticed the accused proceeding on a bicycle with a brass pitcher. Patankar stopped the accused and he disclosed his identity to that accused. He asked the accused what the pitcher contained. The accused stated that it was buffalo's milk. He further asked the accused as to why he was taking the milk. The accused stated that he was taking the milk for sale. Mr. Patankar further asked as to who the owner of the milk was and the accused stated that he was the owner of the milk. Mr. patankar thereafter offered to take the sample of the milk by disclosing his identity. The accused removed the pitcher which was tied to the handle of the bicycle and kept it on the road in front of the steps of the Fashion Centre on one of which Mr. Patankar was actually sitting. Mr. Patankar was busy writing a notice u/s 11 and his colleague

Mr. Joshi was taking out the bottles for taking samples. The accused abruptly picked up the pitcher and threw away the milk thus preventing the Food Inspector from taking the sample. Immediately a panchanama (Ex. 18) was prepared. A policeman also came there. The accused was then taken to the police station. On these facts the accused was prosecuted u/s 16(1)(b) of the Prevention of Food Adulteration Act.

3. The accused pleaded not guilty to the charge and claimed to be tried. His defence was that when he was proceeding from the vegetable market towards Ambajogai temple he noticed that there was a puncture of one of the tyres of his bicycle. That is why he had held the bicycle in his right hand and the brass pitcher containing milk in his left hand. At that time, he stated that Mr. Patankar suddenly held his hand as a result of which the accused got a jerk resulting into the pitcher falling from his hand and the milk being spilt on the road. That time he stated, he remarked to the Food Inspector as to why he had behaved in that foolish manner and asked him for the price of the milk. That is why he stated, he was falsely involved.

4. For proof of its case against the accused the prosecution examined (P. W. 1) Patankar, the complainant Food Inspector (P. W. 2) Joshi, his colleague and another Food Inspector. The prosecution also relied on the notices Exs. 16 and 17 u/s 11 which were being prepared by Patankar at the time of the incident and the panchanama (Ex. 18). The, prosecution also examined (P. W. 3) Sadashiv, the panch who while admitting that the contents of the panchanama are correct and that he had seen the milk lying on the road, denied the rest of the case for the prosecution.

5. Both the Courts have believed the prosecution evidence and rejected the version of the defence. That is why the conviction of the accused which was recorded by the learned Magistrate has been confirmed by the learned Sessions Judge.

6. It is the correctness of that order of conviction and sentence which is challenged by the accused.

7. Mr. Deshpande, learned advocate for the accused has assailed the judgment of conviction. Firstly, he submits that if as panch Sadashiv is maintaining that the incident had not occurred in his presence, the accused could not be convicted inasmuch as there would be no compliance by the Food Inspector of the provisions of Section 10 (7). His second submission is that even on the basis of probabilities while the defence version appears to be correct, the prosecution version is not probable inasmuch as he submits that if the accused had already kept the pitcher on the road in the presence of the Food Inspector it is highly unlikely that he would again pick it up and throw away the contents on the road. Lastly he submits that in any event as it is not the case of the prosecution that the accused gave threats to the Food Inspector or assaulted him or physically obstructed him in any way he could not be said to have prevented the Food

Inspector from taking a sample. He therefore, submits that the conviction cannot be sustained.

8. Mr. Kurdukar, learned Public Prosecutor on the other hand submits that there is no reason to interfere with the appreciation of the evidence by the two Courts below. He also submits that it is the prosecution version which is more probable than the defence version inasmuch as unless the event had occurred in the manner alleged by the prosecution there was no earthly reason for the Food Inspector to put up a false case of the instant type. He also submits that on the facts of this case the accused had clearly prevented the Food Inspector from taking sample under the Act.

9. After being taken through the record, I find no force in the submission of Mr. Deshpande. Mr. Deshpande has drawn my attention to the provisions of Section 10(7) of the Prevention of Food Adulteration Act. Section 10(1)(a) in so far as it is material for our purposes provides that a Food Inspector shall have power to take sample of any article of food from any person who is in the course of conveying, delivering or preparing to deliver such article to a purchaser or consignee.

10. Section 10(7) in so far as it is material for our purposes provides that where the Food Inspector takes any action under Clause (a) of Sub-section (1), he shall, call one or more persons to be present at the time when, such action is taken and take his or their signatures.

11. Mr. Deshpande has also drawn my attention to the provisions of & 16(1)(b) which reads as under: "If any person prevents a Food Inspector from taking a sample as authorised by this Act....

12. Reading Sections 10(1)(a), 10(7) of the Act, Mr. Deshpande submits that unless the Food Inspector had called the panchas he could not be said to have been authorised to take the sample. He, therefore, argues that when Sadashiv says that he was not present at the initial stage and that he had not seen the accused discarding the milk and he only came subsequently and saw that the milk was lying on the road, that would mean that he was not at all present when the Food Inspector was exercising his power u/s 10(1), which; he has to do while complying with the requirements of Sections 10(7) of the Act.

13. I am not impressed with this submission. This submission is based on the assumption that what Sadashiv the panch says is the whole truth and is also based on the assumption that the evidence of the two Food Inspectors does not exist. I have already set out the substance of the evidence of the two Food Inspectors Patankar and Joshi which is identical. According to both of them when they were proceeding together they picked up two panchas including Sadashiv at the market and it is when they all together were proceeding that the accused was seen going riding a bicycle to the handle & which a pitcher containing milk was tied and that he being halted by Patankar and having kept the pitcher on the road in front of the steps of the Fashion Centre on the steps of which Patankar

was busy writing the notice, the accused threw away the milk from the pitcher on the road. Now this story is corroborated by the recitals in the panchanama. Sadashiv has admitted more than once that the contents of the panchanama are correct. That would show how he has been won over by the defence at the stage of the trial and that he is making an idle and unsuccessful attempt to support the case of the defence indirectly or at any rate to damage the case for the prosecution. Having regard to his unequivocal admission that the contents of the panchanama are correct and since the contents of the panchanama corroborate the testimony of the Food Inspectors there is no conceivable reason to disbelieve their testimony. It is not suggested that they had any possible reason to falsely involve the accused. If that is so, the Courts below were perfectly justified in believing these witnesses. If they are believed as I do it would appear that the panchas including Sadashiv were present right from the initial stage and, therefore, a scrutiny of the evidence would show that the submission of Mr. Deshpande based on Sections 10(1), 10(7) along with Section 16(1)(b) is not warranted by the material on record.

14. As regards the probabilities also it would appear that the Food Inspector had no conceivable reason to falsely involve the accused in a case of the Food Inspector being prevented from taking a sample. It appears that the accused is a professional milk vendor and that is exactly what is urged before me. It would, therefore, appear that if the milk were to be spilt accidentally under the circumstances stated by the accused, to which reference is made while setting out his defence, it is highly unlikely that the two Food Inspectors would falsely involve the accused by concocting a charge u/s 16(1)(b) of the Act. On the other hand it appears that it is the accused who has behaved foolishly in throwing away the contents of the pit-

15. It is true that in support of his submission that in order that the accused may be said to have prevented the Food Inspector from taking sample, it should be shown that the accused had either given threats to the Food Inspector or had offered physical obstruction, Mr. Deshpande is fortified by a decision of a single Judge of Gujarat High Court in the State of Gujarat Vs. Laljibhai Chaturbhai, . There, it appears the facts were these: When the Food Inspector went to take sample to a shop the accused refused to give the sample of milk and left the shop. On these facts the accused being prosecuted for an offence u/s 16(1)(b), he was acquitted by the trial Court. In a State appeal preferred against that acquittal, Raju, J. observed as under:

The question in this appeal by the State against an acquittal under the Prevention of Food Adulteration Act, 1954, is whether by refusing to give a sample of milk and leaving the shop, a person can be said to have prevented the Food Inspector from taking the sample. It is also in evidence that the respondent raised his hand. But there is no evidence to show whether the raising of the hand amounted to a threat or an assault. We can, therefore, leave it out of account but the Food Inspector has got powers u/s 10 of the Prevention of Food

Adulteration Act to take a sample. Mere refusal, therefore, would not amount to preventing the Food Inspector from taking a sample. There is also no evidence of any threat as was in the case of *Cort v. Ambergate Ely. Co.* (1851) 20 QB 460 . Whether the Food Inspector was prevented or not would depend on the facts of the case in order to constitute the offence. There must be physical obstruction or a threat or an assault. Mere refusal to give a sample would not amount to such prevention. Nor would merely leaving a shop, we do not know for what purpose amount to prevention.

16. Relying on this decision Mr, Deshpande argues that as is not the case for the prosecution that the accused gave any threat or physical obstruction he could not be said to have prevented the Food Inspector from taking a sample. I am afraid that there is no substance in this submission. The expression "prevent"¹ according to the Oxford Dictionary means, "Hinder, stop". With respect, I cannot appreciate how accused could not be said to have prevented the Food Inspector from taking sample when in fact he destroyed the very sample by throwing the contents of the pitcher on the road. It is not necessary that to commit an offence u/s 16(1)(b), there should be necessarily either physical obstruction or threat to the Food Inspector himself. That offence can be more easily committed by destroying the very evidence of the sample as has been done in this case. It could not be denied that by reason of the conduct of the accused in destroying the sample, the Food Inspector was in fact prevented from taking the sample which he was authorised to take under the Act. Therefore notwithstanding the fact that in the instant case there is no threat to the Food Inspector or assault on Food Inspector the very conduct of the accused in destroying the contents of the pitcher has resulted in the accused successfully preventing the Food Inspector from taking a sample as authorised by the Act. Clearly therefore the offence is brought home to the accused. I, therefore, see no substance in this revision application.

17. The revision application is, therefore, dismissed and the rule is discharged. The accused to surrender to his bail.