

(1980) 08 BOM CK 0021
In the Bombay High Court
Case No : Criminal Appeal No. 280 of 1979

State of Maharashtra

APPELLANT

Vs

Gangadhar Abarao Mankape

RESPONDENT

Date of Decision : 18-08-1980

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 10(1), 16(1)

Citation : (1980) 08 BOM CK 0021

Hon'ble Judges : P.S. Shah, J

Bench : Single Bench

Advocate : B.D. Kamble, P.P, for the Appellant; R.M. Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Shah, J.—The respondent, Gangadhar Abarao Mankape, who gave his occupation as student, was tried along with another accused by the Judicial Magistrate, First Class, Aurangabad, for offences punishable under sections 10(1) read with 16(1)(c) and (1)(d) of the Prevention of Food Adulteration Act. The case against the respondent was that he was a servant of M/s. Jansewa Milk Dairy belonging to accused No. 2 and that he was found selling buffalo's milk near Maroti Temple at Padampura in Aurangabad. The Food Inspector along with two panchas visited the place at about 7.15 a.m. on July 6, 1977. It is alleged that accused No. 1 respondent who was then found selling milk refused to sell sample of milk to the Food Inspector who demanded the same from accused No. 1. According to the prosecution, this amounted to preventing the Food Inspector from purchasing the sample and offences punishable under sections 10(1) read with sections 16(1)(c) and (1)(d) of the Prevention of Food Adulteration Act.

2. On a consideration of the evidence, the learned Magistrate found the respondent guilty of the aforesaid offences on his recording a finding that the respondent refused to sell the milk to the complainant, Food Inspector.

3. The respondent challenged this conviction by filing an appeal in the Sessions

Court at Aurangabad. The learned Additional sessions Judge disagreed with the view taken by the Magistrate and held that the prosecution had failed to establish that the respondent was selling milk or that he had refused to give the sample of the said milk to the food Inspector. He also held that even if the prosecution were to establish its case that the accused had refused to sell the milk it would not amount to an offence in law because what is required to be established by the prosecution is "preventing" the Food Inspector from taking a sample and not merely refusing to sell the sample. In this view of the matter, by his judgment and order dated November 20, 1978, the learned Additional Session Judge allowed the appeal and set aside the conviction and sentence passed by the learned Magistrate and acquitted the accused. This acquittal is challenged by the State in this appeal.

4. On going through the evidence on record, I find that the learned Additional Sessions Judge has carefully scrutinised the evidence of the Food Inspector and the two panchas and found several material discrepancies in their evidence. For instance, he noticed that the panchanama mentions the name of only one panch viz. Churanjilal although it purports to be signed by the other panch, Ashru Jadhav. The prosecution has not explained this material discrepancy in the contents of the panchanama which ordinarily should have mentioned the name of the other panch. Secondly, it was also noticed that Ashru Jadhav is working as a sampling Assistant in the office of the Commissioner for Food and Drugs Administration. In the circumstances of the case and particularly having regard to the absence of the name of Ashru Jadhav in the panchanama, the learned Judge found his testimony to be interested and could not be safely relied on. Even at the end of the panchanama the Food Inspector has made an endorsement about the statement being made by the respondent to the effect that the respondent gave his opinion that the milk belonged to his master, Damodhar Tukaram Ghadge accused No. 2. Surprisingly enough, this endorsement does not bear the signature of any one of the panchas. In their evidence none of these witnesses has stated that the respondent had disclosed that he was a servant of the dairy or that the milk belonged to the dairy. The evidence of the Food Inspector and the other two witnesses, therefore, was disbelieved by the learned Sessions Judge. It cannot be said that the appreciation of evidence by the learned Judge is unreasonable.

5. The case of the respondent is one of penial. According to him, he is a student and that he is not in the employment of the dairy as alleged by the prosecution. There is no evidence led by the prosecution to support its case that the respondent is serving in the said dairy. Having regard to these facts and circumstances, it is not possible for me to interfere with the finding of the learned Sessions Judge that the prosecution had failed to prove its case beyond reasonable doubt that the respondent had refused to sell the milk to the Food Inspector.

6. Even assuming that the prosecution case that the respondent refused to sell

the milk is true, mere refusal is not made an offence u/s 16(1)(c). The legislature is specific in spelling out the offence viz. "prevention" of the Food Inspector from taking sample, and not mere "refusal" to sell. There must be some overt act attributed to the respondent from which it could be reasonably inferred that the Food Inspector could not exercise his duties under the Act. In this case beyond the allegation that the respondent refused to sell the sample, no overt act has been alleged against the respondent so as to bring the case within the four corners of section 16(1)(d) which requires "prevention" on the part of the respondent. A similar view has been taken by Sawant, J., in *Sukhdeo Krishna Kadam v. State of Maharashtra*, in Criminal Revision application No. 97 of 1978, decided on August 23, 1978, (1979 Food Adulteration Journal page 110). It was held that mere non co-operation of the person selling the article with the Food Inspector cannot bring his act u/s 16(1)(b). It was also held that if the person selling the article is either absent or deliberately leaves the place or when present he refuses to sell the article to the Food Inspector, it cannot be said that the Food Inspector is in any way physically obstructed from collecting the sample or that it is impossible for him to collect the sample. In such a case there is no prevention of the Food Inspector from taking the sample. There is, therefore, no merit in this appeal. The appeal stands dismissed. Bail bond cancelled.