
(1978) 08 BOM CK 0033
In the Bombay High Court

Sukhdeo Krishna Kadam

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 23-08-1978

Acts Referred:

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

Citation : (1979) CriLJ 264

Hon'ble Judges : Sawant, J

Bench : Single Bench

Judgement

Sawant, J.—The admitted facts in this case are that on 25-12-1975 at about 10.00 a.m., the complainant Food Inspector with panch witness Bugade was present in Jayprakash Restaurant at Barsi The accused who is a retail vendor of milk brought milk with the intention to sell the same to the proprietor of the restaurant. Suspecting that the milk was adulterated, the Food Inspector demanded a sample of the milk from the accused. The accused kept the pot of milk in the hotel and told the Inspector that he would supply the sample as soon as the other articles which he had kept on his bicycle parked nearby, were also brought to the restaurant. Saying so, the accused left the restaurant and did not turn up thereafter. The Food Inspector waited for a long time for the accused to return. Thereafter, he realised that the accused had made good his escape and therefore decided to attach the milk pot. The Inspector then made the necessary panchanama and attached the pot containing the milk. However, he did not take any sample of the milk since he felt that he could not do so in the absence of the accused-vendor. However, thereafter, he filed a complaint against the accused for the offence u/s 16 (1)(b) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the said Act) as it then stood, for preventing the Food Inspector from taking the sample as authorised by the said Act.

2. The defence of the accused with which I am concerned in this application, was that by running away from the spot, he had not prevented the complainant Food Inspector from taking the sample as authorised by the said Act and therefore he

was not guilty of the offence with which he was charged. The learned Magistrate held that on the proved facts of the case it was established that the accused had run away from the spot as alleged by the complainant and therefore had successfully prevented the Food Inspector from collecting the sample as authorised by the said Act. On this finding, the learned Magistrate convicted the accused for the offence u/s 16 (I)(b) of the said Act and sentenced him to suffer R. I. for three months and to pay a fine of Rs. 1000/- and in default to suffer R. I. for further two months. The appeal filed by the accused before the Sessions Judge, Sholapur. failed, the Appeal Court taking the same view as taken by the trial Court. It is, aggrieved by the order of the Appeal Court that this revision application is filed by the accused, challenging his conviction.

3. The short question that falls for consideration in this revision application is whether the admitted act of the accused in running away from the spot leaving the milk there amounts to prevention from taking the sample as authorised by the said Act within the meaning of Section 16 (1)(b) i.e. the offence for which the accused was charged. It may at once be stated that it is not possible to give a narrow meaning to the word "preventing" used in the said section so as to hold that it is only an overt act of obstruction, assault or criminal intimidation which would amount to prevention as contemplated by the said provision. There is no doubt that for the purposes of the said section any act on the part of the accused which successfully prevents the Food Inspector from taking the sample would amount to such prevention. Such act may, for example, include an act of destruction of the food item or an act causing its disappearance by any other means or an act which will subject the article to loss of its nature or identity. In order therefore, to come within the mischief of the provisions of Section 16 (1) (b) of the said Act, the presence of physical force or of the threat of physical force against the Food Inspector is not always necessary. However, in all cases where the said provisions are invoked, it is necessary to show that the Food Inspector was disabled from taking the sample or that it was impossible for him to take such sample. If the prosecution fails to prove that, it is difficult to hold that the case would fall under the said provision. It is in the light of this proposition of law that I will have to find out whether the present case is covered by the said provision

4. Admittedly, the accused had left the pot containing the milk from which the sample was demanded by the Food Inspector, at the spot where the Food Inspector and the panch were present. All that happened was that the accused absconded from the said place. There was nothing in law to prevent the Food Inspector after waiting for, a reasonable time which he did, from taking the sample of the milk in the presence of the panch and making a panchanama of the said fact as provided under Sub-section (7) of Section 10 of the said Act.

5. A perusal of the relevant provisions of the said Act and the Rules made thereunder will make the aforesaid position in law clear. u/s 10 (1)(a) a Food Inspector has power to take samples of any article of food from any person

selling such article or any person who is in the course of conveying, delivering or preparing to deliver such article to a purchaser or consignee or from a consignee after delivery of any such article to him. Under Sub-section (2) of Section 10, he has been given power also to enter and inspect any place where any article of food is manufactured, stored or exposed for sale and take samples of such articles of food for such analysis. Sub-section (3) of Section 10 then provides that where the Food Inspector takes such samples, he will pay its market price to the person from whom the sample is taken. Sub-section (4) of Section 10 further gives power to the Food Inspector to seize and carry away the whole stock of such article if it appears to be adulterated or misbranded or to keep the same in the safe custody of the vendor. Sub-section (5) of Section 10 confers power on the Food Inspector to break open any package in which any article of food may be contained or to break open the door of any premises where any article of food is kept for sale. The said sub-section also provides that while exercising the power of entry upon, and inspection of, any place, the Food Inspector will follow, as far as may be, the provisions of the Code of Criminal Procedure, 1898, relating to the search or inspection of the place by a Police Officer executing a search warrant issued under that Code. Sub-section (6) of Section 10 empowers the Food Inspector to seize any material found in the possession of the manufacturer of any article of food or in any of the premises occupied by him and being apparently of a kind which may be employed for purposes of adulteration and for the possession of which the manufacturer is unable to account to the satisfaction of the Food Inspector. It also gives him power, if necessary, to take a sample of such material for submitting the same for analysis to the Public Analyst. Sub-section (7) of Section 10 then lays down that where the Food Inspector takes any action under Clause (a) of Sub-section (1), or under Sub-section (2), Sub-section (4) or Sub-section (6), he shall call one or more persons to be present at the time when such action is taken and take his or their signatures. Sub-section (8) of Section 10 enables the Food Inspector to exercise powers of a Police Officer u/s 57 of the Cr.P.C. 1898, for the purpose of ascertaining the true name and residence of the person from whom the sample is taken or an article of food is seized. Section 11" of the said Act then lays down the procedure to be followed by the Food Inspector when he intends to send the sample so taken, for analysis to the Public Analyst. Sub-section (1) of Section 11 lays down that when a Food Inspector takes a sample of food for analysis, he shall give notice in writing then and there of his intention to have it so analysed to the person from whom he has taken the sample. Except in special cases provided by the Rules made under the said Act, the Food Inspector is required to separate the sample then and there into three parts and mark and seal or fasten up each part in such a manner as the nature of the article may permit and deliver one of the parts to the person from whom the sample has been taken, send another part for analysis to the Public Analyst and retain the third part for production in case any legal proceedings are taken or for analysis by the Director of the Central Food Laboratory under Sub-section (2) of Section 13, as the case may be. Sub-section (2) of Section 11 then provides that "if the person from

whom the sample has been taken declines to accept one of the parts, the Food Inspector shall send intimation to the Public Analyst of such refusal and thereupon the Public Analyst receiving a sample for analysis shall divide it into two parts and shall seal or fasten up one of those parts and shall cause it, either upon receipt of the sample or when he delivers his report, to be delivered to the Food Inspector who shall retain it for production in case legal proceedings are taken." R. TO of the Prevention of Food Adulteration Rules, 1955, (hereinafter referred to as the said Rules) made under the Act provides for the form of order to be made by the Food Inspector when he takes action for seizure of the article under Sub-section (4) of Section 10 of the said Act. Rule 11 provides for the form of receipt to be given by the Food Inspector to the person from whom the article is seized under the aforesaid provisions. Rule 12 provides for the form in which the intimation will be given by the Food Inspector to the person from whom the sample is collected when he intends to send the sample for analysis to the Public Analyst. These are all the relevant provisions of the Act and the Rules which are necessary to be referred to in connection with the point that falls for consideration in this case.

6. A perusal of the aforesaid provisions of the said Act and the Rules will therefore show that the Food Inspector has powers to take sample irrespective of whether the person selling the article is willing or unwilling to give the sample. The co-operation of the person who is selling the article is not necessary- In fact when the Food Inspector collects the sample, all that is necessary is that he does so in the presence of the panchas as required by Sub-section (7) of Section 10 thereof. Even the presence of the person selling the article is not necessary. No act on the part of the person selling the article is necessary to enable the Food Inspector to collect the sample. When the article is lying before him, the Food Inspector is in no way disabled from collecting the sample either for want of the presence of the person selling the article or for want of any act on his part. In the circumstances in a case where the person selling the article is either absent or deliberately leaves the spot or when present he refuses to co-operate with the Food Inspector while taking the sample, it cannot be said that the Food Inspector is in any way disabled from collecting the sample or that it is impossible for him to collect the same. Hence, there is no prevention of the Food Inspector from taking the sample. In such a case the absence or the non co-operation of the person selling the article is no more than a resignation on his part to further consequences. To call such an action, "prevention of the Food Inspector from taking the sample" within the meaning of Section 116 (1)(b) would be doing violence to the language. It must be mentioned in this connection that the further action which the Food Inspector is required to take after taking the sample has nothing to do with the act of taking the sample as such and there is a clear distinction between the act of taking the sample and the subsequent action that the Food Inspector is required to take for sending the article for analysis to the Public Analyst. These further acts are mentioned in Section 11 of the said Act viz. giving of notice in writing of the intention to have the sample analysed and

separating the sample into three parts and handing over one part to the person from whom the sample is taken. Even the duty cast under Sub-section (3) of Section 10 on the Food Inspector to pay the market price is an act subsequent to the act of taking the sample itself. The act of taking the sample cannot be said to be incomplete on account of non-payment of the price for the purposes of Section 16 (1)(b) of the said Act.

7. Mr. Kotwal, the learned Counsel for the State argued that the act of taking the sample consists of the demand by the Food Inspector for the sample, the giving of the sample" by the vendor, the payment of the market price of the sample by the Food Inspector and giving of receipt of the said payment by the vendor, giving of notice by the Food Inspector to the vendor of his intention to have the sample analysed, separating the sample into three parts and sealing the same and delivering one part of the sample to the vendor. According to him, unless all these various stages mentioned in Sections 10 and 11 read with Rule 12 are over, the action of taking sample cannot be said to be complete. Therefore, argued Mr. Kotwal, when a person either refused to give the sample when present or does not co-operate with the Food Inspector for taking the sample or runs away as in the present case, he could be said to have prevented the Food Inspector from taking the sample within the meaning of the said Section 16 (1) (b). With respect to the learned Counsel, for the reasons which I have already discussed, it is not possible to agree with his contention. As stated earlier the action of taking the sample is distinct from the further acts and they cannot be said to be part of the act of taking the sample. In fact there is nothing in the Act to suggest that a Food Inspector is required to demand the sample from the person selling the article and that such person is obliged to give the sample. The Food Inspector as stated earlier can take the sample on his own provided he does so in the presence of the panchas as required by Sub-section (7) of Section 10 of the said Act irrespective of whether the person selling the article co-operates or not. Hence, neither his co-operation nor his presence is necessary while taking the sample. As regards the payment of the price it is only a duty cast upon the Food Inspector to pay the price for the same after he collects the sample and the intimation of notice which the Food Inspector is required to give to the person from whom the sample is collected becomes necessary only when the Food Inspector intends to have the sample analysed. So also the requirement of handing over a part of the sample to the person from whom the sample is collected. It is difficult to see as to how all these further actions on the part of the Food Inspector could be said to be a part of the act simpliciter of taking the sample. It may further be mentioned that refusal to give the sample or refusal to co-operate with the Food Inspector while taking the sample is not made an offence under the said Act. On the other hand, the Legislature is specific in spelling out the offence viz. the prevention of the Food Inspector from taking the sample. That the Legislature did not intend to include the acts subsequent to the simple act of taking the sample is clear from the fact that while Sub-Clause (b) of Sub-section (1) of Section 16 confines itself to the prevention of the Food

Inspector from taking the sample, immediately following Sub-clause (c) thereof, makes it an offence to prevent the Food Inspector from exercising any other power conferred on him by or under the Act. It is possible to argue that in a case such as the present one, when the Food Inspector is prevented from taking steps subsequent to the collection of the sample, thus preventing him from exercising the other powers conferred on him under the Act, the case would be covered by Sub-clause (c) of Sub-section (1) of Section 16 of the Act. I am however not concerned with such a case since admittedly the accused was charged for the offence only under Sub-clause (b) of Sub-section (1) of Section 16 of the Act.

8. A reference to the various cases cited at the bar may now be made. It may at once be stated that there appears to be a conflict of views on the point as expressed in the said authorities. In *Bishan Dass Telu Ram Vs. State*, it was a case where the vendor had refused to give a sample even on payment and the accused was charged for the offence u/s 16 (1)(b) of the said Act. The Court held that the refusal of the accused to give the sample does not amount to preventing the Food Inspector from taking the sample and therefore quashed the conviction recorded by the Magistrate under the said section. In *State of Gujarat Vs. Laljibhai Chaturbhai*, the facts were similar to the facts in our case. The milk vendor had refused to give sample to the Food Inspector and had left the shop. The trial Court had acquitted the accused of the offence u/s 16 (1)(b) for which he was charged. The Court upheld the acquittal by holding that the said act did not amount to preventing the Food Inspector from taking the sample. In (*Jagannath v. State of Madhya Pradesh*), which is decided by the Madhya Pradesh High Court, the facts were again similar to the facts of the present case. The Food Inspector had apprehended the milk vendor suspecting that the milk which he was carrying was adulterated and asked him to accompany him to the Municipal Office for taking the sample. After reaching the Office, the accused bolted away leaving his kothi of milk there. The Court held that the presence of the accused was not essential when taking the sample and the accused was entitled to an acquittal for the offence u/s 16 (1)(b) with which he was charged. In *Mussaddi Lal and Another Vs. The State*, the accused were convicted for the offence u/s 16 (1)(b) & (c) of the said Act by the trial Court. The case against them was that when the Food Inspector took the sample of milk from them they refused to accept the notice given to them. They also refused to accept a part of the sample given by the Food Inspector. They further refused to accept the price of the sample tendered to them and sign a receipt for the price as well as for the labels put on the three bottles in which the sample was collected. The Court, amongst other things, held that none of these acts amounted to an offence u/s 16 (1)(b). It also appears that the Court came to the conclusion that the said acts did not amount to an offence also u/s 16 (1) (c). I express no opinion on the finding of the Court that the said acts did not amount to an offence u/s 16 (1) (c) since the present case is confined to the offence u/s 16 (1)(b) only. Suffice it to say that the Court found that none of those acts could be said to fall within the purview of Section 16 (1)(b) of the said Act.

9. As against this, there are decisions supporting the prosecution. In *Municipal Board, Sambhal Vs. Jhamman Lal and Another*, the facts were that when the Food Inspector reached the shop of the accused, there were four drums of sarson (mustard) oil at the shop and also mungphali (groundnut) oil which was exposed for sale. The Inspector asked one of the accused to give him a sample of mustard oil. The accused instead of complying with the request of the Food Inspector left the shop and promised to come shortly. The Inspector waited for some time but the accused did not turn up. Another accused was also sitting in the shop who was then asked by the Food Inspector to supply the same. He replied that the sample could be given only by the accused who had left the shop and therefore he went to call the other accused. The Food Inspector waited for an hour and a half, but neither of the accused came back. It is on these facts that the accused were prosecuted for the offence u/s 16 (1)(b) of the said Act. The Division Bench which delivered the judgment referred to the earlier decision of the single Judge reported in *Bishan Dass Telu Ram Vs. State*, and disagreeing with the view expressed therein held that the accused by disappearance had made it impossible for the Food Inspector to obtain sample from the person selling such article which he was entitled to obtain u/s 10 (1) and thereby he had prevented the Food Inspector in taking the sample as authorised by the Act. In this view of the matter the Court set aside the order of acquittal passed by the lower Court and convicted the accused of the offence u/s 16 (1)(b). With respect to the learned Judges, I am unable to accept this view since according to me, as pointed out earlier, neither willingness nor co-operation of the accused nor even the presence of the accused is necessary while collecting the sample which the Food Inspector is empowered to do u/s 10 (1) of the said Act. The reliance of the Court on the decision of the Madras High Court reported in *Public Prosecutor Vs. Murugesan*, in this connection, according to me, is misplaced for the simple reason that the facts in that case were that when the Food Inspector asked for the sample of the milk from the accused, instead of giving the sample he had poured the entire milk into a milk pan in which other milk was already boiling. He had thus caused the disappearance of the milk from which the sample was sought to be taken. It is on these facts that the Madras High Court there has held that it amounted to prevention of the Food Inspector from taking the sample. With respect I am in complete agreement with the view taken by the Madras High Court in that case. I have already pointed out earlier that any act on the part of the accused which makes it impossible for the Inspector or disables him from taking the sample would amount to prevention from taking the sample within the meaning of the said provision. With respect, I am unable to see as to how the authority of the Madras High Court on the facts of that case could support the view taken by the Allahabad High Court on the facts before that Court.

10. In *District Board Vs. Sadhu Sao*, the Food Inspector had visited the shop of the accused who was found selling mustard oil. He then demanded from him a quantity of oil as sample and offered to pay the accused the price of the same.

The accused refused to give the sample. On these facts the accused was charged for the offence u/s 16 (1)(b). The trial Court held that mere refusal to give sample to the Food Inspector did not amount to an offence under the said provisions and therefore acquitted the accused of the offence. The matter then came before the Division Bench of the Patna High Court. After referring to the definition of "sale" and the provisions of Section 10 and to various authorities as well as after drawing an analogy with the offence of wrongful confinement as denned in Section 340 of the I. P. C. the Court came to the conclusion that the Food Inspector can be prevented from obtaining a sample not only by some overt act, but also by an omission which has the consequence of preventing the Food Inspector from obtaining the sample. The Court further held, while dealing with the contention to the contrary advanced by the Counsel for the accused, that where a person refuses to sell a sample of food to him as required u/s 10 (I), he cannot be compelled to proceed to exercise powers under the other Sub-sections of Section 10 viz. Sub-sections (2) and (5) thereof. It appears from the discussion of the judgment that it was not argued before the Court that the action of taking the sample simpliciter is different from the further steps that the Food Inspector is supposed to take for sending the sample to the Public Analyst. The judgment has proceeded mainly on the basis of the proper definition of the word "to prevent" in interpreting which the Court held that prevention does not mean merely physical obstruction but it would include all acts or omission whereby the person prevented is hindered from performing an act or exercising his power. With respect, I am in complete agreement with the said definition of the word "prevent". As I have pointed out earlier, the wider meaning of the word "to prevent" used in the said provision does not lead to the conclusion that the further steps which are required by the Food Inspector to take after he collects the sample are part of the act of taking the sample. It is for this reason that I am unable, with respect, to agree with the view taken by the Court there. In *Teja Moha Vs. Mangubhai Mehta and Another*, it was a case where the accused had thrown away the milk and thus had rendered it impossible for the Food Inspector to take sample. It is on these facts that the Court came to the conclusion that the said act amounted to prevention of the Food Inspector from taking the sample. I do not find any view expressed in this case contrary to the view which I have already taken. As has been pointed out by me earlier, the word "prevention" would include also an action which causes an article to disappear, either by means of removing it or by destruction or by any other means.

11. In *In re : Perumal Konar*, the facts before the Madras High Court were similar to the facts in the present case. The Food Inspector was standing in front of one hotel when he stopped the accused who was carrying a milk-can containing milk for sale to the hotel. The Inspector demanded a sample for analysis, but instead of complying with the demand, the accused placed the can inside the hotel and took to his heels. The Inspector took samples from the milk and thereafter the accused was prosecuted for offences both under Sections 16 (1)(b) and 16 (1)(c) of the said Act. The Court held that the accused was clearly guilty of the offence

u/s 16 (1)(c) which rendered it an offence to prevent a Food Inspector from exercising any other power conferred on him by or under the Act. There is no distinction made in the judgment as to which acts came separately within the purview of Sub-clause (b) and Sub-clause (c). While in para 2 of the judgment, in the beginning there is a reference to Clause (c), at the end the final order merely states that the learned Judge is satisfied that the convictions are within the ambit of the relevant provisions of law, viz. Section 16 (1)(b) and (c) on the established facts which were as stated earlier. As I have already pointed out earlier in the present case there is no charge u/s 16 (1)(c). Therefore this authority which has made no distinction between Clause (b) and (c) cannot be said to be a clear precedent in support of the prosecution in the present case. At best, the prosecution can rely upon this authority to show that the facts would fall both u/s 16 (1)(b) and (c). For the reasons which I have already discussed, I am unable to hold that the facts would be covered by Clause (b). It also appears that there was no contention raised before the Madras High Court that there was a distinction between Clause. (b) and (c) and it is not known whether the result would have been the same if the charge was only under Clause (b).

12. Mr. Kotwal then brought to my notice two decisions reported in journals which are not in common use. One is a decision of the Allahabad High Court in Criminal Revision No. 981" of 1972 decided on 29-9-1975: reported in Shri Ram Vs. State, published by the International Law Book Company of Delhi. In that case the facts were that the Food Inspector finding that the accused was selling Laddus (a sweetmeat) which he suspected to be adulterated, asked the accused to give him a sample of the same. The accused refused and when the Inspector advanced to take the Laddus for sample he was threatened. The Inspector then prepared a memorandum to the effect that the accused had refused to sell Laddus to him. He then waited for 10 or 15 minutes. Thereafter the accused closed his shop and went away. It is on these facts that the accused was prosecuted for the offence u/s 16 (1)(b) and the Court upheld the conviction. With respect, I am in complete agreement with the ratio of the decision given by the Allahabad High Court in that case for on the facts it was a clear case of prevention of the Inspector from taking the sample. The facts \n the present case are however totally different. The next case is of the Full Bench of the Rajasthan High Court in Narain Prasad Vs. The State of Rajasthan and Another, published by Vinod Publications from Delhi. The facts were that the Food Inspector had visited the shop of the accused and found him selling sweetmeats. The Inspector demanded from the accused a sample of sweetmeat. The accused refused to take the prescribed notice u/s 11" (1)(a) and also refused to sell the sample of the sweetmeat to him. He further created a row preventing the Food Inspector from taking the sample. He was charged for the offence u/s 16 (1)(b). The learned Magistrate found him guilty and convicted him. The accused came in revision. The learned single Judge found two conflicting judgments of two Division Benches of the said Court and therefore the matter came before the Full Bench. On these facts, the Court held after discussing various authorities

including the authorities cited hereinabove, that the conduct of the accused in creating a row and thus preventing the Food Inspector fell within the mischief of Section 16 (1)(b), and therefore upheld the conviction. It will thus appear that the facts of that case have no relevance to the facts in the present case inasmuch as the accused in that case had by his overt act physically made it impossible for the Food Inspector to take the sample.

13. Thus a scrutiny of the aforesaid decisions shows that the view which I am taking of the expression "prevents a Food Inspector from taking a sample as authorised by this Act" used in Clause (b) of Sub-section (1) of Section 16 of the said Act is not inconsistent with the view taken by a majority of the High Courts, and where in the small number of cases the view taken by the High Courts appears to be inconsistent with my view either the facts are different or the contentions which were specifically advanced before me did not fall for consideration.

14. Mr. Kotwal then contended that on the facts of the present case the accused in any case would be guilty of the offence u/s 16 (1)(c) of the said Act and this Court will be competent to convict the accused under that section by using powers u/s 221 of the Cr.P.C. 1973. There are two difficulties in accepting this contention. The first difficulty is that it does not appear that all the provisions of the Cr.P.C. have been made applicable to trials for offences under the said Act. Whenever the Legislature intended that specific provisions of the said Code be made applicable they have been specifically referred to at the proper place. The provisions of Section 221 of the Code are not amongst them. Secondly," for launching a prosecution under the Act, a written consent either of the Central Government or the State Government or the local authority or a person authorised in this behalf by a general or special order of the Central Government or the State Government or the local authority as the case may be, is necessary. Without such consent, no Court can take cognizance of the offence under the Act. When a sanction is sought and given it will have to be presumed to be a sanction for a particular offence for which it was sought and given. Admittedly, in the present case the sanction for prosecuting the accused for the offence only u/s 16 (1)(b) was given by the local authority which is the Municipal Council, Barsi, in the present case. In the circumstances, there could be no trial and hence conviction under any other provisions of the said Act. The contention advanced by Mr. Kotwal therefore has to be rejected.

15. In the result, the rule granted in the revision application has to be made absolute and the conviction and sentence of the accused u/s 16 (1)(b) of the said Act has to be quashed and is hereby quashed. The accused is acquitted of the offence. Fine, if any, paid by the accused should be refunded to him. The bail bond of the accused to stand cancelled.