

(2003) 01 P&H CK 0296

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No's. 22205-M and 22207-M of 1997

Suresh Garg

APPELLANT

Vs

State of Punjab and Food Inspector

RESPONDENT

Date of Decision : 07-01-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Prevention of Food Adulteration Act, 1954 — Section 16, 16(1), 7, 9

Citation : (2003) 2 RCR(Criminal) 604

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Advocate : Manjit Singh, for Ajay Lamba, for the Appellant; B.S. Sewak, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

M.L. Singhal, J.—By means of this order, I will dispose of Crl. Misc. No. 22205-M of 1997 and Crl. Misc. No. 22207 of 1997 as both these petitions pertain to the quashing of complaint filed by the Government Food Inspector u/s 7/16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (for short the Act) against him (petitioner) and one Bans Raj, Annexure P-9 and other consequential and subsequent proceedings arising therefrom including the summoning order Annexure P3/A dated 6.1.1994 served on him (Suresh Garg) on 21.5.1997 requiring him to appear on 21.7.1997 in the court.

2. Facts are being taken from Crl. Misc. No. 22205-M of 1997.

3. Facts:- On 20.10.1993, Rajesh Kumar Jindl, Govt. Food Inspector authorised to function as Food Inspector in all the local areas of Ropar District vide Punjab Govt. Notification No. FD(1)PB-91/14763 dated 9.10.1991 u/s 9 of the Prevention of Food Adulteration Act, 1954 (hereinafter to be referred as the Act), along with Dr. A.K. Khullar, inspected the premises of Bans Raj at 12.10 PM on 20.10.1993 situated at Kurali and found Shri Bans Raj in possession of 5 quintals of "mixed milk contained in drums for sale of human consumption. "Food

Inspector" after disclosing his identity to Bans Raj that he was "Food Inspector" authorised to take samples of food stuff from their vendors with a view to have them analysed from the public Analyst, purchased 750 mls of mixed milk on payment of Rs. 6/- to him against proper receipt. Before he took 750 mls. of mixed milk from Bans Raj, he thoroughly stirred the milk contained in the drum and made it homogeneous. Food Inspector divided the milk so purchased in three equal parts. He put each part in separate dry and clean bottles. He added 20 drops of formalin in each bottle as preservative. Bottles were stoppered tightly labelled and wrapped in thick paper separately and paper slip bearing the code number of the office of local health authority Ropar with his signatures thereon was pasted on the wrapper of each part of the sample lengthwise covering the mouth and bottom of the container and joining its ends. It was then secured with a strong twine and the bottles were then sealed at the spot with intact seal impression with distinct seals. Signatures of the vendor were obtained on each part of the sample in the prescribed manner i.e. partly on wrapper and partly on slip. The samples were also signed by the Food Inspector. Food Inspector sent one part of the sample to the Public Analyst, Jalandhar along with form VII and seal impression used in sealing the sample in a sealed parcel through special messenger. Per that special messenger, one copy of the memo and specimen impression of the seal used in sealing the packet were also delivered in a separate sealed cover under intimation to the local health authority, Ropar. Food Inspector deposited the other two sealed parts of the sample with two copies of form VII in sealed form with the local health authority.

4. After the receipt of the report of the Public Analyst according to which mixed milk was found deficient in milk fat content and milk solids not fat content vis-a-vis the standard of purity laid down in the Act, complaint was filed by the Food Inspector u/s 7/16(1)(a)(i) of the Act against Bans Raj, Salesman of Milk Collection Centre of Himachal Milk Specialities Chandigarh Road, Kurali and (2) Suresh Garg, Proprietor of M/s. Himachal Milk Specialities Limited, Paonta Sahib, H.P.

5. In support of this prayer for quashing of complaint Annexure P-9 and the summoning order Annexure P3/A against Suresh Garg requiring him to appear on 6.7.1997 in the court, learned counsel for the petitioner submitted that Suresh Garg is the Managing Director of M/s Himachal Milk Specialities Limited, Paonta Sahib, H.P. which is a company incorporated under the Companies Act with the Registrar of Companies, Jalandhar and the company is engaged in the manufacture of milk products i.e. Ghee, Skimmed milk powder, dairy whitener and holds a licence to manufacture and sell ghee, skimmed milk powder and dairy whitener since 1989 and not in the sale of raw milk. It was submitted by him that the company does not sell raw milk at all in Punjab, Haryana or elsewhere and sells only milk products as named above in accordance with the licence. Manufacture of milk products is done in Paonta Sahib where the factory is situated and milk products are sent to Guwahati, Calcutta, Haryana, U.P. and Himachal Pradesh. There are not even any distributors for the sale of milk

products of the petitioner company in Punjab. He submitted that for the purpose of manufacturing of milk products, he got raw material i.e. milk from various places like Sirhind, malerkotla, Sangrur in Punjab, Kurukshetra, Shahbad and Pundri areas in Haryana and some areas in U.P. such as Badayun, Amroha, Islam Nagar, Saharanpur Roorkee and some local areas of Himachal Pradesh. It was submitted that the milk thus collected from various collection centres authorised by him is purchased and brought to the plant and products are made. Company is the purchaser of raw milk and not seller of raw milk and deals in the sale of milk products only. It was submitted that no complaint was competent against him and no order of summoning could be passed against him. It was also submitted that so far as Bans Raj is concerned, he had nothing to do with him. Company has no collection centre at Kurali. Bans Raj was not the employee of the company. He was not directly or indirectly connected with the company. It was submitted that request was made to the Food Inspector that facts should be verified since the sample milk was not connected with the (petitioner). For more than 3 years, no communication was received by him from the "Food Inspector". It was only in May 1997 that summons were received by him from the court of Sub Divisional Magistrate, Kharar calling upon him to appear on 6.7.1997. In nutshell, the petitioner's plea is that this company deals in the sale of milk products only. It does not deal in the sale of raw milk. It purchases raw milk from various collection centres and is involved only in the manufacturing of milk products. It does not deal in raw milk. Secondly, Bans Raj was not the employee of the company. There is no milk collection centre of the company at Kurali, as such Bans Raj could not claim any connection with this company.

6. Respondent-State of Punjab, on the other hand, submitted that the Food Inspector along with Dr. A.K. Khullar inspected the milk collection centre situated at Kurali on 20.10.1993 at 12.45 PM. Bans Raj was found present at the milk collection centre in possession of about 5 quintals of mixed milk contained in drums for sale for human consumption. Shri Suresh Garg is the owner of M/s Himachal Milk Specialities Limited, Paonta Sahib, H.P. as disclosed by Bans Raj from whom the sample of milk was taken at milk collection centre, Kurali.

7. Learned counsel for the petitioner submitted that Bans Raj was not salesman of M/s Himachal Milk Specialities Limited, Paonta Sahib, H.P. of which Suresh Garg was the Managing Director, it being a company incorporated under the Companies Act. It was submitted that in the complaint, no such witness has been cited who could depose to the fact that Bans Raj was the salesman of the company authorised to deal in the sale of raw milk by the company. It was submitted that Bans Raj's disclosure that he was salesman of M/s Himachal Milk Specialities Limited, Paonta Sahib, H.P. and that he was there at the milk collection centre, Kurall on behalf of the company is not binding on the company.

8. It is not the stage when this fact could be gone into whether Bans Raj was or was not salesman of the company authorised or not authorised to deal in the sale of milk by the company. It is also not the stage where this fact could be

gone into whether the company had any milk collection centre at Kurall. It was submitted that the company does not deal in the sale of raw milk. It deals only in the sale of milk products such as ghee, skimmed powder milk and dairy whitener and holds a licence (Annexure P-1) to deal in the manufacture of milk products. Company is licensed to manufacture for sale/wholesale of milk products. It was submitted that even if milk was stored by the company for the manufacture of sale of milk products, Food Inspector had no business to take sample from the stored milk. Section 7 of the Act prohibits a person from manufacturing for sale or store, sell or distribute any adulterated food etc. Explanation to Section 7 provides that for the purpose of this section, a person shall be deemed to store any adulterated food or misbranded food or any article of food referred to in Clause (iii) or Clause (iv) or Clause (v) if he stores such food for the manufacture therefrom of any article of food for sale." It was submitted that as milk was kept only for manufacturing milk products, the Food Inspector had no authority to take sample of the above stored milk.

9. It is again a matter of evidence whether milk was or was not being sold by Bans Raj as raw milk authorised or unauthorisedly. It is again a matter of evidence that the company was engaged only in the sale of milk products and not in the sale of raw milk. Complaint does not per se seem to be false or frivolous so that it could be quashed. In the complaint, triable issues are involved which need adjudication.

10. For the reasons given above, both these Crl. Misc. petitions fail and are dismissed. However, petitioner is free to take all these points at the trial.