

(1992) 02 P&H CK 0136

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 640-DBA of 1986

The State of Haryana

APPELLANT

Vs

Banwari Lal

RESPONDENT

Date of Decision : 07-02-1992

Acts Referred:

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

Citation : (1992) 2 ILR (P&H) 296 : (1992) 101 PLR 505 : (1992) 3 RCR(Criminal) 375

Hon'ble Judges : J.B. Garg, J;A.P. Chowdhri, J;A.L. Bahri, J

Bench : Full Bench

Advocate : S.S. Goripuria, A.A.G, for the Appellant; D.S. Bali and Shalu Bali, for the Respondent

Judgement

A.P. Chowdhri, J.—Banwari Lal respondent was tried u/s 7(i) read with section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as "the Act"). He was convicted and sentenced by the Judicial Magistrate Ist Class, Fatehabad. In appeal, his conviction was set aside by the Additional Sessions Judge, Hisar, mainly on the ground that the prosecution failed to prove that the article of food Haldi powder in this case, had been properly mixed before taking the sample. In coming to this conclusion, the lower appellate Court relied on two Single Bench decisions in Charanji Lal v. The State of Punjab (1983) 10 C L. T. 157, and Sham Sunder v. The State of Haryana 1986 (1) C. L. T. 120, and sought to distinguish a Division Bench decision to contrary in State of Haryana v. Hukam Chand 1984 F. A. J. 198. The State preferred an appeal against the acquittal, which came up for motion bearing before a Division Bench consisting of J. S. Sekhon and S. S. Rathor, JJ. The learned Judges pointed out that the Division Bench decision in Hukam Chand's case (supra) related to sample taken from Atta which was lying exposed to dust, and expressed a doubt whether the law laid down therein i. e. in Hukam Singh's case, applied where the sample of food article was taken from a proper container. In the opinion of the Bench, the point kept arising frequently and needed to be authoritatively decided by a larger

Bench. The question referred is as follows :-

"Whether mixing up of the Haldi powder or wheat flour (Atta) to make it homogeneous before taking its sample is required under the provisions of the Act and the Rules framed thereunder ?"

2. We have heard Mr. S. S. Goripuria, Assistant Advocate-General, Haryana, for the appellant, and Shri D. S. Bali, Senior Advocate, for the accused.

3. It may be stated at the outset that there is no provision in the Act or the Rules that the food article must be stirred before taking the sample. As a result of case law, however, it has been held that in case of milk, the same must be stirred to make it homogeneous before taking the sample. In *Food Inspector, Municipal Corporation, Baroda Vs. Madanlal Ramlal Sharma and Another*, , it was observed that in milk and milk preparations, including curd, it was distinctly possible that the fact settled on the top and in order to find out whether the milk or its preparation, such as, curd had the prescribed content, the sample must be homogeneous and representative one so that the analysis could furnish reliable proof of the nature and content of the article of food under analysis. It was, therefore, pointed out that churning is one of the methods of making the sample homogeneous and representative.

4. The question which falls to be determined is whether in the case of Atta or Haldi, powder etc. there is any requirement of stirring in order to make the same homogeneous before taking the sample either on principle or precedent ?

5. On principle, the case of milk and certain other liquids is evidently distinguishable from that of other food articles, such as Atta and Haldi powder. It may be that in the case of mixture of articles having different specific gravity, a proper mixing and stirring would help in making the sample more representative but when the article kept for sale consists of a substance of the same structure and specific gravity, no such mixing or stirring is necessary. The requirement of stirring is not of universal application. Two examples may be readily given where the requirement of stirring had no application. These are : (1) In *Gopalpur Tea Co. Ltd. Vs. Corporation of Calcutta*, , food article concerned was 25 bags of tea. The Food Inspector took the sample from one of the bags selected at random. The contention was that the sample was not representative of the contents of 25 bags. It was held that the doctrine of representative sample does not in such a case require that tea from all the boxes must first be mixed up together and thereafter the representative sample should be taken. It was further held that each bag was a separate entity by itself. In the second instance, in *Alotius Wilson and Ors. v. Food Inspector* 1981 (1) F. A. C. 183, the case related to taking of sample from out of about 100 k. gs. of ice-cream. It was argued that the sample was not a representative one as the ice-cream had not been thoroughly mixed up before taking the sample. The contention was repelled with the observation that the Act and the Rules did not contemplate that in such a situation the entire mass of ice-cream or food article concerned must be stirred before any portion is

sold as sample to the Food Inspector. If it were held otherwise, it would lead to an impossibility of taking a sample for analysis at all. In the case of ice-cream, for instance, it is well known that if it is melted, it cannot be brought back to its former state. This is apart from the fact that it will require a fairly big plant to mix such a huge quantity of ice-cream to make it homogeneous. The question how a sample would be representative in a given case must, therefore, necessarily depend on the nature of the goods sold and the usual mode of supply to the customer when he comes to purchase the same. If there is normally a practice of stirring and mixing when the food stuff concerned is sold to the customer from time to time, representative sample would be that which is taken after such stirring and mixing. If, on the other hand, the usual mode of sale is to take out the food article portion by portion without any such stirring or mixing, there can be no complaint that the sample sold is not a representative one.

6. In *State of Kerala etc. v. Alasserry Mohammed etc.* (1978) 5 C L. T. 204 (S.C.), it was laid down by the apex Court that the requirement of representative and homogeneous sample was not applicable to every article of food. It was observed that a representative sample has different connotation, meaning and purpose depending on the context in which it is relevant. It was farther observed that if the food article sold to the Food Inspector was proved to be adulterated, it was immaterial whether the sample purchased by him was a representative sample or not of the entire stock in possession of the person. Having regard to the ingredients of the offence u/s 7 of the Act, a person who "stores" or "sells" such a sample was liable to be punished u/s 16(1)(a)(i) of the Act. From the foregoing discussion it follows that certain peculiar reasons which make it necessary to stir the milk before taking sample have no application at all to the case of Atta or Haldi powder. No reason could be advanced in support of the view that such stirring is required.

7. Coming to the precedents, we find that there are three decisions of a learned Single Judge of this Court in Charanji Lal's case (supra), Sham Sunder's case (supra) and Mohan Lal v. State of Punjab (1989) 16 C.L.T. 280 holding that stirring was necessary in the case of Haldi powder and Ajwain. Contrary view was, however, taken by a Division Bench of this Court (M. R. Sharma and S. S. Kang, JJ.) in Hukam Chand's case (supra). It was held that the principle of mixing the total quantity of food article before taking the sample cannot be extended to wheat Atta. No reasoning is given in any of the Single Bench decisions for the conclusion that the Haldi powder or Ajwain must be mixed before taking sample. In fact, these judgments proceed on the assumption that such is the requirement of law. We have carefully examined this question and we have no doubt in our minds at all that there is no such requirement either in the Act or the Rules or the case law. We are, therefore, constrained to hold that the law on the point of stirring the food article before taking the sample in so far as Haldi powder or Ajwain or a similar food article is concerned, has not been correctly stated in the aforesaid Single Bench decisions. These are hereby overruled. On the contrary, we fully agree with the conclusion reached in Hukam

Chand's case (supra) and hold that the principle of mixing the total quantity of food article before taking the sample cannot be extended to wheat Atta, Haldi power, Ajwain or similar other food article and the analogy of stirring of milk before taking sample does not, at all apply to such cases.

8. For the foregoing reasons, we answer the question posed in the reference in the negative and direct that the present appeal as also other connected appeals pertaining to the same point shall be listed before the appropriate Bench for disposal according to law.