

M. V. Krishnan Nambissan

Vs

State of Kerala

Criminal Appeal No. 93 of 1964

(K. Subha Rao, M. Hidayatullah, R. S. Bachawat JJ)

18.01.1966

JUDGMENT

SUBBA RAO, J. -

The appellant is the manager of the Palghat Depot of Messrs. Nambissan's D.V. Dairy Farm. On July 20, 1961, one of the Food Inspectors visited his depot and purchased from the second accused, the salesman in charge of the depot, two nazhies of "skimmed thick butter-milk" out of the stock exposed for sale in the depot. He sent a sample of it for analysis to the Public Analyst. The Analyst reported that the solids-not-fat content in the said sample was 7.5 per cent. as against 8.5 per cent. prescribed for curd : he was of the opinion that the sample contained not less than 11 per cent. of added water. When the sample was analysed a few months later by the Central Food Analyst, he reported that the solids-not-fat content in the sample was only 6.4 per cent. Thereupon a complaint was filed in the Court of the District Magistrate (Judicial), Palghat, against the appellant and his sales-man-we are not concerned in this appeal with the charge against the sales-man. The charge against the appellant was that he committed an offence under s. 16(1)(a)(i) and s. 7 of the Prevention of Food Adulteration Act, 1954 (37 of 1954), hereinafter called the Act, read with r. 44 of the Prevention of Food Adulteration Rules, 1955, hereinafter called the Rules. The charge against him was that he exposed for sale "skimmed thick butter-milk" which on analysis was found to be adulterated with water to the extent of 11 per cent. The learned District Magistrate, on a consideration of the entire evidence placed before him, came to the conclusion that the appellant was not guilty of the offence with which he was charged; he held that no standard of quality was prescribed for butter-milk and, therefore, the accused could not be convicted for the offence under the Act and the Rules. On appeal, the High Court took the view that the standard for milk had been fixed by the Rules, that the same standard was made applicable to curd and that, as butter-milk was in essence curd from which butter had been extracted, the butter-milk should contain the same quantity of solids-not-fat as curd should contain. On this reasoning, the High Court held that, as the sample showed only 6.4 per cent. of solids-not-fat content while it should have contained 8.5 per cent. of it, the accused had committed the offence under the said provisions and sentenced him to pay a fine of Rs. 100/-, in default to suffer simple imprisonment for one month. Hence the present appeal, by certificate.

Mr. R. Ganapathy Iyer, learned counsel for the appellant, contended that the appellant was prosecuted for not maintaining the standard prescribed for butter-milk and that, as no standard was in fact prescribed for the said product, the High Court went wrong in convicting him.

To appreciate this contention it is necessary to notice the relevant provisions of the Act and the Rules.

Section 2(i)(1). An article of food shall be deemed to be adulterated if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities which are in excess of the prescribed limits of variability.

Section 7. No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute :

(i) any adulterated food :

(ii) any misbranded food;

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(v) any article of food in contravention of any other provision of this Act or of any rule made thereunder.

Section 16. (i) If any person -

(a) whether by himself or by any person on his behalf imports into India or manufactures for sale, or stores, or distributes, any article of food in contravention of any of the provisions of this Act or of any rule made thereunder.

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he shall, in addition to the penalty to which he may be liable under the provisions of s. 6, be punishable.....

In exercise of the power conferred under s. 23 of the Act, the Central Government made rules defining the standard of quality for, and fixing the limits of variability permissible in respect of, any article of food. Rule 5 reads :

"Standards of quality of the various articles of food specified in Appendix B to these Rules are as defined in that Appendix."

## APPENDIX B

A.11.01. Milk means the normal clean and fresh secretion obtained by complete milking of the udder of a healthy cow, buffalo, goat or sheep during the period following at least 72 hours after calving or until colostrum free whether such secretion has been processed or not.

A.11.01.01. Cow milk shall contain not less than 3.5 per cent of milk fat, except in Orissa, where it shall be not less than 3 per cent. and in Punjab and PEPSU where it shall be not less than 4.0 per cent. The milk solids other than milk fat shall be not less than 8.5 per cent.

A.11.01.02. Buffalo milk shall contain not less than 5.0 per cent. of milk fat except in Delhi, Punjab, PEPSU, Uttar Pradesh, Bihar, West Bengal, Assam, Bombay and Saurashtra where it shall not be less than 6 per cent. The milk solids other than milk fat shall not be less than 9 per cent.

A.11.01.03. Goat or sheep milk shall contain not less than 3.0 per cent. of milk fat except in Madhya Pradesh, Punjab, PEPSU, Bombay, Uttar Pradesh and Travancore-Cochin where it shall be

not less than 3.5 per cent. The milk solids other than milk fat, shall be not less than 9 per cent.

Where milk, other than skimmed milk is sold or offered for sale without any indication as to whether it is derived from cow, buffalo, goat, or sheep the standard prescribed for buffalo milk shall apply.

A.11.02. Skimmed milk, either fresh or reconstituted, means milk from which all or most of the milk fat has been removed by mechanical or any other process and includes "separated milk" or "machine skimmed milk". The milk solids other than milk fat shall be not less than 8.5 per cent.

A.11.03. Butter-milk means the product obtained after removal of butter from curds by churning or otherwise.

A.11.05. (a) Table (creamery) butter means the product prepared exclusively from milk, cream or curd of cow or buffalo or a combination thereof with or without the addition of salt and coloured with annatto and shall contain not less than 80 per cent. of milk fat and not more than 16 per cent. of moisture. No preservative is permissible in table butter. Diacetyl may be added for flavour but shall not exceed 4 parts per million.

(b) Deshi (cooking) butter means the product prepared exclusively from milk, cream or curd of cow or buffalo or a combination thereof, without the addition of any salt or any colour or any preservative and intended exclusively for use in cooking or for preparation of ghee. It shall contain not more than 20 per cent. of moisture and not less than 76 per cent. of milk fat. Where butter is sold or offered for sale without any indication as to whether it is table butter or deshi butter, the standards of quality prescribed for table butter shall apply.

A.11.06. Dahi or curd - (a) Whole milk dahi or curd means the product obtained from fresh whole milk either of cow or buffalo by souring. It shall not contain any ingredient not found in Milk except sucrose and/or gur.

(b) Skimmed milk dahi or curd means the product obtained from skimmed milk either of cow or buffalo by souring. It shall not contain any ingredient not found in milk, except sucrose and/or gur.

The standard of purity of dahi or curd shall be the same as prescribed for the milk from which it is derived.

Where dahi or curd, other than skimmed milk dahi is sold or offered for sale without any indication as to whether it is derived from cow or buffalo milk, the standards prescribed for dahi prepared from buffalo milk shall apply.

It will be seen from the said provisions that it is not an ingredient of the definition of butter-milk that it should contain any particular percentage of solids-not-fat. Indeed, no standard in regard to its contents is prescribed. The only standard, if it may be described as one, is that it shall be a product obtained after removal of butter from curd by churning or otherwise. It is not suggested that the butter-milk in question was not a product obtained in the manner described thereunder. Prime facie, therefore, it follows that the appellant has not committed any offence with which he was charged, namely, that he had added water to the extent of 11 per cent. to the butter-milk.

Mr. Govinda Menon, learned counsel for the State, contended that a fair reading of the definition of the various milk products in Appendix B leads to an irresistible conclusion that for butter-milk the

same standard of solids-not-fat prescribed for curds would apply. It was said that butter-milk was nothing more than curd from which fat had been removed and, therefore, there was no reason why, apart from fat, the other contents should be different from those found in the milk.

It will be seen from the definitions of the various products in Appendix B to the Rules, which we have already extracted, that wherever the rule-making authority intended to prescribe a specific standard for the contents of a product, it definitely states so. The standards of solids-not-fat are fixed for the milk of cow, buffalo, goat or sheep. Though standards are fixed for the said milk products, in defining "skimmed milk", "desi (cooking) butter", and "skimmed milk dahi or curd" the standard of quality is prescribed with reference to other products. But when we come to butter-milk, no standard for its contents either specifically or with reference to other items is prescribed. A comparative study of the said items leaves no room for doubt that the rule making authority, for reasons, which, we think, are obvious has not thought fit or feasible to prescribe any such standard in regard to the contents of butter-milk. We cannot by inference read some thing in the definition of butter-milk which is not there. The reason for this omission is presumably due to the fact that it is not possible to maintain in butter-milk the same percentage of solids-not-fat content as is found in curds or milk, for water will be added in the process of making butter-milk owing to the fact that butter grains in the churn are washed with cold water which will run off into the butter-milk. Anyhow, we would prefer to rest our judgment on the absence of fixation of any standard in respect of butter-milk rather than on the process of conversion of curds into butter-milk. We should not be understood to have expressed any view on the question whether a prosecution could be launched for adulteration of butter-milk under some other clauses of the definition of "adulterated" in s. 2 of the Act, for in the present case the prosecution was only for not maintaining the standard.

In the result, the order of the High Court is set aside and that of the District Magistrate is restored. The fine, if it had already been collected, shall be refunded.

Appeal allowed.

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