

Ajit Prasad Ramkishan Singh

Vs

The State of Maharashtra

Criminal Appeal No. 243 of 1969

(G. K. Mitter, P. Jagmohan Reddy, K.K. Mathew JJ)

02.05.1972

JUDGMENT

MATHEW, J. -

1. This appeal, by special leave, is from the judgment of the High Court of Bombay, convicting the appellant under Section 16(1)(a)(i) read with Section 7(i) of the Prevention of Food Adulteration Act (Act 37 of 1954), hereinafter called 'Act', and sentencing him to undergo R. I. for six months and pay a fine of Rs. 1,000/- and, in default of payment of fine, to undergo R. I. for a further period of two months.

2. The appellant was the owner of a sweet-meat shop on Kurla-Andheri Road, Bombay. On July 1, 1965, the Food Inspector of the Bombay Municipal Corporation visited his shop at 9.55 a.m. and took a sample of unboiled buffalo milk after conforming to the formalities enjoined by the Act. The Food Inspector divided the sample into three parts, retained two parts with him and delivered the other part to accused No 2, who alone was in the shop at the time. The Food Inspector sent one part for analysis by the Public Analyst. Exhibit 'B' is the report of the Analyst. That showed the fat contents of the milk as only 2.7 per cent. instead of six per cent. as required by the rules framed under the Act. On the basis of the report the accused were prosecuted.

3. Accused No. 1, the appellant, admitted that he was the owner of the shop and that accused No. 2 who actually sold that milk to the Food Inspector was his nephew. As the whereabouts of accused No. 2 could not be traced, the case as against him was dropped.

4. The Magistrate acquitted the appellant. His reasoning was as follows : the sample was taken, on July 1, 1965; the complaint was filed on August 13, 1965, summons was served on the appellant, on November 13, 1965; the date for appearance of the accused was on November 26, 1965; the right to apply to Court to have the part of the sample delivered to the vendor sent for analysis by the Director, Central Food Laboratory, Calcutta, hereinafter referred to as the "Director", accrued to the appellant only when the summons was served on him; since by that time the sample would have become decomposed, he lost the valuable right to have the part of the sample delivered to the vendor analysed by the Director and so, the appellant should be acquitted.

5. The High Court, on appeal by the Food Inspector reversed the order of acquittal. The High Court held that the appellant was bound to make an application under Section 13(2) of the Act after paying the prescribed fee and as no such application was filed by the appellant, it could not be said that the appellant had been deprived of any valuable right. And as the fact content of milk was deficient by 55 per cent. the food was adulterated and so, the appellant was guilty of the offence.

6. In this appeal, counsel for the appellant contended that the appellant was deprived of his right to have the sample analysed by the Director on account of the delay in the service of summons. He said that the appellant was acquitted by the Magistrate because the Magistrate found that on account of the delay it would be a futile exercise to have sent the sample for analysis to the Director and as the laches of the complainant was the reason for the delay in the service of summons and the proximate cause of the appellant losing his right to get the part of the sample delivered to the vendor analysed by the Director, the appellant was entitled to be acquitted. He relied on the decision of this Court in *Municipal Corporation of Delhi v. Ghisa Ram* ((1967) 2 SCR 116.), to support his contention. We do not think that the case would in any way assist the appellant. In that case, the part of the sample delivered to the vendor had been sent to the Director on the application of the vendor but, the Director reported that the sample had become highly decomposed and could not be analysed. It was not disputed in that case that the Food Inspector had not taken the precaution of adding the necessary preservative to the sample. So the Court held that the valuable right given to the vendor under Section 13(2) of the Act could not be availed of and that the conviction was bad. In the present case, the appellant never applied to the Court to have the part of the sample with him analysed by the Director. Section 13(2) of the Act states :

"After the institution of a prosecution under this Act the accused vendor or the complainant may, on payment of the prescribed fee, make an application to the Court for sending the part of the sample mentioned in sub-clause (i) or sub-clause (iii) of clause (c) of sub-section (1) of Section 11 to the Director of the Central Food Laboratory for a certificate; and on receipt of the application the Court shall first ascertain that the mark and seal or fastening as provided in clause (b) of sub-section (1) of Section 11 are intact and may then despatch the part of the sample under its own seal to the Director of the Central Food Laboratory who shall thereupon send a certificate to the Court in the prescribed form within one month from the date of Receipt of the sample, specifying the result of analysis."

It is clear from the sub-section that the appellant should have made an application after paying the prescribed fee if he wanted the part of the sample available with him to be sent to the Director for analysis. If he had made the application after paying the prescribed fee, the Magistrate would have had no option but to send the part of the sample for analysis by the Director. If in pursuance of the application the part of the sample was sent to the Director and he had reported that the part of sample was incapable of analysis for the reason that it was decomposed, the appellant could perhaps, have contended that he was deprived of his rights to have the sample analysed by the Director on account of the laches of the complainant and that he should be acquitted. But, since the appellant never applied under Section 13(2) of the Act, he cannot, complain that he has been deprived of any right. In *Babulal Hargovindas v. The State of Gujarat* ((1971) 1 SCC 767.), Jaganmohan Reddy, J., speaking for the Court, said that unless an application to send the sample to the Director is made, the vendor cannot complain that he was deprived of his right to have the sample analysed by the Director.

7. The learned Magistrate was wrong in thinking that no useful purpose would be served by sending the sample for analysis by the Director. It was not for the Magistrate to decide without any data that the sample would be decomposed and was incapable of being analysed. The Food Inspector had sworn as P.W. 1 to that he had added eight drops of formalin to each part of the sample. Though under the rules he should have added 16 drops to each part, there is no reason to think that the sample became decomposed by the time the summons was served for that reasons. There was no evidence before the Magistrate that for the reason that the prescribed quantity of formalin was not

added to each part, the part of the sample delivered to the vendor was incapable of being analysed by the Director. Nor did the Magistrate rely on that circumstance for his conclusion that the sample would have become decomposed. The appellant could have summoned the Public Analyst and examined him if he was serious in his present contention that since the prescribed quantity of formalin was not added, the part of the sample would have become decomposed by the time the summons was served, and no useful purpose would have been served by sending the sample for analysis by the Director. There was, therefore, no evidence that the part of the sample available with the appellant had so deteriorated at the time the summons was served as to be incapable of being analysed. In *Sukhmal Gupta and Another v. The Corporation of Calcutta* (Cr. A. No. 161 of 1966, decided on May 3, 1968.), Sikri, J., as he then was, speaking for the Court, said :

"..... it was held by this Court in *Municipal Corporation of Delhi v. Ghisa Ram* (supra), that Section 13(2) of the Act confers a valuable right to have the sample given to him analysed by the Director of the Central Food Laboratory but 'the reason why the conviction cannot be sustained is that the accused is prejudiced in his defence and is denied a valuable right of defending himself solely due to the deliberate acts of the prosecution'. In this case no prejudice of the defence has been shown. It has not been established on the record that the sample of tea which was available with the appellant had deteriorated by the time the summons was received. He never utilised the right under Section 13(2) of the Act of sending the sample to the Director of Central Food Laboratory."

8. We are of the opinion that the High Court was right in coming to the conclusion that the appellant was guilty of the offence. But we do not think that the sentence of six months R. I. and a fine of Rs. 1,000/- was called for in the circumstances of the case. Since the offence fell under proviso (1) of Section 16 of the Act, the Court was not bound to impose a sentence of imprisonment for a term of six months. The appellant had entrusted the running of the shop to the second accused, his nephew. There is no evidence to show that there was any mechanism in the shop by which the fat contents could be extracted from un-boiled milk. There is also no evidence that any water had been added to the milk.

9. Taking into account all these circumstances, we reduce the sentence to R.I. for three months and the fine to Rs. 500/- and we direct that in default of payment of fine, the appellant will undergo R.I. for a further period of one month. The appeal is allowed only to the extent indicated but is dismissed in all other aspects.

10. The appellant, if on bail, shall surrender to the bail.

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