

Municipal Committee, Amritsar

Vs

Hazara Singh

Criminal Appeal No. 228 of 1972

(CJI A. N. RAY, K. K. Mathew, V. R. Krishna Iyer)

12.03.1975

JUDGMENT

KRISHNA IYER, J. –

1. We regret to begin this Judgment with the observation that the high purpose of reserving the Supreme Court's jurisdiction for substantial legal issues affecting the nation, should not be taken by cases of lesser consequence. The present criminal appeal is a signal instance of litigation of little public interest being brought up here, holding up other momentous causes.

2. A petty milk vendor was prosecuted for alleged adulteration, proof of which rested on a minimal shortfall in the percentage of 'milk solids not fat' going by the prescribed standard (Rule 5 of the Prevention of Food adulteration Rules). The plea of the accused that, if a all, there might have been a marginal error, while the analysis was conducted was rightly rejected and the Magistrate sentenced him to imprisonment and fine as laid down in Section 7 and Section 16(1) of the Prevention of Food Adulteration Act (hereinafter called the Act). The milk vendor hopefully appealed and impressed by the fact that the milk solids were of the required standard and the 'milk solids not fat' were slightly sub-standard, the Sessions Judge ignored 'the minor deficiency which is in the nature of permissible error' and acquitted the accused.

3. The Municipal Committee pursued the matter to the High Court in appeal. But a Division Bench of that Court dismissed it in limine, presumably as too trivial for an appeal against acquittal. However, the appellants has arrived in this Court claiming that this is a test case and making it appear that some important question of law hangs on the decision, although it was represented, at the time special leave was sought by the Counsel, 'that his clients will not press for the conviction of the respondent.' This latter representation itself is suggestive of the absence of seriousness surrounding this particular case. apart from this tell-tale circumstances, the facts we have set out above show that nothing grave or great in law, by way of miscarriage of justice or general public importance is involved. This is one of those routine cases, comparatively insignificant, where one court has acquitted and the High Court has felt it unjustified for appellate reversal. It is of paramount importance that this Court's time should not be consumed by questions which are trifles.

4. It is plain from submission of Counsel that the appellant's grievance is not so much against the acquittal as against a passing reference by the Sessions Court to an obiter observation of this Court in *Malwa Co-operative Milk Union Ltd. Indore v. Biharilal* (Cri As Nos. 235 and 236 of 1964, decided on 14-8-1967). Obviously, the Sessions Judge had concluded that a minor error in the chemical analysis might have occurred. He was perhaps not right in saying so. Anyway, a reading of his judgment shows that the mention of this court's unreported ruling (*supra*) was meant to fortify

himself and not to apply the ratio of that case. Indeed, this Court's decision cited above disclose that Hidayatullah, J. (as he then was) was not laying down the law that minimal deficiencies in the milk components justified acquittal in food adulteration cases. The point that arose in that case was whether the High Court was justified in upsetting an acquittal in revision, when the jurisdiction was invoked by a rival trader, the alleged adulteration having been so negligible that the State had withdrawn the prosecution resulting reserved for setting right miscarriage of justice, not for being invoked by private persecutors. Such was the ratio but, in the course of the judgment, Hidayatullah, J. to drive home the point that the case itself was so marginal, referred to the microscopic difference from the set standard. To distort that passage, tear it to of context and devise a new defence to of it in respect of food adulteration cases, is to be grossly unjust to the judgment. Indeed the Kerala case cited before us by Counsel viz., State of Kerala v. Vasudevan Nair (Cr. a. No. 89 of 1937,decided by the Kerala High Court on July 18, 1974-All India Prevention of food Adulteration Cases Reporter, 1975 Part I, p. 8) itself shows that such distortion of the passage in the judgment did to and could not pass muster. When pressed with such misuse of this ruling, the High Court repelled it. The law of food adulteration, as also the right approach to decisions of this Court, have been set out correctly there :

Judicial propriety, dignity and decorum demand that being the highest judicial tribunal in the country even obiter dictum of the Supreme Court should be accepted as binding Declaration of law by that Court even if it be only by the way has to be respected. But all that does not mean that every statement contained in a judgment of that Court would be attracted by Article 141. Statements on matter other than law have no binding force. Several decisions of the Supreme Court are on facts and that Court itself has pointed out in Gurcharan Singh v. State of Punjab ((1972) FCA 549) and Prakash Chandra Pathak v. State of Uttar Pradesh (AIR 1960 SC 195 : 1960 Cri LJ 283) that as on facts on two cases could be similar, its own decisions which were essential on question of fact could not be relied upon as precedents for decisions of other cases.

The standard fixed under the Act is one that is certain. If it is varied to any extent, the certainty of a general standard would be replaced by the vagaries of a fluctuating standard. The disadvantages of the resulting unpredictability, uncertainty and impossibility of arriving at fair and consistent decisions are great.

5. It is extraordinary that an appeal with special leave under Article 136 should have been filed, to get a declaration that a casual statement in a judgment of this Court which ex facie had to kinship with the question under decision, was not the ratio in the case.

6. This appeal was ill-advised, misconceived and unnecessary and merits dismissal.

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