

Karam Chand

Vs

Municipal Corporation of Delhi

Criminal Appeal No. 219 of 1974

(Syed M. Fazal Ali, A. D. Koshal JJ)

07.02.1979

JUDGMENT

FAZAL ALI, J. –

This appeal by special leave is directed against the judgment of the Delhi High Court, by which the appellant had been convicted under Section 7/16 of the Prevention of Food Adulteration Act and sentenced to six months' rigorous imprisonment and a fine of Rs. 1000, in default four months' rigorous imprisonment. The appellant was tried by the trial Magistrate under Section 7/16 of the Prevention of Food Adulteration Act and was convicted by him. On appeal the learned Additional Sessions Judge acquitted the appellant of the charges framed against him, but thereafter the State filed an appeal to the High Court. The appeal was accepted by the High Court and the appellant was convicted as indicated above. Hence this appeal by special leave. Mr. Soni appearing for the appellant has raised a short point before us. He has submitted that even accepting the prosecution case at its face value, no offence appears to have been committed by the appellant. According to the prosecution case the Food Inspector intercepted the appellant who was carrying three cans of milk, one of the cans was labelled as toned milk. The Food Inspector took a sample of the milk and informed the appellant that he had purchased toned milk for the purpose of analysis.

Simultaneously, the appellant wrote back that he had not sold toned milk but he has sold sapreta milk or skimmed milk. If the milk which was actually sold to the Food Inspector was sapreta milk then it is conceded by the Additional Solicitor-General that it would not be punishable under the Act so as to make the appellant liable under the Prevention of Food Adulteration Act. Unfortunately, it appears that a comedy of errors had arisen in that the appellant and the Food Inspector were not conversant with language of each which has led to this prosecution. The appellant knew Urdu but did not know English whereas Food Inspector knew English but did not know Urdu. It is, therefore, manifest that when the appellant wrote in reply to the Notice that he sold sapreta milk, as the Food Inspector was not conversant with Urdu, he did not know what was actually sold to him. The document, Ex. P.B., however, shows that immediately in answer to the Notice the appellant had taken the stand that he sold sapreta milk which was written by him in his own words at that very time. Mr. Sorabjee placed great reliance on the fact that the appellant appears to have written the word cow and scored it out and then wrote sapreta milk. This appears to have been a slip of the pen because we feel that the appellant must have tried to write that it was cow's sapreta milk but later having found that it may cause complications he scored out the word cow. All this confusion could have been avoided if the Food Inspector would have been conversant with Urdu or could have asked anybody to read what the appellant had written in which case this case would not have seen the light of the day. In these circumstances, the prosecution has failed to prove that what was sold to the Food Inspector was sold as toned milk. The very basis of adulteration, therefore, disappears. For these reasons, we, therefore, allow this appeal, set aside the conviction and sentence imposed on the

appellant and acquit him of the charges framed against him. The appellant will now be discharged from bail bonds. Fine if paid shall be refunded.

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