

Rajinder Pershad

Vs

State of Haryana

Criminal Appeal No. 615 of 1981

(Syed M. Fazal, A. Varadarajan, M. P. Thakkar JJ)

11.07.1983

JUDGMENT

VARADARAJAN, J. –

1. This appeal by special leave is directed against the judgment of the Punjab & Haryana Court, dismissing Criminal Revision Case No. 562 of 1979 which was filed by the appellant against in judgment of the Additional Sessions Judge, Gurgaon who affirmed the judgment of the Chief Judicial Magistrate, Gurgaon sentencing the appellant to rigorous imprisonment for six months and a fine of Rs 1000 under Section 16 (1) (c) of the Prevention of Food Adulteration Act, 11954 as amended from time to time.

2. We dismissed the appeal and confirmed the conviction and sentence on April 5, 1983 for reasons to be given later. We hereby give the reasons.

3. The charge against the appellant was that when the Food Inspector, Gurgaon, Sant Lal Anand (PW 2) went to the appellant's grocery shop at Farrukh Nagar at about 4 p.m. on August 27, 1976 he prevented PW 2 from taking a sample of dhania from the stock kept for sale by slipping away from the shop some pretext. The case of prosecution was that when the Food Inspector (PW 2) visited the appellant's grocery shop accompanied by Dr. Aggarwal, Medical Officer Incharge, Primary Health Center, Farrukh Nagar (PW 1) and Dr. Yadav, Chief Medical Officer (Health), Gurgaon (PW 3). The appellant was found to have stored six kgs of dhania for sale in his shop. PW 2 disclosed his identity to the appellant and demanded a sample of the dhania for analysis and sought to serve the notice Ex. P/B and tendered Rs. 4.80 as the price of 600 gms of dhania asked for. The appellant went away from the shop under the pretext of passing urine without accepting the notice Ex. P/B or the sum of Rs. 4.80 tendered by PW 2 and he did not come back to the shop though PWs 1 to 3 waited there for about one and a half hours. Thereafter PW 2 took a sample from the shop in the absence of the appellant and prepared the spot memo Ex. P/A in the presence of PWs 1 to 3 and subsequently filed the compliant Ex. P/C in the court of the Chief Judicial Magistrate, Gurgaon against the appellant for contravention of Section 16 (1) (c) of the Prevention of Food Adulteration Act. 1954 as amended, by preventing him from taking a sample of the article of food.

4. After the examination of PWs 1 to 3 a charge was framed against the appellant for the offence punishable under Section 16 (1) (c) of the Act and he pleaded not guilty to the charge and claimed to be tried.

5. The prosecution relied on the evidence of PWs 1 to 3 who deposited to the facts mentioned above. The appellant stated when examined under Section 313, Criminal Procedure Code, that he is

running a cloth business at Delhi and had casually visited his father's grocery shop at Farrukh Nagar on August 27, 1976 when PWs 1 to 3 came there and he went to call his father Uggar Sen (DW 1) and came back to the shop along with DW 1 after about six or seven minutes and that PWs 1 to 3 had gone from the shop by that time. The appellant examined his father as DW 1 in his defence.

6. The learned Chief Judicial Magistrate, Gurgaon who tried the case rejected the evidence of DW 1 as being interested and unreliable and accepted the evidence of PWs 1 to 3, of whom PW 1, however, could not identify the appellant as the person who went away from the shop without accepting the notice and case tendered by PW 2 and found, following judgment of the Punjab & Haryana High Court in *Krishan Lal v. State of Haryana* that the appellant was guilty of having prevented the Food Inspector (PW 2) from taking a sample of the article of food by going away from the shop without accepting the notice and case tendered by PW 2. Accordingly, the learned Magistrate convicted the appellant and sentenced him to undergo rigorous imprisonment for six months and to pay a fine of Rs 1000 under Section 16 (1) (c) of the Act.

7. The conviction and sentence were confirmed on appeal by the learned Additional Sessions Judge, Gurgaon who found that the appellant was more than 18 years of age at the time of commission of the offence and was therefore not entitled to the benefit of Section 360, CrPC in view of Section 20-AA of the Act according to which Section 360, CrPC is not applicable to the case of the accused who was more than 18 years of age at the time of commission of the offence. The criminal revision case filed by the appellant in the Punjab & Haryana High Court against the judgment of the learned Additional Sessions Judge, Gurgaon was dismissed by S. S. Dewan, J. who confirmed the conviction and sentence. Hence, this appeal by special leave.

8. The prevention of Food Inspector from taking a sample of an article of food as authorised by the Act is an offence punishable under Section 16 (1) (c) with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than one thousand rupees. Mr. Uma Datta, appellant's learned counsel, invited Additional Sessions Judge, Gurgaon where it has been found that the Food Inspector (PW 2) had in fact taken a sample in the presence of PWs 1 and 3. But it must be noted that this was done after the appellant went away from the shop under the pretext of passing urine and did not return for about one and a half hours during which period PWs 1 to 3 waited for him at the shop. The finding of fact that the appellant went away from the shop under the pretext of passing urine when the Food Inspector (PW 2) tendered the notice Ex. P/B and the case of Rs 4.80 for purchasing a sample of dhanias and did not return for about one and a half hours, during which period PWs 1 to 3 waited at the shop for him cannot be canvassed in this appeal. The learned counsel for the appellant invited our attention to two decisions and submitted that the mere disappearance of the appellant from the shop after the sample was asked for by the Food Inspector without anything more did not amount to prevention of the Food Inspector from taking the sample. The first of those decisions is of C. P. Sen, J. of the Madhya Pradesh High Court in *Jagannath v. State of M. P.* where the facts found were that when the accused was taking five liters of milk in his kothi for sale the Food Inspector stopped him as he suspected the milk to be adulterated and asked him to accompany him to the Municipal Office for taking a sample and that on reaching the Municipal Office the accused bolted away leaving the kothi of milk, and the learned Judge held that the accused did not prevent the Food Inspector from taking a sample simply because he bolted away from the spot and that the Food Inspector was free to take the sample from the kothi of milk left behind by the accused even in the absence of the accused. In holding so the learned Judge differed from the view taken in *Municipal Board, Sambhal v. Jhamman Lal* where it has been held that the disappearance of the their seller from the shop amounts to prevention of the Food Inspector from taking the sample and that over act on the part of the seller is

not necessary to constitute an offence under Section 16 (1) (b) of the Act as it then stood which corresponds to the present Section 16 (1) (c). The second decision relied upon by the learned counsel of the appellant is of the Full Bench of the Rajasthan High Court in *Narain Prasad v. State of Rajasthan* where Shrimal, J., speaking for the Bench has observed :

Thus the consensus of the opinion of almost all the High Courts barring a few on the point is that Section 16 (1) (b) of the Act makes a person liable to punishment, who prevents the Food Inspector from taking the sample as authorised by the Act. Section 10 (1) (a) (i) gives the Inspector power to take sample of article of food from any person selling such article. Sub-section (2) of Section 10 gives the Food Inspector power to enter any place where the article of food is exposed for sale. Sub-section (4) of Section 10 provides for seizure of adulterated food. The Inspector has also power to break open the door or any package in which the article of food is kept. For all the purpose the Inspector has power to exercise his power of search and seizure, of a police officer under the CrPC. The Food Inspector is also authorised to exercise powers of a police officer under Section 57 of the Code i.e. to arrest an offender, if he refuses to tell his name and residence. Section 11 prescribes the procedure to be followed by the Food Inspector while taking sample. Therefore, the Food Inspector can follow one of the two modes; one where the vendor cooperates, the other when he refused to cooperate. To prevent the Food Inspector from taking a sample, the accused must do something which makes it impossible for him to take the sample.

9. The learned Judges of the Full Bench appear to have held that some overt act on the part of the seller apart from mere refusal to sell the article of food to the Food Inspector is necessary to constitute an offence of prevention of the Food Inspector from taking the sample.

10. On the other hand, Mr. R. N. Poddar, learned counsel appearing for the State of Haryana, invited our attention to two decisions and submitted that the conduct of the appellant in slipping away from the shop when the Food Inspector disclosed his identity and asked for the sale of a sample of dhania from his grocery shop, amounts to prevention of the Food Inspector from taking the sample as per the provisions of the Act. The first of those decisions is of H. C. P. Tripathi, J. in *Mamchand v. State* where the learned Judge has observed :

The sample had to be taken in accordance with the provisions of the Act and Rules thereunder. As soon as the owner of the milk disappeared from the scene the food inspector could not have obtained the sample as required under law. By running away from the place the applicant did prevent the food inspector from taking sample as required under the Act through not from taking away the entire quantity of the milk which the food inspectors could do in exercise of his powers under Section 10 (iv) of the Act. In the case of *Municipal Board, Sambhal v. Jhamman Lal*, it was held by a Division Bench of this Court that if a person selling article leaves the shop he prevents food Inspector from taking sample as Authorised by the Act. In the instant case, the applicant left the milk, which he was exposing for sale and thereby prevented the food inspector from taking its sample.

A learned Single Judge of the Madhya Pradesh High Court has taken a similar view in *Habib Khan v. State of M. P.* In that case a milk vendor on being accosted by the Food Inspector, kept his milk can in the canteen and bolted way, and it has been held that the milk vendor prevented the Food Inspector from taking the sample and thus committed an offence under Section 16 (1) (b) of the Act

as it stood then. The learned Judge has observed in his judgment thus :

The power of taking the sample has been conferred on the Food Inspector so that he may prosecute the person found selling adulterated food stuff or found in possession thereof for the purposes of sale. Now, if a person bolts away and thus his identity remains undisclosed, the whole purpose of the exercise of the power conferred under Section 10 on the Food Inspector is defeated. In such a case, it will have to be held that in bolting away the person prevented the effective exercises of the power by the Food Inspector. If this is so, it is difficult to see how the same action on the part of a known person would make any difference. If he bolts away, an additional burden will be cast on the Inspector, if he decides to prosecute him for selling or keeping for sale adulterated food articles, to prove that the person who bolted away was the accused and that the article left by him was in his possession. Witnesses may not be available at the nick of the time and here, again the result would be the same. This is why it is necessary to interpret the two expressions "prevents" and "in exercise of the powers under the Act" in the manner interpreted by the Allahabad High Court in Municipal Board, Sambhal v. Jhamman Lal.

11. We are of the opinion that the view of the Allahabad High Court expressed in Municipal Board, Sambhal v. Jhamman Lal reiterated in Mamchand v. State referred to above and taken by the learned Single Judge of the Madhya Pradesh High Court in Habib Khan V. State of M. P. and the Punjab & Haryana High Court in the judgment under appeal in this case is the correct view and that appellant in this case who bolted away from the shop under the pretext of passing urine when the Food Inspector (PW 2) went to his shop along with PWs 1 and 3 and disclosed his identity and tendered the notice Ex. P/B and cash of Rs 4.80 and asked for a sample of the dhanias kept for sale in his grocery shop without accepting the notice and the cash prevented the Food Inspector (PW 2) from taking a sample in accordance with the provisions of the Act and the Rules made thereunder and that no other overt act is necessary on the facts of this case to constitute the offence for which the appellant has been convicted and sentenced and that he has been rightly convicted and sentenced by the court below under Section 16 (1) (c) of the Act. We accordingly, dismiss the appeal and confirm the conviction of the appellant and the sentence awarded to him.

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