

**SUPREME COURT OF INDIA**

Delhi Administration

Vs.

Vidya Gupta

Crl.A.No.625 of 2018

(S.A.Bobde and L. Nageswara Rao,JJ.,)

24.04.2018

**JUDGMENT**

**S.A.Bobde,J.,**

SLP(Crl.)No.999 of 2015

1. Leave granted.

2. The accused, a vendor of M/s New Bikaner Sweet Center was in charge of the day to day business of the shop . On 08.04.2004 at about 7.00 PM, Food Inspector Shri S.K. Sharma purchased a sample of Ghee, a food article for analysis from the shop of the accused where the said food article was stored for sale.

The sample consisted of approximately 600 gms of Ghee taken from an open tin bearing no label or declaration, after proper mixing with the help of a clean and dry long spoon. The sample was divided into three equal parts and stored separately as per the requirements in three separate clean and dry glass bottles under the supervision and direction of Shri B.M. Jain, SDM/LHA. The vendor's signature was obtained on the LHA slip and the wrapper of the sample bottles and the Panchnama was prepared on the spot. One counterpart of the sample was sent to the Public Analyst, Delhi (hereinafter referred to as "PA"), and the other two counterparts were deposited with the LHA. The PA opined that the sample exceeds the maximum Butyro Refractometer (hereinafter referred to as "BR") reading limit of 43 and has a Reichert value of less than 28. The sample also tested positive for Baudouin Test, which should be negative in case of Ghee. And thus, does not conform to the standard. Upon summoning, the accused opted to get the second counterpart of the sample analyzed by the Director, Central Food Laboratory (hereinafter referred to as "the Director") under Section 13 (2) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as "the Act"). The report opined that the sample did not conform to the standards of Ghee as per the Act and the charges were framed. The ACMM-II held the accused guilty of the violation of the provisions of Section 2 (ia) (a) (c) & (m) of the Act,

punishable under Section 16 (1) (a), read with Section 7 of the Act and convicted him . The Sessions Judge set aside the order of the ACMM-II, vide order dated 15.04.2011 and acquitted the accused. Against the order of acquittal, the prosecution applied for leave to appeal under Section 378(1) of the Code of Criminal Procedure. The High Court declined to grant relief , and hence the present appeal is before us.

3. There are two reasons why the High Court had declined to grant leave to appeal against the judgment of acquittal of the Sessions Court.

“(1) First, the sample of Ghee that was taken was itself not meant for sale but it was meant to be used merely as an ingredient in the preparation of sweets which in turn were meant for sale, and therefore no offence is made out under the provisions of Section 2 (ia) (c) & (m) and Section 16 (1) (a) read with Section 7 of the Act.

(2) Secondly, there was a discrepancy between the report of PA and that of the Director with respect to the BR reading. The PA had recorded the BR reading as 52.7, whereas the Director had recorded the BR reading as 53.1. This variation was 0.76% i.e. more than 0.3%, and therefore the sample cannot be considered as representative in nature as held in *State (Delhi Administration) v. Ram Singh and Another*<sup>1</sup>. We have carefully considered the provisions of the Act and find no merit in either reason. Whether the Food was illegally stored.

4. Section 7 of the Act prohibits storing of any adulterated food, it is as follows:-

"7. Prohibitions of manufacture, sale, etc., of certain articles of food.—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;

(iii) any article of food for the sale of which a licence is prescribed, except in accordance with the conditions of the licence;

(iv) any article of food the sale of which is for the time being prohibited by the Food (Health) Authority [in the interest of public health;]

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

[(vi) any adulterant.]

[Explanation.—For the purposes of this section, a person shall be deemed to store any adulterated food or misbranded food or any article of food referred to in clause (iii) or clause (iv) or clause (v) if he stores such food for the manufacture therefrom of any article of food for sale.]"

This section must be construed according to the rule of interpretation enunciated in *Municipal Corporation of Delhi v. Kacheroo Mal*<sup>2</sup>, which also arose under this Act. This Court enunciated the Rule as follows:

"5. The Act has been enacted to curb and remedy the widespread evil of food adulteration, and to ensure the sale of wholesome food to the people. It is well-settled that wherever possible, without unreasonable stretching or straining, the language of such a statute should be construed in a manner which would suppress the mischief, advance the remedy, promote its object, prevent its subtle evasion and foil its artful circumvention "

5. This case turns on the above explanation to the section. According to the accused, since the Ghee which was found to be adulterated was not itself meant for sale, but was meant to be used as an ingredient in the sweets that were in turn meant for sale, no offence is made out. The contention in other words is that it was legal to store adulterated Ghee, if the Ghee itself was not meant for sale.

6. The explanation to the section does not support this contention. It clearly lays down that if a person stores any adulterated food for the purpose of manufacturing from it any article of food for sale, he shall be deemed to store adulterated food. The purpose of this provision is clear, it prohibits the storing of adulterated food notwithstanding the fact that such adulterated food is itself not offered for sale, but is used in making some food which is offered for sale. It is clearly to prevent the adulteration of food and its sale to the public even when it is meant to be used for preparing some other food which is offered for sale. Thus, either way, whether the adulterated food is stored for sale, or if such food is stored for making some other food which is sold, such storing is an offence. Parliament has rightly assumed that no one, who offers food for sale, would store food which is not meant to be used in some food meant for sale.

7. The learned counsel for the accused relied on the judgement of this court in *Municipal Corporation of Delhi v. Laxmi Narain Tandon*<sup>3</sup>. In that case, this Court upheld the decision of a full bench of the Delhi High Court which held that the expression "store" in Section 7 means "storing for sale" and consequently the storing of an adulterated article of food not meant for sale would not constitute an offence under Section 16 1(a). According to the learned counsel, therefore, the High Court was right in maintaining the acquittal of the respondent since the Ghee was found to have been stored not for sale, but for a purpose other than that of sale i.e. for the purpose of preparation of sweets. Though valid when rendered, the decision relied on can no longer govern the point decided. When this Court decided Tandon's case (supra), the section did not explicitly prohibit the storing of adulterated food which was not meant for sale. This Court, therefore, held that storing of adulterated food

which was not meant for sale was not an offence. Tandon's case (supra) was decided on 17.12.1975; the amendment which introduced the deeming fiction that a person shall be deemed to store any adulterated food, even if he stores such food for manufacturing from it any article for sale was introduced by Act 34 of 1976 w.e.f. 01.04.1976. Tandon's case (supra) therefore has no application to the present case. In the present case, the sample of Ghee that was taken was from the Ghee that was stored for the purpose of making jalebis. On the accused's own admission, the offence is clearly made out under Section 7 of the Act. Variation between the reports of Public Analyst and the Director, Central Food Laboratory

8. Section 13 lays down the procedure by which the report of the PA that an article of food is adulterated is dealt with. In brief the procedure is as follows:-

When a report, that the article of food is adulterated, is received and a prosecution is instituted, the local health authority is enjoined to forward a copy of the report of such analysis to such person or persons who may have applied for having such food analyzed vide Section 12. Such persons may, if desired, make an application to the Court to have the sample of the article of food analysed by the Director, and the Court may then dispatch a part of the sample received to the Director. The Director shall send a certificate specifying the result of the analysis. Where two parts of the sample have been sent to the Court and one part has been sent by the Court to the Director, the Court is bound to send the remaining part to the local health authority who is bound to destroy it after a certificate is received from the Director vide sub-section (2C) of Section 13.

9. The law accords such great importance to the report from the Director that it prohibits the Court from continuing with the prosecution until the receipt of the certificate from the Director. Sub-section 3 of Section 13 clearly attributes a higher evidentiary value to the certificate from the Director when compared to the report given by the PA. It reads as follows:-

"13. Report of public analyst-

(1)

(2)

(2A)

(2B)

(2C)

(2D)

(2E)

(3) The certificate issued by the Director of the Central Food Laboratory [under sub-section (2B)] shall supersede the report given by the public analyst under sub-section (1)."

The proviso to sub-Section 5 provides that the certificate from the Director shall be final and conclusive evidence of the facts stated therein. The above scheme, particularly sub-Section 3 which provides that the certificate of the Director shall

supersede the report of the PA and the proviso which makes such a certificate final and conclusive evidence, puts it beyond any shadow of doubt that the report of the PA loses any significance in the proceedings as a piece of evidence.

10. Therefore, there is no reason for the Court to refer to the contents of the report of the PA. Where there is no reason to refer to its contents of the report of the PA, there is even less reason to refer to the variation between the report of the PA and the Director. The Court is enjoined by law to consider the contents of the certificate of the Director only.

11. Moreover, this view is no more *res integra* in view of the judgment of this Court in *Calcutta Municipal Corporation v. Pawan Kumar Saraf and another*<sup>4</sup>. This Court held as follows:-

“Per majority (Thomas and Quadri, JJ.) When Section 13(3) says that the certificate of Director, CFL shall supersede the report, it means that the report would stand annulled or obliterated. The word "supersede" in law means "obliterate, set aside, annul, replace, make void or inefficacious or useless, repeal". Once the certificate of the Director of the Central Food Laboratory reaches the court, the report of the Public Analyst stands displaced and what may remain is only a fossil of it. In the above context the proviso to sub-section (5) of Section 13 can also be looked at which deals with the evidentiary value of such certificate. If a fact is declared by a statute as final and conclusive, its impact is crucial because no party can then give evidence for the purpose of disproving that fact. This is the import of Section 4 of the Evidence Act. Thus the legal impact of a certificate of the Director of the Central Food Laboratory is threefold. It annuls or replaces the report of the Public Analyst, it gains finality regarding the quality and standard of the food article involved in the case and it becomes irrefutable so far as the facts stated therein are concerned.”

12. The finding of the High Court that the variation between the two reports was 0.76% and therefore more than 0.3% as permitted in Ram Singh's case (*supra*) is completely unsustainable and liable to be set aside. The reliance placed by the High Court on the decisions in *Kanshi Nath v. State*<sup>5</sup> and *State v. Mahender Kumar & Ors*<sup>6</sup>, which hold that if in the comparison of the reports of the PA and the Director vast variations are found, then the samples are not representative, is improper. Those decisions do not lay down good law.

It is thus clear that the accused was not entitled to the acquittal and the acquittal is liable to be set aside. We, therefore, set aside the acquittal of the respondent and convict him for the offence under Section 2 (ia) (a) (c) & (m) of the Act, punishable under Section 16 (1) (a), read with Section 7 of the Act. However, the proceedings commenced in the year 2004, the business has closed down since and the accused is now about 70 years old. In these circumstances, we direct that the sentence shall be confined to the period already undergone.

13. Appeal is allowed accordingly.

<sup>1</sup>(2009) 1 FAC 371  
<sup>4</sup>(1999) 2 SCC 400

<sup>2</sup>(1976) 1 SCC 412  
<sup>5</sup>(2005) 2 FAC 219

<sup>3</sup>(1976) 1 SCC 546  
<sup>6</sup>(2008) 1 FAC 177

