

ALLAHABAD HIGH COURT

State

Vs.

Malik Ram

Govt. Appeal No.849 of 1960 . against order of Addl. S.J., Kumaun,

(V.G. Oak and J.D. Sharma, JJ.)

20.01.1960. 07.12.1960

JUDGMENT

V.G. Oak, J.

1. This is an appeal by the State arising out of a prosecution under the Prevention of Food Adulteration Act (hereinafter referred to as the Act). Malik Ram respondent deals in Ghee. One day one Food Inspector took a sample of Ghee from the respondent's shop. The sample was sent to the Public Analyst for examination. It was reported that the Ghee was adulterated. Malik Ram was, therefore, prosecuted under section 7 read with section 16 of the Act for exposing adulterated Ghee for sale. The accused pleaded not guilty. He denied that the Ghee in question was adulterated. The learned Magistrate held that the Ghee was adulterated. Malik Ram accused was convicted under section 7/16 of the Act, and was fined Rs. 100/.

2. Malik Ram appealed. The appeal came up before the Additional Sessions Judge, Kumaun. He held that it was not proved that, the Ghee was adulterated. He, therefore, allowed the appeal, and acquitted Malik Ram. Hence this appeal by the State.

3. There is not much dispute about facts. Malik Ram respondent is a dealer in Ghee. A sample of Ghee was taken by a Food Inspector from the shop. The question is whether the Ghee in question was adulterated or not.

4. One sample of the Ghee was sent to the Director of Central Food Laboratory. He found that the Reichert value was 26.3. He, therefore, expressed the opinion that the Ghee was adulterated. It is not denied on behalf of the respondent that the Reichert value was in fact 26.3. But Mr. Chaturvedi appearing for the respondent urged that the Ghee was nevertheless pure.

5. The learned Sessions Judge has quoted the rule, which prescribes the specifications for Ghee.

The relevant rule is A-11-14 given in Appendix D of Prevention of Food Adulteration Rules. Under that rule, India has been divided into three sections. Section one consists of the Punjab, Uttar Pradesh and certain other States. It is laid down in the rule that, for these States, Reichert value should not be less than 28.0. Section two consists of the following States:-

"Madras, Andhra, Travancore-Cochin, Hyderabad, Mysore, Orissa, Assam, Tripura, Manipur, Madhya Bharat, Bombay, Himachal Pradesh etc."

It is laid down in the rule that, for these States, Reichert value should be not less than 26.0. Section three relates to the following States:-

"Saurashtra, Kutch, cotton-tract areas of Madhya Pradesh, etc."

It is laid down in the rule that for these States, the Reichert value shall be not less than 21.

6. It will be noticed that, for the States falling in section one, the prescribed Reichert value is 28.0, whereas for States in section two, the prescribed Reichert value is only 26.0. For States falling in section three, the Reichert value may be as low as 21. If the present case is governed by part one of the rule, it would appear that the Ghee in question was adulterated. On the other hand, if the case is governed by part two or part three of the rule, Reichert value found was higher than the minimum prescribed by the rule. Mr. K.N. Srivastava appearing for the State contended that, the present case is governed by part one of the rule, which deals with Uttar Pradesh. On the other hand, Mr. P.C. Chaturvedi contended that the present case ought to be governed by part two of the rule, which relates to tracts like Himachal Pradesh.

7. Mr. Chaturvedi pointed out that this is a case from district Kumaun. When the Food Inspector took the sample, he noted on Ex. Ka.1 that, the article in question was "Ghee Pahari". The accused stated before the trial Court that, the Ghee in question had been brought from Jhoolagbat. We understand that Jhoolaghat is a place in Kumaun Division. The learned counsel for the State is prepared to accept the position that this was Pahari Ghee. It was however, urged that, the Reichert value must not be less than 28.0, as prescribed by the rule quoted above.

8. The rule prescribing the specifications for pure Ghee contains a clear indication that, Reichert value may vary according to the part of India where the Ghee is prepared. A single Reichert value has been prescribed for the whole of Uttar Pradesh under part one of the rule. A lower Reichert value has been prescribed under part two of the rule for such hilly tracts like Assam, Tripura, Manipur and Himachal Pradesh. The rule itself contains an indication that, in hilly tracts Reichert value may be properly less than the Reichert value in the plains of Uttar Pradesh. If Ghee is obtained from a hilly tract in Uttar Pradesh, a low Reichert value is not necessarily proof of the fact that the Ghee is adulterated. It appears that Reichert value depends upon the class of the cattle and the nature of food supplied to the cattle. Bearing these factors in mind, one should be prepared for variation in Reichert value within Uttar Pradesh itself. In Uttar Pradesh we have got hills as well as the plains. One should not expect the same Reichert value in places like Naini

Tal and Almorah as in places like Agra, Etawah and Allahabad. It appears to us that there is greater resemblance between the hills of Uttar Pradesh and places like Himachal Pradesh than between the hills of Uttar Pradesh and the plains of Uttar Pradesh. We are, therefore, unable to understand why a single Reichert value has been prescribed by the rule for the whole of Uttar Pradesh, which consists of the plains as well as hills. The rule contemplates that for pure Ghee prepared in hilly tracts, Reichert value may be as low as 26.0. It is, therefore, quite possible that, the Ghee collected from Malik Ram respondent was in fact pure Ghee, although its Reichert value did not reach the figure prescribed in part one of the rule. It seems to us that, the rule is unreasonable in so far as a single Reichert value has been prescribed for the whole of Uttar Pradesh.

9. Upon a reading of the relevant rule as a whole, we are not satisfied that, the Ghee in question was in fact adulterated. So the respondent's acquittal cannot be said to be clearly wrong.

10. The appeal is dismissed.

Appeal dismissed.