

ALLAHABAD HIGH COURT

Municipal Board, Faizabad

Vs.

Chand Surajmal

Criminal Appeal No. 946 of 1962, against order of S.J. Faizabad
(B.N. Nigam and G.D. Sahgal, JJ.)

01.10.1962. 27.09.1963

JUDGMENT

Sahgal, J.

1. This is an appeal by the Municipal Board of Faizabad against an order of acquittal of the respondents passed by the Sessions Judge of Faizabad of an offence under Section 7 read with Section 16 of the Prevention of Food Adulteration Act, 1954 which order of acquittal was passed by him in appeal against an order of conviction by a Magistrate.

2. The respondents had a shop in mohalla Chauk in Faizabad where they sold tea and for the purpose of selling tea they stored milk also which is a necessary ingredient for the preparation of tea. Though Sewak Ram respondent is described as a proprietor and Lal Chand as the servant, it appears from the receipt Ex. Ka-3 that they are partners of the shop. On 26th October, 1961 at 8 a.m. the Food Inspector took a sample of milk purporting to be cow's milk from Lal Chand weighing 3/4th of a seer and sealed it in three bottles and paid a sum of 37 nP. to him as its price. One of the bottles was kept by the Food Inspector, one was sent to the Public Analyst U.P. and one was handed over to Lal Chand from whom the milk was purchased. The report of the Public Analyst indicated that the sample contained fat to the extent of 2.1 per cent and non-fatty solids to the extent of 4.6 per cent. The deficiency in fat contents was thus 23 per cent and non-fatty solids about 46 per cent. It was on these facts that the two respondents were prosecuted.

3. Both of them pleaded not guilty. They admitted the taking of the sample by the Food Inspector but their defense was that the milk was not meant for sale but was

meant for being mixed with tea. There is thus no doubt that one of the respondents on his own behalf and as a partner on behalf of the other did sell milk for analysis to the Food Inspector from his shop where he had kept it for preparing tea.

4. The learned Sessions Judge held that as the milk had not been stored for the purpose of sale but had been stored for the purpose of preparing tea which was to be sold and not milk, no offence had been committed under Section 7 read with Section 16 of the Prevention of Food Adulteration Act, 1954. He also held that the certificate of the Public Analyst was not in the prescribed form as required under Section 13(1) of the Act. A third point was also raised before him but it was not decided. It was to the effect that the link evidence had not been produced to establish that the sample which was set to the Public Analyst was the same sample that had been taken from him by the Food Inspector. On the findings on the two points stated above he acquitted the respondents who had been convicted by the Magistrate.

5. We have heard the learned counsel for the Municipal Board, Faizabad, and the learned counsel for the respondents and are of opinion that the respondents have been wrongly acquitted. The learned Sessions Judge relied on a decision of this Court, *Narain Das v. State, reported in* ¹ which lays down that the word 'stored' in Section 7 of the Act means storing for sale and storing for the purposes other than sale does not constitute an offence' under Section 16(1)(a) of the Prevention of Food Adulteration Act. He has, however, ignored another aspect of the matter. No doubt the respondent could not be convicted for storing the milk at their shop which was of the quality or purity below the prescribed standard, as the milk was not stored for sale but was stored for mixing it with tea which was sold at their shop but they did sell milk to the Food Inspector and the selling of adulterated milk was itself an offence.

6. Under Section 7 of the Prevention of Food Adulteration Act, 1954, no person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute any adulterated food. Not only is the storing of the adulterated food an offence but the selling of such food also is an offence.

7. Under Section 2(xiii) 'sale' with its grammatical variations and cognate expressions, means the sale of any article of food, whether for cash or on credit or by way of exchange and whether by wholesale or retail, for human consumption or use, or for analysis, and includes an agreement for sale, an offer for sale, the exposing for sale or having in possession for sale of any such article, and includes also an attempt to sell

any such article. Thus even sale for analysis comes within the definition of 'sale' under Section 2(xiii) of the Act. Under Section 7 of the Act, therefore, even this sale of adulterated milk was an offence even though it might have been made for the purpose of analysis.

8. Learned counsel for the respondents drew our attention to the provisions of Section 10(3) and also Section 16(1)(b) of the Act by pointing out that the respondents could not refuse to sell under the law and that if they could not refused to sell which they were compelled to do they could not be said to have sold the milk voluntarily, or sold it at all in the eye of law.

9. Now Sub-Section (3) of Section 10 of the Act provides that where any sample is taken under clause (a) of Sub-Section (1) or Sub-Section (2) its cost calculated at the rate at which the article, is usually sold to the public shall be paid to the person from whom it is taken, and clause (b) of Sub-Section (1) of Section 16 provides that if any person prevents a Food inspector from taking a sample as authorized by this Act he shall be guilty of an offence under the Act. It was not obligatory upon the respondents to sell the milk to the Food Inspector. When the Food Inspector came to take the sample they could say that he could very well take the sample but they were not going to sell it. They did not do any such thing. The receipt Ex. Ka-3 indicates that they did sell it for sample. No doubt it was the duty of the Food Inspector as provided under Section 10(3) to pay the price but if the respondents had refused to take the money the Food Inspector could not have compelled them to take it. If they had done so, they would not have committed any offence under Section 16(1)(b) of the Act which provides that the preventing of a Food Inspector from exercising any power conferred on him by the Act is an offence. By not taking the price, they were not preventing the Food Inspector from exercising his powers. As it is, they have sold the milk, or at least one of them has sold the milk on his own behalf and on behalf of the other to the Food Inspector for analysis. Under Section 2(xiii) it was a sale within the meaning of the Act and was under Section 7 an offence being sale of adulterated milk. The respondents therefore have committed the offence though it may be of a very technical nature. If they had refused to sell the milk they would not have been guilty of any offence. They could allow the sample to be taken away by the Food inspector telling him that he could take it if he wanted to do so but as they were not selling the milk they would not accept its price for they were storing milk only for mixing it with tea which alone they were selling at their shop.

10. The next point to be considered is as to whether the report of the Public Analyst was on the prescribed form and as such admissible in evidence as proof of the facts stated therein. Under Rule 7 of the Prevention of Food Adulteration Act (sic), 1955 the Analyst shall cause to be analyzed such samples of articles of food as may be sent to him by the Food Inspector or by any other person under the Act and after analysis has been completed he shall forthwith supply to the person concerned a report in Form III of the result of such analysis. Under Form III as it now stands the Public Analyst has to certify that he has/have caused to be analyzed the sample, and it provides for a declaration of the his analysis in a certificate. The actual words used there are :

"I further certify that I have/have caused to be analysed the aforementioned sample and declare the result of 'my analysis' to be as follows :-

The Public Analyst, however, has furnished the certificate in the following form :

"I further certify that I have caused to analysis the aforementioned sample and declare the result of the analysis to be as follows"

The difference between the prescribed form and the form in which this certificate has been given is that instead of the words 'my analysis' the words 'the analysis' have been used. To us there does not appear to be any difference as to whether the words 'the analysis' were used or 'my analysis' were used. In fact when the rules allow the Public Analyst to get the analysis done by someone subordinate to him under his own supervision he can not certify that it was the result of his analysis. The report that he has submitted, therefore described in a more accurate manner what he was actually expected to do and what in fact he did though there is a deviation from the form. We are, therefore, not impressed by the argument that this certificate is not in the prescribed form.

11. Moreover, under Sub-Section (5) of Section 13 any document purporting to be a report signed by a public analyst unless it has been superseded under Sub-Section (3) or any document purporting to be a certificate signed by the Director of the Central Food Laboratory, may be used as evidence of the facts stated therein, in any proceeding under the Act or under Sections 272 to 276 of the Indian Penal Code. In any case, even if the report was not on the prescribed form under this provision of law

it was a document purporting to be a report signed by a Public Analyst within the meaning of that term under this provision of law and was evidence of the facts stated therein.

12. The next point urged on behalf of the respondents was that under Section 10(7) the Food Inspector was expected to take signatures of two persons at least at the time when he took the sample into his possession and as in this case only one person's signature had been taken, the taking of the sample has not been done in accordance with law. Now this provision of law is only directory. It only provides that this shall be done as far as possible. Moreover the question does not arise in view of the fact that the respondents do admit the taking of the sample by the Food Inspector in the manner in which it is said to have been taken.

13. The last point that was urged on behalf of the respondents was that there is no link evidence in the case indicating that the sample that was actually sent to the Public Analyst was the same that was taken by the Food Inspector. As to this we have the statement of the Food Inspector that the sample was sent from the office. We have the report of that Public Analyst that the seals were found in tact when the sample was received. We have however no evidence of the person who actually dispatched the samples and where these bottles remained in the meantime. The respondents also were given a sealed bottle at the time of the taking of the sample from them, if they wanted to challenge the fact that the sample that had been sent to the Public Analyst was not the same, that had been taken from them, or that the sample that had been sent had been tampered with during the course of transit or during the period it was stored in the office of the appellant, they could have sent their own sample for analysis as provided under Section 12 of the Prevention of Food Adulteration Act, 1954. This point also therefore, has no force.

14. Altogether, therefore, we are of opinion that the respondents have been wrongly acquitted by the learned Sessions Judge. We accordingly allow this appeal and convict the respondents of the offence under Section 7 read with Section 16 of the Prevention of Food Adulteration Act and sentence them to a fine of Rs. 5/- each. The fine should be paid in the Court of the Magistrate within a period of fifteen days.

Appeal allowed.

Cases Referred.

1. 1961 All LJ 663: (AIR 1962 All 82)