

ALLAHABAD HIGH COURT

Babboo

Vs.

State (Allahabad)

Criminal Revn. No. 1743 of 1967, against order of S. J. Allahabad

(B.D. Gupta, J.)

18.09.1967. 18.02.1969

ORDER

B.D. Gupta, J

1. This is a revision by one Babboo who stands convicted for the offence punishable under Section 16 of the Prevention of Food Adulteration Act, hereinafter referred to as the Act.

2. The prosecution case was that, on the morning of the 21st of July, 1966, the applicant was found on the Rewa Road near village Sarangpur, within the jurisdiction of police station Ghurpur in the district of Allahabad, transporting cow's milk for sale, sample whereof was purchased by Sri B. L. Sharma, a Food Inspector, and, on examination of the said sample by the Public Analyst, the same was found deficient in non-fatty solid contents. The applicant pleaded not guilty and stated that he was transporting the milk for his own use and not for sale. The learned Magistrate accepted the prosecution case, rejected the defense and convicted the applicant, awarding him rigorous imprisonment for a period of one year. An appeal to the learned Sessions Judge having failed the applicant filed this revision.

3. At the hearing of this revision learned counsel for the applicant raised two substantial points. The first was that, by reason of delay in starting the prosecution of the applicant, the applicant was deprived of the valuable right conferred on him by the provisions contained in Section 13 of the Act to get the sample analyzed by the Director of the Central Food Laboratory because by the time the applicant learnt of his prosecution the sample must have deteriorated to such an extent that it would have defied analysis. Reliance in support of this contention, was placed by learned counsel on my decision in the case of *Net Ram v. State*¹, The second point raised by learned counsel was that, on the material on record it could not appropriately be held that when the Food Inspector took the sample he added thereto the necessary quantity of formaline as required by the rules framed under the Act. Having heard learned counsel for the parties I am of the opinion that, whilst the first contention must be negatived, the second must be accepted and this revision must be allowed.

¹1968 All LJ 916.

4. The facts relevant to the first contention are that the sample in question was taken on the 21st of July, 1966. The report of the Public Analyst is dated the 3rd of November, 1966. The complaint filed by the Food Inspector, which was duly forwarded to the Court of the Magistrate concerned, is dated the 30th of November, 1966. The case was registered and, on the 14th of December, 1966, summons was directed to be issued to the applicant requiring the applicant to appear on the 27th of December, 1966. Nothing appears to have been done by the office of the learned Magistrate in compliance with the above order with the result that, on the 27th of December, 1966, the learned Magistrate passed another order for the issuance of fresh summons requiring the applicant to appear on the 22nd of February, 1967 and on the latter date the applicant appeared in Court for the first time. Keeping in view the fact that the sample in question was alleged to have been taken from the applicant on the 21st of July, 1966, it was urged that more than six months had passed by the time the applicant had the opportunity to avail himself of the benefit of the provisions contained in Section 13 of the Act and the sample must have deteriorated and analysis thereof by the Director of the Central Food Laboratory must have been rendered useless. This case is no doubt fully covered by the decision recorded by me in the case of 1968 All LJ 916 (supra), in which I applied the schedule of time in regard to deterioration of curd which had been accepted by the Supreme Court in the case of *Municipal Corporation of Delhi v. Ghisa Ram*², on the basis of evidence given by one Dr. Satya Prakash, Mr. Girdhar Malaviya, appearing for the State, however, drew my attention to the decision recorded by D. S. Mathur, J., on the 30th of September, 1965, in *Gokul Chand v. State*,³ in support of the contention, that in case of cow's milk, to which the necessary quantity of formaline had been added and which had been kept in normal circumstances, the sample retains its character and is capable of being usefully analysed for a period of about ten months. A perusal of the judgment makes it clear that the above conclusion was recorded by brother Mathur after a thorough investigation into the question and, if I may say so with respect, I see no reason why the said conclusion should not be accepted as correct and followed in cases dealing with cow's milk. After reading the material set forward by brother Mathur in support of the conclusion recorded by him I have no hesitation in recording my feeling that, in accepting in regard to milk the schedule of time accepted by the Supreme Court in regard to curd in the case of AIR 1967 Supreme Court 970 (supra) I committed an error, and that the schedule of time which should be applied to cases of milk should be the one incorporated by brother Mathur in Criminal Revn. No. 1612 of 1962, D/-30-9-1965 (All). It is unfortunate that the above decision, even though approved for reporting, does not appear to have been reported in any law reports even though more than three years have passed since it was recorded. If this decision had been reported or had otherwise been brought to my notice when I decided the case of 1968 All LJ 916 (supra) my conclusion, I trust, would have been in line with the result of a thorough investigation into the matter by brother Mathur in Criminal Revn. No. 1612 of 1962, D/-30-9-1965 (All) referred to above. Therefore, in the present case, since only about six months had passed since the date on which the sample of milk was collected by the Food Inspector I am unable to accept that the

sample was bound to have deteriorated by the time the accused had the opportunity to avail himself of the benefit of the provisions contained in Section 13 of the Act. The first contention must, therefore, fail.

² AIR 1967 SC 970

³ Criminal Revn. No. 1612 of 1962 (All)

5. As regards the next contention, learned counsel for the State concedes that, apart from such statements of the Food Inspector as are on record, there is no other material on record to make out that the required quantity of formaline was added to the sample of milk purchased by the Food Inspector from the applicant. There is no controversy that none of the three bottles into which the sample was divided was before the Court. A perusal of the provisions contained in Section 11 of the Act makes it clear that of the three containers into which the sample is divided one is handed over to the person from whom the purchase is made, another is sent for analysis to the Public Analyst and the third container is retained by the Food Inspector for production in case any legal proceedings are taken or for analysis by the Director of the Central Food Laboratory under sub-section (2) of Section 13 of the Act, as the case may be. In the case before me the third container which the Food Inspector must have retained for production in case any legal proceedings were taken was, however, not produced by the Food Inspector at the trial. During the course of his examination-in-chief the Food Inspector, Sri B. L. Sharma, made a statement that he had added preservative to the sample purchased by him. He did not mention the substance which he had added as preservative, nor the quantity or proportion thereof. The matter was pursued in cross-examination and the Food Inspector stated that there was nothing on the record of the file with him to indicate that preservative had been added to the sample purchased by him. He stated that in the labels which are pasted on the containers a mention is made of the preservative which is added but he confessed that he had before him neither any label nor any container. If he had retained the third container and brought the same with him whilst the trial was going on and had produced the same the label thereon would have disclosed the fact of the adding of preservative as also the nature and quantity of the preservative actually added. Learned counsel for the State has been unable to place before me any material which might furnish any explanation for this omission on the part of the Food Inspector. I am thus left with the bald statement made by the Food Inspector more than ten months after the date on which he had purchased the sample of milk that he had added preservative to the sample purchased by him, I find it impossible to accept that the Food Inspector remembered, as a fact the adding of preservative to the sample purchased by him from the applicant after a lapse of such a long time. It appears manifest that during this long period, in his capacity as Food Inspector, he must have taken samples in numerous cases, and the best that can be said about his assertion that he had, in fact, added preservative in the case in question is that this assertion was merely the result of belief that he must have done so, and not the result of actually remembering, as a fact, that he had done so on the date and time when he purchased the sample in question. The provisions contained in Rule 20 are mandatory and I find it impossible to accept that the prosecution has established compliance with the rule. Failure on the part of the prosecution to establish that the necessary preservative was added would lead to the result that it cannot be said as to what may have happened to the sample by the time it was examined by the Public Analyst, and no reliance

on the result of the analysis by the Public Analyst can, therefore, be placed for sustaining the conviction of the applicant.

6. Accordingly this revision is allowed and the conviction of the applicant and the sentence of one year's R. I. awarded to him are set aside. The applicant is on bail. He need not surrender. His bail bonds are discharged.

Revision allowed.