

MADHYA PRADESH HIGH COURT

Municipal Corporation Gwalior

Vs.

Kishan Swaroop

Criminal Appeal No. 225 of 1963, Decided on 16.9.1964, from judgment of Municipal Magistrate 1st class, Gwalior
(P.K. Tare and S.P. Bhargava, JJ.)

28.12.1962. 16.9.1964

JUDGMENT

Bhargava, J.

1. This is an appeal by the Municipal Corporation Gwalior against the order of the Municipal Magistrate, first class, Gwalior, acquitting the respondent Kishan Swaroop of the offence under section 7(1) read with Section 16(1) of the Prevention of Food Adulteration Act (7 of 1954) (hereinafter called the Act).

2. Briefly stated the facts are that Shri Radhey Shyam Sharma, Food Inspector of the Municipal Corporation Gwalior purchased 94 seer of milk from the respondent on 10-5-1960 at about 7 A.M. for 36 paise. The milk purchased was divided into 3 portions and samples were taken in three separate phials. One of the phials was given to the accused, the other was sent to the Public Analyst for analysis on 17-5-60 and the third was preserved for production in Court. The Public Analyst analyzed the sample of milk apparently on 19-5-1960. In his opinion the sample contained fat 2.9 per cent non-fatty solids 7.39 per cent and added water 17.8 per cent. It was not challenged that the milk was buffalo milk and under Rule A. 1.1.01.03 it is to be presumed that where the milk is sold or offered for sale without any indication as to whether it was derived from cow, buffalo, goat or sheep, the standard prescribed for buffalo milk shall apply.

3. The oral evidence in the case is not of much importance. The case for the prosecution mainly hinges on the report of the Public Analyst. The learned Magistrate concluded that it was not established by the prosecution that the said milk was adulterated. He emphasized that the said milk was analysed by the Public Analyst

after more than 8 days of the samples being taken, that only one drop of formalin was added per ounce of milk of instead of two drops per ounce as required under Rule 20 of the Prevention of Food Adulteration Rules; that as the preservative added was much below the proportion of 2 drops to one ounce of the sample, it could not be held that the preservative had the effect of preserving the sample; that there was no evidence that the sample sent for analysis was kept and sent to the Public Analyst under refrigeration or having been kept under ice; and that the report of the Public Analyst only mentioned the percentage of added water without mentioning the quantity of water detected in the sample. Consequently, no reliance was placed upon the report of the Public Analyst, and the learned Magistrate found that the report of the Public Analyst did not prove the respondent's guilt.

4. The first contention raised by the learned counsel for the appellant is that the milk in question should have been deemed to be adulterated within the meaning of Section 2(1) of the Act because its quality and purity were found to be below the prescribed standard and because in addition it was found to contain added water by the Public Analyst. The learned counsel urged that the mere fact that formalin was added in the proportion of one drop to one ounce of the sample of milk instead of the requisite proportion of two drops to one ounce of the sample was not material, firstly for the reason that the addition of preservative according to Rule 19 of the Prevention of Food Adulteration Rules was merely directory and not mandatory and secondly for the reason that the milk in question was examined by the Public Analyst only after 8 days of the date of the purchase of milk by the Food Inspector.

5. In our opinion, the contentions advanced by the learned counsel cannot be accepted. Rule 19 on which reliance is placed is a general rule authorizing any person taking a sample of any food for the purpose of analysis to add a preservative as may be prescribed from time to time to the sample for the purpose of maintaining it in a condition suitable for analysis. Rule 20 is a specific rule for using the preservative in case of sample of any milk (including skimmed and separated milk) cream and gur in liquid or semi liquid form. This rule expressly provides that the liquid commonly known as "formalin", that is to say, a liquid containing about 40 per cent formaldehyde in aqueous solution in that proportion of 2 drops in an ounce has to be added. As admittedly the requirement of this rule was not satisfied and the quantity of formalin added to the sample of milk in question was only half of the strength prescribed by R. 20, in our opinion, there is no basis to hold that the preservative added was adequate

to prevent disintegration or damage in composition of the milk. We are also clear in our mind that the report given by the Public Analyst under Sub-Section (1) of section 13 of the Act could carry any weight only if it was shown that the mandatory requirements of Rule 20 were fulfilled. As that has not been shown in the instant case we are of the view that the finding of the learned Magistrate on this point must be accepted as correct.

6. It was next contended by the learned counsel for the appellant that under Rule 44(b) of the Rules the respondent could not sell the milk in question because it was found to contain added water by the Public Analyst, and he deserved to be convicted of the offence charged on this short ground floor. Again, we are unable to agree. We fully agree with the learned Magistrate that the Public Analyst should not in his report have said that the milk contained a certain quantity of added water. The proper course for him to adopt was to write down the result of his analysis and show how much water was contained in the milk. His statement to the effect that the milk contained 17.8 per cent of added water is of no value unless it was indicated as to what was the total quantity of water which was formed by him in the milk, or it could be gathered from the contents of fat and non-fatty solids indicated by him that the milk must have been adulterated by the use of water. The certificate, therefore, was, in our opinion, bad in respect of the statement that the milk sample contained 17.8 per cent of added water. But we have no hesitation to say that on the basis of the quantity of the non-fatty solids and milk fat which has been indicated in the report of the Public Analyst could otherwise be acted upon. The view that we are taking finds support from the Full Bench decision of the Allahabad High Court in *Prem Das v. State*,¹ In that case their Lordships have enunciated the proposition that a sample of milk will be deemed to be adulterated if the milk fats are less than the prescribed minimum or the non-fatty solids are less than the prescribed minimum. In Appendix F Rule A. 11.01.02 it is proscribed that buffalo milk shall contain not less than 5.0 per cent of milk fat and not less than 9 per cent of the milk solids, other than milk fat. In the instant case, milk fat found by the Public Analyst was only 2.9 per cent and non-fatty solids were 7.39 per cent, and thus the quantity and purity of the milk was definitely below the prescribed standard. Thus, if the report of the Public Analyst were legally acceptable we would have not hesitated in convicting the accused, but we are presently going to show that apart from the question of formalin not having been added to in adequate quantity there is another serious hurdle in the way of the prosecution, because this case was challenged with great delay on 21-9-61 and due to this delay the accused-respondent

lost his valuable right to challenge the report of the Public Analyst in the manner prescribed by Section 13(2) of the Act.

7. Section 13(2) envisages that after the institution of the prosecution under this Act, the accused vendor or the complainant may on payment of prescribed fee make an application to the Court for sending a part of the sample mentioned in sub-clause (1) or sub-clause (3) of clause (c) of Sub-Section (1) of Section 11 to the Director of the Central Food Laboratory for a certificate and on receipt of the application the Court shall first ascertain that the mark and seal and fastenings as provided in clause (b) of Sub-Section (1) are intact, and may then dispatch a part of the sample under its own seal to the Director of the Central Food Laboratory, who shall thereupon send a certificate to the Court in the prescribed form within one month from the date of the receipt of the sample specifying the result of his analysis. In clause (3) of Section 13, it is further provided that the certificate issued by the Director of the Central Food Laboratory under Sub-Section (2) shall supersede the report given by the Public Analyst given under Sub-Section (1). In the instant case on the request of the accused-respondent the sample bottle produced in Court by the prosecution was sent to the Director Jivajee Industrial Research Laboratory, Gwalior. But as the curd formation in the sample had already taken place the analysis of the same could not be carried out. The report received from the Directorate of the Research Laboratory is dated 18-12-1962 on record. The learned counsel for the respondent has contended, and, in our opinion, rightly that as the prosecution in the present case was launched after a delay of about 16 months the accused was deprived of exercising his valuable right in getting the report of the Public Analyst tested in the manner contemplated by Section 13, and as his valuable right was denied to the accused for no fault of his, but wholly due to the inordinate laches of the prosecution no weight could be given to the report of the Public Analyst.

8. It is significant, that under Section 13(2) the accused gets the right to ask for the examination of the sample by the Director of Central Food Laboratory only after the institution of the prosecution. We are surprised that the appellant should have delayed the prosecution of the respondent for such a long time. Adulteration of food is a crime against society and general interests of the public demand that all such prosecutions should be launched with great dispatch so that really guilty persons may not escape punishment. But as in the instant case there can be no doubt that the accused has been prejudiced by the delay of the prosecution we have no option, but to give weight to the

contention raised on behalf of the respondent.

9. The learned Magistrate has also stressed that examination of the milk sample by the Public Analyst which was done on 19-5-1960 after 9 days of the incident seriously affected the value of the certificate of the Analyst. Almost in similar circumstances it was observed by Mudholkar, J. (as he then was) in *Dattappa v. Secretary, Municipal Committee, Buldhana*,²

"Bearing in mind that the milk was analysed by the analyst a week after absence of proof of manner in which the samples were sent and the conditions in which the milk was when the samples were received by him detracts from the value of the certificate."

We are in respectful agreement with the said observation. It cannot be disputed that the composition of milk undergoes a rapid change unless the milk is either pasteurized or unless it is sent under refrigeration. To obviate the possibilities of these changes it is absolutely necessary to get the samples examined by the Public Analyst at the earliest possible time and if there is some delay it is also necessary for the prosecution to establish that the milk was preserved in the interval under ice or under refrigeration.

10. The learned counsel for the appellant urged that the learned Magistrate was in error in relying on the decision in AIR 1951 Nagpur 191, where it was held that when milk was analyzed by the Analyst almost a week after the samples were taken the absence of proof of the manner in which the samples were sent and the conditions in which the milk was when the samples were received by him detracted from the value of the certificate. He tried to distinguish the case by saying that in the year 1950 when that case was decided use of formalin as a preservative was not resorted to and, therefore, the point of delay emphasized in that case cannot serve as a proper basis in those cases where formalin was added to the samples. In our opinion, the argument does not help the appellant for the simple reason that the preservative added in the present case was much below the prescribed quantity under Rule 20, and, therefore, cannot be accepted to be sufficient to prevent its disintegration or changes in its composition.

11. Before we part with the case, we consider it fit to observe that it is high time that the Public Analyst should clearly understand the scope of his duties and confine

himself to do what lies within the scope of his duty. If there is adulteration in any degree it is not for the Public Analyst to indulge in vague generalities, nor should he be content merely by expressing his opinion. In such cases he should set out his findings with such clearness that the Court may be able upon the data he gives to form its own opinion as to whether the article was or was not adulterated. This opinion has been expressed in numerous cases (see *Bakewell v. Davis*,³ *Newby v. Sims*,⁴ *Fortune v. Hanson*,⁵ and AIR 1961 Allahabad 590 (FB)). All these authorities emphasize that it is the function of the Court to determine in accordance with the law what is maximum quantity of water permissible in unadulterated milk and to decide then whether the sample contained more than that quantity or not. The milk in its natural state contains a large quantity of water. Added water in unadulterated milk merely results in a mixture and does not result in producing a compound having characteristics different from those of its ingredients. Adulteration by adding water can properly be judged by correctly noting the quantity of water found in the milk and the quantity of fats and non-fatty solids.

12. In the view that we take little value can be attached to the report of the Public Analyst on which reliance is placed on behalf of the appellant. For the reasons stated above, we, therefore, maintain the order of acquittal passed by the lower Court. The appeal fails and is dismissed.

Appeal dismissed.

Cases Referred.

1. AIR 1961 All 590
2. AIR 1951 Nag 191
3. 1894-1 QB 296
4. 1894-1 QB 478
5. 1894-1 QB 202