

PUNJAB AND HARYANA HIGH COURT

Ram Sarup Tara Chand Convict

Vs

The State

(Bedi, J.)

03.02.1965

ORDER

Bedi, J.

(1) Petitioner Ram Sarup was running a grocer's shop at Dharamsala. On the 10th June, 1963, H. R. Khanna Food Inspector went to his shop at about 3-30 p. m. and purchased 450 grams of desi ghee in the presence of Udo Ram his peon and Amritsaria Ram another person running shop close to the shop of the petitioner after paying him the price. The ghee in question was divided into three price. The sealed into three separate bottles. One of these bottles was sent to the public analyst who reported that the ghee was adulterated because butyro-refractometer reading of the sample-ghee was in excess by 1-2 as it gave the reading of 44. 2. The reichert value was 2. 6 less than the prescribed minimum.

(2) On the above facts a report against the petitioner was lodged. He was tried under section 16(1)(a)(i) of the Presentation of Food Adulteration Act 1954 and sentenced to six months rigorous imprisonment besides a fine of Rs. 500/- or in default of its payment to further rigorous imprisonment for three months. The petitioner went up in appeal which was dismissed by Shri R. S. Bindra Sessions Judge Hoshiarpur of Dharamsala but the sentence was reduced to a fine of Rs. 200/- and in default of payment of the fine he was to suffer rigorous imprisonment for two months vide his order dated 22nd January, 1964, out of which this revision petition has arisen.

(3) Learned counsel for the petitioner raised a number of points for my consideration. One of those points was that the provisions of section 10(7) of the act were not complied with which were obligatory, The sub-section runs as under:--'10(7) Where the Food Inspector takes any action under clause (a) of sub-section (1) sub-section (2) sub-section (4) or sub-section (6) he shall as far as possible call not less than two person to be present at the time when such action is taken and the their signature."

It is admitted that the two persons who were present at the time of taking sample of ghee were Udo Ram and Amritsaria Ram. IT is also admitted that these two persons had actually signed the

relevant memo. Amritsalia Ram, however, resiled from his statement and when examined stated that although he had signed the memo but he actually reached after the sample had been taken by the Food Inspector. A request was made by the Public Prosecutor to declare this witness as hostile but this respect was turned down and the learned Sessions Judge in my opinion rightly remarked that the Magistrate should have allowed this witness to be cross examined. The Inspector. He, therefore, cannot be said to be an independent person. In that connection the counsel for the petitioner has invited my attention to a Division Bench decision of this Court in state v. Sadhu Singh AIR 1962 Punj 548 where it was held that the provisions of sub-section (7) of the section 10 of the Act were mandatory and not merely directory and it was the duty of the Food Inspector to comply with the same unless it was impossible to secure the attendance of two persons at the time he took a sample or did any of the acts under sub-section (1),(4) and (6) of section 10. The law did not vest discretion in him to associate or not to associate two persons at the time of taking the sample but it must be due to circumstances beyond his control that his failure to call two persons to witness the taking of sample would be excused. It was further held that accordingly when in a particular case sample was not taken in the presence of two persons it would be for the prosecution to satisfy the Court that it was not on account of any desire to circumvent the provisions of sub-section (7) of section such cause. I am bound to follow this judgment. The counsel for the State however submitted that the words "as far as possible" in sub section (7) were significant and may be therefore the Food Inspector wanted to join some other shop-keepers of the locality but they refused to oblige him. But this is only a conjecture based on no material. It is however not possible in all cases for the Food Inspector to have with him always two independent person when taking action under section 10(7) but some other Inspector is going along with his peon or some other official and on the way he comes across a milk-seller the Food Inspector checks him and obtains a sample of his milk as required under the law and theirs on one near about the place except those who were already present with him; in such Circumstances the non-compliance with this clause may be excused. In the present case however we find that the sample by the Food Inspector was taken at about 3. 30 p. m. There is evidence that a number of other shops in the close proximity of the petitioners shop were there. Besides there were other persons near about the spot at the time by the Food Inspector did not even care to ask any of the those persons to witness the transactions.

(4) For the foregoing reasons I feel that the provisions of sub-section (7) of section 10 of the Act have not been complied with which were mandatory. The petitioners is therefore entitled to acquittal. I consider accordingly.

(5) Order accordingly.