

RAJASTHAN HIGH COURT

Narain Prasad

Vs.

State, (Rajasthan)

Full Bench Reference in Criminal Revn. No. 527 of 1972

(A.P. Sen, M.L. Joshi, and M.L. Shrimal, JJ.)

23.12.1977

JUDGMENT

Shrimal, J.

1. Tersely speaking shorn of unnecessary details the prosecution case as disclosed at the trial is that on Sept. 6, 1970 Food Inspector Shri V. D. Sharma visited the shop of the petitioner Narain Prasad and found him selling sweet-meats. The Food Inspector after disclosing his identity demanded from him a sample of 'Ghewar.' The accused-petitioner refused to take the prescribed notice in the prescribed form No. 6 and also refused to sell him the sample of 'Ghewar'. He was tried for contravening the provisions of Section 16 (1) (b) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'the Act'). The learned Magistrate First Class, Ajmer found the accused guilty under Section 16 (1) (b) of the Act and sentenced him to one day's simple imprisonment and a fine of Rs. 750/- and in default of the payment of fine to further undergo simple imprisonment for 15 days, vide his judgment dated Nov. 29, 1971.

2. Being aggrieved by the judgment of his conviction and sentence passed by the learned Magistrate, the accused petitioner went in appeal before the learned Sessions Judge, Ajmer but without any success.

3. On revision, the case came up for decision before Hon'ble the Chief Justice on Sept. 2, 1977. During the course of arguments his Lordship noticed that two contradictory views were expressed by different Division Benches of this Court on the same point. Lodha J. and J. P. Jain J. in (*Municipal Council, Jaipur v. Ganesh Narayan, decided on 7-11-1972*)¹ held that an overt act or physical obstruction is not the sine qua non of

an offence under Section 16 (1) (b) of the Act, while in (*Municipal Council, Jaipur v. Mangilal reported in*)² it was held by another Division Bench that if the accused had shown his unwillingness to give sample to the Food Inspector, but was willing to accompany the Food Inspector wherever he desired to take him, then it was negative approach of the accused and the act of the accused in not co- operating with the Food Inspector would not tantamount to preventing the Food Inspector from taking the sample. Mere refusal to give sample to the Food Inspector did not amount to preventing him within the meaning of Section 16 (1) (b) of the Act.

4. In the opinion of Hon'ble the Chief Justice these two views of the learned Judges heading the two Division Benches were contradictory to each other and in his opinion it was necessary to settle the law on the subject and, therefore, he referred this case for hearing by a Full Bench, that is how the matter has come up before us.

5. The main question which needs decision by this Bench is 'whether a mere refusal to sell article of food to the Food Inspector amounts to preventing the Food Inspector from taking sample as authorized by the Act within the meaning of Section 16 (1) (b) of the Act or not ?. Whether it amounts to preventing the Food Inspector from exercising any other power conferred on him by or under the Act within the meaning of Section 16 (1) (b) of the Act or not ? There is a conflict of opinion amongst the different High Courts including our own Court on this point.

6. Before dealing with various cases it will be useful to notice the relevant statutory provisions at this stage. Relevant portion of Section 10 of the Act, which defines the powers of the Food Inspector, as it stood prior to the Amendment Act No. 34 of 1976 is reproduced below:-

"10. Powers of Food Inspector - A Food Inspector shall have power-

(a) to take samples of any article of food from-

(i) any person selling such article;

(ii) any person who is in the course of conveying, delivering or preparing to deliver such article to a purchaser or consignee;

(iii) a consignee after delivery of any such article to him, and

(b) to send such sample for analysis to the public analyst for the local area within which such sample has been taken;

(c) with the previous approval of the health officer having jurisdiction in the

local area concerned, or with the previous approval of the Food (Health) Authority, to prohibit the sale of any article of food with a view to preventing the outbreak or spread of any infectious disease.

(2) Any Food Inspector may enter and inspect any place where any article of food is manufactured, stored or exposed for sale and take samples of such articles of food for analysis.

(3)-(4)

(5) The power conferred by this section includes power to break open any package in which any article of food may be contained or to break open the door of any premises where any article of food may be kept for sale:

Provided that the power to break open the door shall be exercised only after the owner or any other person in occupation of the premises, if he is present therein, refuses to open the door on being called upon to do so:

Provided further that the Food Inspector shall, in exercising the powers of entry upon and inspection of any place under this section, follow, as far as may be, the provisions of the Cri. P. C., 1898, relating to the search or inspection of place by a police officer executing a search warrant issued under that Code.

(6)-(7)

(8) Any Food Inspector may exercise the powers of a police officer under Section 57 of the Criminal Procedure Code 1898, for the purpose of ascertaining the true name and residence of the person from whom a sample is taken or any article of food is seized.

(9)....."

7. A perusal of the above section shows that Section 10 empowers the Food Inspector to take sample of any article of food. The power conferred by this section includes the power to break open the package in which any article of food may be contained or to break open the door of any premises where any article of food may be kept for sale. But it must be remembered that it does not create any obligation on the part of the salesman or any other person mentioned therein to physically hand over the article to the Food Inspector. It is for him to take the sample and if the salesman prevents him from doing so, he can be liable for an offence under Section 16 (1) (b) of the Act.

8. The term 'prevent' having not been defined by statute, we have to construe it in the light of various decisions given by different High Courts.

9. In *Public Prosecutor v. Murugesan*,³ Ramaswami J. while interpreting Section 14

(3) of the Madras Prevention of Adulteration Act observed as under (at p. 199):-

"Where a person by his action effectively prevented the officer from taking the sample, held, that no overt act was necessary to make out preventing under Section 14 (3) of the Act."

10. In *Municipal Board Sambhal v. Jhammanlal*,⁴ the word 'prevent' appearing in the Act came up for interpretation. The accused in that case instead of giving sample of mustard oil to the Food Inspector left the shop and promised to come shortly. The Food Inspector waited for some time, but the accused did not turn up. Tota Ram, who appears to have been also sitting on the shop was then asked by the Food Inspector to supply the sample. He said that sample could only be given by Jhammanlal accused and that he was going to call Jhammanlal. He also left the shop. The Food Inspector waited for an hour and a half, but neither Totaram nor Jhamman Lal came back. On conviction it was urged before the Allahabad High Court that the Food Inspector was not prevented from taking sample, because under sub-section (4) of Section 10 of the Act, he could have seized the articles and carried it away. B. D. Bhargava J. speaking for the Court observed:

"If a person disappears from the shop, in our opinion, he has done an overt act by means of which he has made it impossible for the Food Inspector to obtain a sample from him. Apart from this fact we do not think that in cases of prevention an overt act is necessary."

11. In *Habib Khan v. State of Madhya Pradesh*,⁵ Bhave J. held that:-

"It is not always necessary to use either threat or physical force to prevent the exercise of any power. It can be done in many other ways".

In the same case it was also held that :-

"Where a milk vendor on being accosted by Food Inspector, keeps his milk-cans in the canteen and bolts away, the milk vendor prevents the Food Inspector from taking the sample and thus commits an offence under Section 16 (1) (b)."

12. In *Ayodhya Bhagat v. State of Bihar*⁶ Wasiuddin J. of the Patna High Court observed as under:-

"A Food Inspector can be prevented from obtaining a sample which he is authorized to take in exercise of his power under the Act within the meaning of the Section 16 (1) (b) not only by some overt act, but also by an omission which has the consequence of preventing the Food Inspector from obtaining the sample from a person selling the article of food concerned." In the same case it was further held that :-

"It cannot be the intention of the legislature that the Food Inspector must be compelled by reason of some act or omission of the person selling an article of food to resort to his powers under sub-sections (2) and (5) in every case. To impose such a limitation upon the powers of the Food Inspector would amount to rendering his powers under sub-section (1) nugatory. If, therefore, a person selling an article of food refuses to comply with the demand of the Food Inspector to give a sample of it to him on tender of the requisite price then the refusal has the consequence of preventing the Food Inspector from taking a sample which he is authorized to take by the Act and the person who thus prevents a Food Inspector from taking a sample commits an offence punishable under Section 16 (1) (b) read with Section 10 (1) (i) of the Act."

13. In *District Board Patna v. Sadhu Sao*,⁷ the accused in that case on being asked by the Food Inspector to give 6 chhataks of the mustard oil by way of sample, refused to give sample to the Food Inspector. The learned Judge came to the conclusion that the act of the accused which includes also his omission had the consequence of preventing the Food Inspector from obtaining the sample from a person selling the article of food concerned.

14. A contrary view was taken in the following cases :-

In *State v. Kanu Dhanua Patil*,⁸ the word 'prevent' appearing in Section 4 of the Bombay Harijan Temple Entry Act, 1947 (Act No. 35 of 1947) came up for consideration before a Division Bench of the Bombay High Court presided by Gajendragadkar and Vyas JJ. It was observed in that case that (at p. 394):-

'In some cases, prevention may take the form of physical obstruction. The gates of the temple may be barred by putting a physical obstruction in his way. But it is equally possible that in some cases where Harijans who are not fully conscious of their rights and not aware of the strength of their cause seek to enter the temple in a timid and diffident way, they might be prevented from

making an entry merely by the use of words strong and loud. In our opinion, if the use of strong and loud words actually results in the Harijan getting out of the temple without obtaining the 'darshan' of the deity, that itself must be regarded as constituting an offence within the meaning of Section 4."

15. In *Bishan Dass Telu Ram v. State*,⁹ where the accused refused to give sample even on payment, Kapur J. held that in his view it was not something as 'prevention', which does involve some action which hindered the Food Inspector from taking the sample.

16. In *State of Gujarat v. Laljibhai Chaturbhai*,¹⁰ it was held by V. B. Raju J. that mere refusal to give a sample would not amount to preventing the Food Inspector from taking a sample in the absence of physical obstruction, threat or assault.

17. In *Jaunpur Municipality v. Maluk Das*,¹¹ a Division Bench of the Allahabad High Court, regarding the word 'prevent' occurring in the Act has said that (at p. 706):-

"The word 'prevent' according to the Webster's New English Dictionary as relevant for this case means 'to frustrate,' to deprive of power of acting- noting, operating, proceeding etc.; to ward off circumvent, to hinder the progress or fulfillment. The phrase 'prevent from' is used in sense of 'hindering'. The prevention under Section 16 must, therefore, necessarily imply the doing of some act on the part of the dealer which may make it impossible for the Food Inspector to obtain the sample in exercise of his power under Section 10 (1) of the Act. The dealer may prevent a sample being taken by destroying or otherwise making non-available the article of food itself or by making it impossible for the Food Inspector to take the sample by creating hindrance in his way. The dealer must be shown to have either prevented the Food Inspector from acting in the furtherance of his duty under Section 10 (1) (a) of the Act or to have made the goods disappear so that the taking of sample be prevented before he can be made liable under Section 16 (1) (b) of the Act."

18. In *Public Prosecutor v. Doredla Ramayya*,¹² a contention was raised before the Andh. Pra. High Court that merely refusing to give sample and locking the door and going away does not amount to preventing the Food Inspector from taking the sample as contemplated by Section 16 (1) (b) of the Act. Repelling the contention Reddy J. of the Andhra Pradesh High Court held that this contention was not tenable. The word 'prevents' only means 'to hinder effectually' from taking the sample. It does not necessarily mean that there should be actual prevention by using physical force against the Food Inspector who intends to take sample.

19. In *Shri Ram v. State*,¹³ Hari Swarup J. of the Allahabad High Court after making reference to *Jaunpur Municipality v. Maluk Das* (supra) enunciated the law, which has been aptly described in head note (a) as under:-

"Mere refusal of vendor to give sample to the Food Inspector on demand is not sufficient to constitute an offence under Section 16 (1) (b). There must be an overt act on his part to hold that the Inspector was prevented from taking the sample. In the instant case ten minutes after refusing to give the sample the vendor closed the shop and went away, though the Inspector was waiting at the shop. Thus the closing of shop had a direct nexus with the vendor's refusal to give the sample and his act clearly prevented the Inspector from taking the sample.'

20. In *Jagannath Bhagirath v. State of Madhya Pradesh*¹⁴ C. P. Sen J., who after taking into consideration the decisions of various Courts did not follow the decision in *Habib Khan v. State of M. P.* (supra) because it was based on *Municipal Board v. Jhammanlal* (supra) which was later on considered by a Division Bench of the same High Court in *Jaunpur Municipality v. Maluk Das* (supra) and the observations made in the former case were held to be obiter. The learned Judge after making a reference to the definition of the word 'prevent' given in Webster's New English Dictionary observed as under:

"Prevention under Section 16 must, therefore, necessarily imply the doing of some act on the part of the dealer which may make it impossible for the Food Inspector to obtain sample in exercise of his power under Section 10 (1) of the Act. The dealer may prevent a sample being taken by destroying or otherwise making non-available the article of food itself or by making it impossible for the Food Inspector to take the sample by creating hindrance in his way. The dealer must be shown to have either prevented the Food Inspector from acting in furtherance of his duty under Section 10 (1) (a) of the Act or to have made the goods disappear so that the taking of sample be prevented before he can be made liable under Section 16 (1) (b) of the Act."

21. In the above case law the point at issue has been enunciated in an attractive and trenchant manner.

22. A resume of the aforesaid authorities shows that the earlier view held by the Allahabad High Court and Madhya Pradesh High Court was not approved by the same High Courts in subsequent cases. Thus the consensus of the opinion of almost all the High Courts barring a few on the point is that Section 16 (1) (b) of the Act makes a person liable to punishment, who prevents the Food Inspector from taking the sample as authorized by the Act. Section 10 (1) (a) (i) gives the Inspector power to take sample of article of food from any person selling such article. Sub-section (2) of Section 10 gives the Food Inspector power to enter any place where the article of food is exposed for sale. Sub-section (4) of Section 10 provides for seizure of adulterated food. The Inspector has also power to break open the door or any package in which the article of food is kept. For all the purposes the Inspector has power to exercise his power of search and seizure, of a police officer under the Cri. P. C. The Food Inspector is also authorized to exercise powers of a police officer under Section 57 of the Code i. e. to arrest an offender, if he refuses to tell his name and residence. Section 11 prescribes the procedure to be followed by the Food Inspector while taking sample. Therefore, the Food Inspector can follow one of the two modes; one where the vendor co-operates, the other when he refused to co-operate. To prevent the Food Inspector from taking a sample, the accused must do some thing which makes it impossible for him to take the sample. The prevention does not mean only obstruction by physical force, but it may even involve threat. The dealer can also prevent a sample being taken by destroying or otherwise making non-available the article of food itself, or by making it impossible for the Food Inspector to take the sample by creating a row. Sometimes the act of simple refusal may be accompanied by such a conduct and demeanour that it may amount to preventing but mere inaction on the part of the vendor in not giving the sample would not tantamount to preventing the Food Inspector from taking the sample. The view taken by a Division Bench of this Court in *Municipal Council, Jaipur v. Mangilal* (supra) represents the correct statement of law on the subject. In view of this, the decision of the Division Bench of this Court in *Municipal Council, Jaipur v. Ganesh Narayan* ¹⁵ needs to be reviewed and must be held to be erroneous.

23. Keeping the above proposition of law in view, we shall now examine whether in the case on hand it has been proved from material on record that the accused-petitioner not only refused to give sample of 'Ghewar' for the purposes of analysis to the Food Inspector but created such circumstances whereby the Food Inspector can be

said to have been prevented from taking the sample within the meaning of Section 16 (1) (b) of the Act.

24. The trial Court held that from the evidence of the Food Inspector corroborated by the memos prepared by him on the spot viz. Ex. P/2 it is clearly proved beyond reasonable doubt that the Food Inspector asked the accused-petitioner to give the sample of 'Ghewar' on payment but he refused to do so and also refused to take the notice Ex. P/1. He also created row and thereby prevented the Food Inspector from taking the same and this conduct of the accused-petitioner fell within the mischief of Section 16 (1) (b) of the Act.

25. The revisional jurisdiction is normally to be exercised only in exceptional cases where there is a glaring defect in the procedure or there is a manifest error of point of law and consequently there has been a flagrant miscarriage of justice. The process of appraising the evidence led by two parties can be equated almost to the process of holding a balance, the time honoured symbol of justice. Sometimes when the two pans of the balance are seemingly equal, even a slight evidence, circumstantial or otherwise, tilts the balance on one side and thereby probabalises the case of one party as against the other. In this process of holding the balance what pieces of evidence, of course excluding inadmissible evidence, would lean the balance in favor of one party is dependent on the evidence available in a given case. But asking the revisional court to say that this piece of evidence should have weighed more than the other is nothing more than seeking a reassessment of evidence. Appreciation of evidence is a mental process involving selection, assessment and conclusion. Which statement ought to weigh and how much, cannot be rigidly laid down. The two courts below have consistently held that the accused-petitioner by creating row prevented the Food Inspector from taking the sample and there is nothing for us to hold otherwise.

26. Before parting with the case we would like to observe that the learned Magistrate was wrong in awarding the lenient sentence in a case punishable under Section 16 (1) (b) of the Act. The proviso to Section 16 (1) says that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or of fine of less than Rs. 1,000/-, if the offence, of which the accused is found guilty, falls under sub-Clause (i) of Clause (a) of the section and is with respect to an article of food, which is adulterated under sub-Clause (1) of Clause (i) of Section 2 of the Act. It is patent from the proviso that the discretion permitted to the court in the matter of sentence is available only in the cases

mentioned in the proviso i.e. the offence must be with respect to an article of food which is adulterated under sub-Clause (i) of Clause (1) of Section 2 of the Act, or misbranded under sub-Clause (k) of Clause (ix) of that section, or the offence is under sub-Clause (ii) of Clause (a). The accused has been convicted under Section 16 (1) (b) and thus the proviso can have no application and the offence committed by the accused- petitioner has to be visited with the minimum sentence prescribed by Section 16 of the Act.

27. The offence was committed in the year 1970 and we are now in the year 1977. Criminal proceedings against the accused have thus gone for nearly seven years. Pendency of criminal proceedings for so long a time does amount to harassment, apart from the considerable expenses which the accused might have incurred by now. The hanging of a Damoclean sword does obstruct the sequence of normal life. The State Government has not challenged the quantum of sentence awarded to the accused-petitioner at any stage of the proceedings. The accused has not cared to appear before us. Enhancement of sentence will need a notice to the accused, which would further delay the decision. In the facts and circumstances of the case, we reject the revision petition, without enhancing the sentence of the accused-petitioner.

28. In the result, the conviction and sentence of the accused-petitioner under Section 16 (1) (b) of the Prevention of Food Adulteration Act, 1954 are upheld. The revision petition has no merit and it is dismissed.

Revision dismissed.

Cases Referred.

1. Criminal Appeal No. 108 of 1969
2. Criminal Appeal No. 578 of 1970, 1975 Raj LW 577
3. (1954 Cri LJ 197)
4. (1961 (1) Cri LJ 204)
5. 1971 MPLJ 883
6. 1973 FAC 89 (Pat)
7. AIR 1971 Pat 222
8. (1955 Cri LJ 1333)
9. (1957 Cri LJ 656)

10. (1967 Cri LJ 376 (1))
11. 1971 Cri LJ 705
12. 1973 Cri LJ 506 (Andh Pra)
13. 1976 Cri LJ 736
14. (1977) I FAC 157
15. (Criminal Appeal No. 108 of 1969)