

N. K. S.

*Before K. S. Tiwana and S. S. Dewan, JJ.*

STATE OF PUNJAB,—Appellant.

*versus*

RAMESH KUMAR,—Respondent.

*Criminal Appeal No. 480-DB of 1981.*

November 3, 1983.

*Prevention of Food Adulteration Act (XXXVII of 1954)—Sections 7 and 16(1) (a) (i)—Sample of curd taken by the Food Inspector—Milk fat found to be in excess of the prescribed standard by the Public Analyst—Milk solids not fat found marginally deficient—Such marginal deficiencies—Whether entitle the accused to acquittal.*

*Held, that there are separate standards prescribed for fat and non-fatty solids and the law does not contemplate condonation of deficiency in one constituent by the excess of the other constituent. The authorities vested with powers necessary in this behalf fixed the margins of variability after proper consideration and it is not the function of the Courts to lay down any parallel standards of their deficiency. Where the fat contents of the curd sold are in excess and the non-fatty solids are marginally deficient, the selling of such adulterated curd constitutes an offence falling within the mischief of section 7 of the Prevention of Food Adulteration Act, 1954.*

(Para 10).

*Ujagar Singh vs. The State of Punjab 1980(I) FAC 432.*

*Puran Singh vs. The State of Uttar Pradesh and others, 1978 F.A.J. 168.*

*Municipal Corporation of Delhi vs. Jawahar Lal, 1980(II) F.A.C. 145.*

**OVERRULED.**

G. S. Tulsi, Advocate, for State.

Ajay Mittal, Advocate, for the Respondent.

## JUDGMENT

S. S. Dewan, J.

(1) This appeal preferred by the State of Punjab against the acquittal of respondent Ramesh Kumar on a charge under S. 16(1) (a)(i) of the Prevention of Food Adulteration Act, 1954, is concluded in favour of the appellant by the Full Bench judgment of this Court in *State of Punjab v. Teja Singh* (1).

(2) On 20th July, 1979, Dr. M. L. Jaiswal, Government Food Inspector along with Dr. Ramesh Kumar Gupta visited the premises of the respondent at Rup Nagar and purchased 600 grams of cows' milk curd for analysis. Whole of the curd weighing about 4 kgs. was lying in an earthen pot for sale. After completing all the formalities, the sample was later on sent to the Public Analyst for analysis. Subsequently Public Analyst,—*vide Report Exhibit P. D.*, disclosed that the milk fat was 6.6 per cent as against the requisite standard of 4 per cent, i.e., the milk fat was more by 2.6 per cent and the milk solids not fat was found to be 7.7 per cent as against the requisite standard of 8.5 per cent i.e. the milk solids not fat was less by 0.8 per cent.

(3) The complainant besides himself coming into the witness-box as P.W.1, examined Dr. H. R. Dewan, P.W.2 and Dr. Romesh Kumar, P.W.3 and also proved the necessary documentary evidence with regard to the purchase of sample from the respondent. The respondent denied the prosecution allegations and pleaded false complicity in the case but led no evidence in defence.

(4) The only point strenuously canvassed before the trial Magistrate was that it could not be possible that the milk fat should be more than the prescribed limit and there may be some variation of the standard of milk due to the quality of food supplied to the cows and as such the sample could not be said to be adulterated. Placing reliance on Single Bench decisions in *Ujagar Singh v. The State of Punjab*, (2), *Puran Singh v. The State of Uttar Pradesh and others*, (3) and *Municipal Corporation of Delhi*

(1) 1976 P.L.R. 433.

(2) 1980(1) FAC 432.

(3) 1978 FAJ 168.

v. *Jawahar Lal*, (4), the Chief Judicial Magistrate, Rupnagar, accepted the argument advanced before him and rather cryptically acquitted the respondent for the following reasons:

"In the present case also, the sample is of cows' milk curd and the milk fat has been found to be more by 2.6 per cent than the prescribed standard and the milk solids not fat were found to be less by 0.8 per cent. In the present case also, there is no escape from the inference that either the test performed by the Public Analyst was erroneous or there was some imbalance in the fodder fed to the cow which resulted in the high percentage of the fat while giving lower percentage in solids not fat. At any rate, it cannot be said that the accused had intentionally affected adulteration in the milk. I, therefore, accordingly hold that the prosecution has not been able to prove its case against the accused beyond the scope of any reasonable doubt. I, therefore, acquit him."

(5) It is manifest from the above that the aforesaid acquittal of the respondent is based on the ground that there was some imbalance in the fodder fed to the cows which resulted in the high percentage of fat while giving lower percentage in solids not fat. This reasoning has been deprecated in *Teja Singh*' case (supra). Therein the specific legal issues which fell for consideration were formulated in the following terms:—

1. Whether it is permissible to add the percentages of the various constituents of milk disclosed by the Public Analyst and thereafter to deduce a conclusion therefrom about the overall deficiency or otherwise of the milk from its prescribed standards?
2. Whether the Court is entitled to assume a slight or reasonable margin of error in the conclusions recorded by the Public Analyst during the course of analysis of the milk?
3. Whether a negligible or marginal deviation from the prescribed standard laid down by the Act can be ignored and acquittal recorded on that basis?

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(6) It was authoritatively and categorically held that the answer to all the aforesaid three questions must be returned in the negative.

(7) In view of the Full Bench judgment in *Teja Singh's case* (supra), the Single Bench decisions on which the Magistrate relied are no longer good law. On this ground, the acquittal of the respondent is not justified and requires to be set aside.

(8) Mr. Ajai Mittal, learned counsel for the respondent, in order to avoid the effect of Full Bench Judgment in *Teja Singh's case* (supra) relied on a Supreme Court judgment in *Food Inspector, Municipal Corporation Baroda v. Madan Lal—Ram Lal Sharma and another* (5) and urged that the deficiency of milk solids in the curd sample involved here was only border-line and, therefore, there should be no interference with the order of acquittal passed by the trial Court. In that case, the question for determining was whether the High Court was right in holding that churning of the curd of which sample was taken, if done with hand was not done in a proper manner so as to make the sample homogenous and representative. While dismissing the appeal preferred by the Food Inspector, Municipal Corporation, Baroda, their Lordships of the Supreme Court made the following observations:

“The sample of curd was taken on September 4, 1976. Six years have passed and two Courts have concurred in acquitting the accused, namely, the Sessions Judge and the High Court. We are, therefore, reluctant to interfere with the order of acquittal. But the learned counsel Mr. M. C. Bhandare for the appellant, Food Inspector and the learned counsel Mr. Nain appearing for the State of Gujarat second respondent supporting the appellant, urged that irregularity in churning the curd before sampling the same in bottles as found by the High Court, if allowed to remain unquestioned it would have an adverse affect on a large number of pending cases. We are, therefore, only inclined to examine the legal submission and we may make it absolutely clear that we are disinclined to interfere after six years in what is found to be marginal adulteration by the learned Magistrate so as

to send the respondent to jail, though we must make it abundantly clear that we do not look upon with equanimity on offences under the Prevention of Food Adulteration Act because these offences have the deleterious effect playing havoc with the health and well-being of a large segment of the Society. But the acquittal by two courts and delay of six years and coupled with the finding that there was marginal adulteration would certainly be a disincentive to interfere with the order."

In *Municipal Committee, Amritsar, v. Hazara Singh*, (6), Their Lordships of the Supreme Court observed in the following terms:

"It is plain from submission of counsel that the appellant's grievance is not so much against the acquittal as against a passing reference by the Sessions Court to an obiter observation of this Court in the *Malva Co-operative Milk Union Ltd., Indore v. Behari Lal and another*, (7) Obviously, the Sessions Judge had concluded that a minor error in the chemical analysis might have occurred. He was perhaps not right in saying so. Anyway, a reading of his judgment shows that the mention of this Court's ruling (*supra*) was meant to fortify himself and not to apply the ratio of that case. Indeed, this Court's decision cited above discloses that Hidayatullah, J., (as he then was) was not laying down the law that minimal deficiencies in the milk components justified acquittal in food adulteration cases. The point that arose in that case was whether the High Court was justified in upsetting an acquittal in revision, when the jurisdiction was invoked by a rival trader, the alleged adulteration having been so negligible that the State had withdrawn the prosecution resulting in the acquittal. Certainly, the revisional power of the High Court is reserved for setting miscarriage of justice, not for being invoked by private prosecutors. Such was the ratio but, in the course of the judgment, Hidayatullah, J., to drive home the point that the case itself was so marginal, referred to the microscopic difference from the set standard."

(6) 1975 F.A.C. 271.

(7) 1973 F.A.C. 273.

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(9) Mr. Mittal has urged that when only recently the contrary view has been taken by the Supreme Court, then the only way open to this Court is to follow the latest pronouncement of the Supreme Court. In *Food Inspector, Municipal Corporation, Boroda's case* (supra) the judgment was pronounced by the Bench of two Judges whereas in *Hazara Singh's case* (supra), the judgment was given by the Bench of three Judges. That being so, we must prefer to follow the decision in *Hazara Singh's case*, (supra), as against the decision in *Food Inspector, Municipal Corporation, Baroda's case*, (supra) as the former is a larger Bench than the latter. The Full Bench judgment of this Court in *Teja Singh's case* (supra), had set the controversy at rest. The order under appeal runs counter to the judgment of the Full Bench decision of this Court.

(10) There are separate standards prescribed for fat and non-fatty solids and the law does not contemplate condonation of deficiency in one constituent by the excess of the other constituent. The authorities vested with powers necessary in this behalf fixed the margins of variability after proper consideration and it is not the function of the Courts to lay down any parallel standards of their deficiency. In the instant case, the fat contents being in excess to the extent of 2.6 per cent and the non-fatty solids being deficient to the extent of 0.8 per cent, his selling such adulterated curd constitute an offence falling within the mischief of S.7 of the Act. We, therefore, allow the State appeal, set aside the order of acquittal and convict the respondent for having committed an offence under S. 16(1)(a)(i) of the Act and sentence him to suffer rigorous imprisonment for 6 months and to pay a fine of Rs. 1000. We direct that on failure of the respondent to pay the fine, he shall further suffer rigorous imprisonment for 2 months.

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