

area in which the offence has been committed. Section 12AA(1) (f) further provides that all offences under this Act shall be tried in a summary way.

(5) In this view of the matter, it was incumbent upon the Investigating Officer to seek special permission of the Court for extension of time for investigation as envisaged under Section 167(5) of the Code of Criminal Procedure. Admittedly, no application was filed by the Investigating Officer making out a case for extension of time for investigation beyond the period of six months. Thus, finding no infirmity in the impugned order of the learned Sessions Judge, Narnaul, dated October 15, 1984, we dismiss the appeal being without any merit.

R.N.R.

(FULL BENCH)

Before A. L. Bahri, A. P. Chowdhri and J. B. Garg, JJ.

STATE OF PUNJAB,—Appellant.

versus

RAMESH KUMAR,—Respondent.

Criminal Appeal No. 44-DBA of 1986.

22nd January, 1992.

Prevention of Food Adulteration Act, 1954—Ss. 2(1) (a), 7, 16—Code of Criminal Procedure, 1973—Ss. 2(d), 190—Complaint made against accused for selling adulterated milk—No allegation in the complaint that milk was stirred before sample was taken for analysis—Omission to state—Complaint not liable to be dismissed—Facts in the complaint show commission of offence—Trial Court can take cognizance of such a complaint.

Held, that if the facts alleged in the complaint show that the sample was purchased from the accused, which was found on analysis to be not in accordance with the prescribed standard and a prayer for taking action against the accused for commission of the offence i.e., for sale of adulterated milk, under S. 7 read with S. 16 of the Prevention of Food Adulteration Act, 1954, the Court could take cognizance of such a complaint even though the fact that "milk was stirred before sample was taken" is not mentioned in the complaint. (Para 12)

(This case was referred to Full Bench by Hon'ble Mr. Justice J. B. Garg and Hon'ble Mr. Justice A. P. Chowdhri on 9th August, 1991, for decision of an important question whether a mere omission

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to mention in the complaint the fact that the commodity, say milk in this case, was stirred before taking the sample shall per se be fatal to the prosecution of an accused under the Prevention of Food Adulteration Act, 1954."

The Full Bench consisting of Hon'ble... Mr. Justice A. L. Bahri, Hon'ble Mr. Justice A.P. Chowdhri & Hon'ble Mr. Justice J. B. Garg decided the question of law in negative on 2nd January, 1992 and referred the case before the division bench for fresh decision in the matter according to law. The Division Bench consisting of Hon'ble Mr. Justice S. D. Bajaj and Hon'ble Mr. Justice D. S. Nehra affirming the findings of the learned trial court and acquitted the accused charged under section 16(1) (a) read with S. 7 of the Presentation of Food Adulteration Act).

Appeal from the order of the Court of Shri Gurdev Singh, PCS, Addl. Chief Judicial Magistrate Hoshiarpur, dated the 24th August, 1985, acquitting the accused.

Mr. M. C. Bery, DAG (Punjab), for the Appellant.

Amrik Singh Kalra, Advocate with Miss Harbind Kalra, Advocate, for the Respondent.

JUDGMENT

A. L. Bahri, J.

(1) The question referred to the Full Bench is whether a mere omission to mention in the complaint the fact that the commodity, say milk in this case, was stirred before taking the sample shall per se be fatal to the prosecution of an accused under the Prevention of Food Adulteration Act, 1954 ?

(2) At the outset, it may be stated that neither the provisions of Prevention of Food Adulteration Act nor the Rules framed thereunder prescribe for stirring of the milk or such like products before sample therefrom is to be taken. However, the judicial pronouncements on the subject do not leave any manner of doubt on the importance of factum of stirring of the milk or such like products to make them homogeneous before taking sample for analysis under the provisions of the Act. Three Division Bench cases and several Single Bench cases of this Court have been referred to on the subject on behalf of the accused, who is respondent in this case, whereas the Deputy Advocate General appearing on behalf of the

appellant, State of Punjab, has referred to two decisions of the Supreme Court with respect to the matters which require to be incorporated in the complaint, calling upon the Court to take action against the accused for commission of offences. It will be useful to refer to the definition of complaint given in Section 2 Clause (d) of the Code of Criminal Procedure, which reads as under :-

“Complaint” means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation.—A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint, and the police officer by whom such report is made shall be deemed to be a complainant.”

(3) Reference may also be made to Section 190 of the Code of Criminal Procedure, which authorises the Magistrate to take cognizance of the complaint :—

190(1) subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence —

- (a) upon receiving a complaint of facts which constitute such offence;
- (b) upon a police report of such facts;
- (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.”

It may be stated that no particular form is prescribed for a criminal complaint to be filed in the Court. However, the allegations contained in a complaint must, *prima facie*, disclose the commission of

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an offence and the complaint must be filed with a view for taking action under the Code. The facts, which are required to be mentioned in the complaint, must indicate commission of an offence. It is not expected of the complainant to categorise the elements of the offence sought to be charged against the accused in the complaint. A case relating to the provisions of Essential Supplies (Temporary Powers) Act, was under the consideration of the Supreme Court in *Bhagwati Saran and another v. The State of Uttar Pradesh* (1). Section 11 of the aforesaid Act relating to powers of the Court to take cognizance of offences on a report in writing of the facts constituting such offence. It was urged before the Supreme Court that certain details of facts were required to be mentioned in the complaint to enable the Court to take cognizance of commission of offence. The High Court had rejected the contention and the Supreme Court approved the decision. In para 17 of the judgment, it was observed as under :—

“It is to be noticed that the report is required to contain only a “statement of facts constituting the offence” and its function is not to serve as a charge-sheet against the accused.”

It was further observed that the details which would be necessary to be proved to bring home the guilt to the accused and which comprised the several matters (enumerated in the judgment earlier) will be details, which would emerge at a later stage when after notice to the accused a charge is framed against them and of course at the stage of trial. They would all be matters of evidence———”

(4) The Supreme Court in *Bhimappa Bassappa Bhu Sannavar v. Laxman Shivarayappa Samagouda and others* (2), dealt with the scope of ‘complaint’ as defined under the Code of Criminal Procedure. In para 11 of the judgment, it was observed as under :—

The word ‘complaint’ has a wide meaning since it includes even an oral allegation. It may, therefore, be assumed that no form is prescribed which the complaint must

(1) A.I.R. 1961 S.C. 928.

(2) A.I.R. 1970 S.C. 1153.

take. It may only be said that there must be an allegation which *prima facie* discloses the commission of an offence with the necessary facts for the magistrate to take action. Section 190(1) (a) makes it necessary that the alleged facts must disclose the commission of an offence."

(5) The three cases of Division Bench particularly relating to Prevention of Food Adulteration Act need to be noticed, as they directly or indirectly deal with the question referred to above.

(6) In *State of Haryana v. Kam Dhan* (3), the matter was disposed of with the following observations :—

"The learned trial magistrate gave a finding of fact that the milk was not stirred before the same was purchased from the respondent. On this point the Food Inspector did state in the trial Court that the milk was stirred before the same was purchased but in the complaint, Exhibit P.C. it is nowhere mentioned that it was done so. Dr. V. K. Mahotra is also silent on this point. It is a matter of common knowledge that cream accumulates on the top of boiled milk and if milk is not properly stirred when the sample is taken, it is bound to be deficient in essential ingredients. In this view of the matter, the judgment of the acquittal passed by the trial Magistrate is inexceptionable. We, therefore, see no force in this appeal and dismiss the same."

In the above case though it was not specifically held as a question of law that the fact of stirring the sample of milk was required to be mentioned in the complaint, however, omission of this fact in the complaint was taken into consideration while appreciating the evidence of the Food Inspector given in Court and the effect of non-stirring of the milk was taken into consideration that it was a matter of common knowledge that the cream accumulates on the top of boiled milk and it would be deficient in essential ingredients.

(7) In *State of Punjab v. Jugan Nath* (4), after referring to the provisions of section 2(d) and section 190 of the Code of Criminal

(3) 1983 (1) F.A.C. 199.

(4) 1987 (1) Recent Criminal Reports 5.

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Procedure as well as section 2(1) (a) (m) and section 7 of the Prevention of Food Adulteration Act, it was observed as under :—

“Thus, the essential ingredients of a complaint in a case of adulterated milk are that the milk was for sale, that its sample was taken by the Food Inspector which was got analysed and that the sample was found adulterated. There is no provisions in the Act of the Rules prescribing method of taking sample nor there is any statutory requirement of making the milk homogeneous. In these circumstances, the omission of the factum of making the milk homogeneous in the complaint is not fatal to the admissibility of the complaint. When a complaint is filed by the Food Inspector omitting this fact the Magistrate evidently cannot refuse taking cognizance of the offence. Quite clearly, such omission does not affect the maintainability of the complaint.”

(8) The following observations of the Supreme Court in *Food Inspector, Municipal Corporation, Baroda v. Madanlal Ram Lal Sharma and another*, were also noticed :—

“We are conscious of the fact that in milk and milk preparations including curd, it is distinctly possible that the fat settles on the top and in order to find out whether the milk or its preparations such as curd has prescribed content then a sample must be homogeneous and representative so that the analysis can furnish reliable proof of nature and content of the articles of food under analysis.”

The effect of omission of this important matter in the complaint or the First Information Report was taken into consideration and it was observed as under :—

“But at trial these omissions would assume importance and the proof adduced before the Court regarding the fact so omitted in the First Information Report would be looked with suspicion and the benefit of doubt will become available to the accused. Such a situation will arise not because the mention of those facts was a

necessary requirement of the complaint to constitute the offence but because the omission would make the evidence, which is produced to prove those facts, suspect as an after thought. The omission is not inherently fatal to the prosecution case but the Court while assessing the evidence would certainly be entitled to take the view that evidence of the facts not mentioned in the complaint or the first information report cannot be safely relied upon. By the same reasoning, although it may not be necessary to mention the factum of making the milk homogeneous for maintainability of the complaint, yet it would be open to the Court not to place implicit reliance on the evidence produced in respect thereof in the Court on the ground that in the light of the omission in the complaint this evidence could possibly be an after thought. We must hasten to make it clear that the Court is not bound to reject the evidence of stirring of the milk simply because this fact is omitted in the complaint."

(9) The third case of the Division Bench in the line is *State of Haryana v. Rameshwar* (5). Case of *Jagan Nath* (referred to above) was referred to. The observations made in *Jagan Nath's* case were relied upon in extenso. In para 7 of the judgment, it was observed as under :—

"There is no proforma prescribed for the drafting of the complaints. Necessary facts which constitute an offence have to be mentioned in the complaints. If some essential facts or essential requirements, which are a prerequisite before doing an act, is not mentioned in a complaint, then the accused, in given cases, has the right to say that the prosecution has made an improvement in its case."

It was further observed :—

"It is high time that the Food Inspector realise that such printed proform which are deficient in certain aspects should not be used for filing the complaints. Almost in every case, which we have come across, the mention of

the stirring of the milk is singularly absent. In many a circumstances, as in this case, this fact assumes importance to know whether the Food Inspector has performed his duties appropriately and in accordance with the accepted rules of taking samples. It is very easy for a witness to say such a fact at the time of evidence. If this improvement is allowed, in every case then a day will come when the Food Inspectors will omit to mention in the complaints how the sample was taken, how and what type of preservative and what quantity of it, was added to the sample. We, therefore, do not see inclined to grant this latitude to the Food Inspectors to make improvements in the case under the Prevention of Food Adulteration Act as it has been done in this case by mentioning only at evidence stage about the stirring of the milk."

The other Single Bench cases, referred to during arguments, are the following :—

Tara Chand v. State of Haryana, 1985 (1) P.L.R. 186; Gulshan v. State of Haryana, 1986 (2) R.C.R. 49; Jai Bhagwan v. State of Haryana, 1989 (2) R.C.R. 502; Har Lal v. State of Haryana, 1988 (1) R.C.R. 149 and Kewal Krishan v. State of Punjab, 1989 (1) R.C.R. 192, Sant Ram v. State of Haryana, 1990 (3) R.C.R. 2.

(10) It may be stated that Jagan Nath's case (supra) was referred to in some of the cases and while appreciating the oral evidence, the omission of the 'fact of stirring of milk in the complaint' was taken into consideration while deciding the cases. In particular, reference is made to the decision in Jai Bhagwan's case, referred to above, where the omission to mention that the milk was stirred in the memorandum prepared on the spot was taken into consideration and the following observations were made in para 3 of the judgment :—

"Exhibit PC, the spot memo is another piece of evidence which could help in the matter. This memo is prepared at the spot and detail of taking sample is provided therein. But if we refer to the report and evidence taken in course of sampling of that memo, it nowhere mentions

that the product or skimmed milk was stirred or mixed to make it homogeneous. Thus, there is no evidence whatsoever on the record that the milk with the petitioner was made homogeneous. Mention in the complaint by itself in the absence of evidence is of no value.

In Sant Ram's case (supra), while referring to the case of Jagan Nath, it was observed as under :—

“The importance of stirring the milk is well know. It is an acknowledged fact that if milk is not stirred properly, fats accumulate at the top. At the time of the taking of sample, stirring of the milk makes it homogeneous and whichever part of the milk is then taken is representative of the bulk. Though non-mentioning of such a fact in the complaint is not fatal to the maintainability of the complaint but this fact tells on the credibility of evidence of the Food Inspector even though he may assert at the trial that he did stir the milk.”

(11) We have given due consideration to the respective arguments addressed by counsel for both the parties and are of the firm opinion that the view expressed in Jagan Nath's case is correct that the law does not require mentioning of the fact of stirring of the milk in the complaint to enable the court to take cognizance of the offence.

(12) If the sample of milk has been found to be not in accordance with the standard prescribed, it would be covered under the definition of 'adulterated', as defined under section 2(i) (a) of the Act. If the facts alleged in the complaint show that the sample was purchased from the accused, which was found on analysis to be not in accordance with the prescribed standard and a prayer for taking action against the accused for commission of the offence i.e. for sale of adulterated milk, under section 7 read with section 16 of the Act is made, the Court could take cognizance of such a complaint even though the fact that "milk was stirred before sample was taken" is not mentioned in the complaint.

(13) It is entirely a matter of appreciation of evidence as to whether evidence produced by the complainant at the trial on the point of stirring of milk before purchase of the sample is to be

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accepted or not on account of the omission of this fact in the spot memo or in the complaint, would depend upon the facts and circumstances of each case. The complaint, or first information report or report submitted under section 173 of the Code of Criminal Procedure or the memo of taking sample prepared on the spot can best be used as previous statements of the witnesses with which witnesses could be confronted for contradictions with the facts mentioned therein or omission of material facts.

(14) The question referred to the Full Bench is, therefore, answered in the negative.

(15) The case would be listed for decision according to law, before the Division Bench.

A. P. Chowdhri, J.

I agree with the conclusion of my brother A. L. Bahri, J. but I would like to add a few lines of my own.

There can be no doubt or debate that as an abstract proposition there is no requirement of the fact that milk or some of its products, like curd, had been stirred before taking the sample being mentioned in the complaint. It follows that omission to mention such a fact cannot be *per se* fatal to the prosecution. The other question is whether in fact the milk was stirred in order to make it homogeneous at the time of taking the sample. The answer to this question will naturally depend upon an evaluation of the evidence. The two propositions, namely, the mention of the stirring of milk etc. at the time of taking sample in the complaint on the one hand and the fact whether milk was stirred before taking the sample on the other hand are two entirely distinct things and one should not be confused with the other. There are certain observations in some of the authorities referred to by my learned brother, which give the impression to an unwary reader that the mention of the fact of stirring must necessarily be mentioned in the complaint itself. We have come to a categorical conclusion that there is no such requirement of law. It will naturally depend on the facts of each case whether the stirring of milk etc. at the time of taking sample is established as a fact in a particular case or not. It may also be mentioned that having regard to the scheme of the Prevention of Food Adulteration Act, a complaint is drawn up only on receipt of

the result of the sample from the Public Analyst. It follows that a complaint is not a contemporaneously prepared document at the time of taking the sample and no undue importance can be given to the non-mention of the fact of stirring in the complaint even while evaluating the evidence of the prosecution on that point.

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