

REVISIONAL CRIMINAL.

Before Gopal Singh, J.

ADMINISTRATOR AMRITSAR MUNICIPALITY,—Petitioner.

versus

BHUPINDER SINGH,—Respondent.

Criminal Revision No. 24-R of 1968.

February 26, 1970.

Prevention of Food Adulteration Act (XXXVII of 1954)—Sections 2(i) (e), 16(1) (a) (i) Proviso—Prevention of Food Adulteration Rules (1955)—Rules A. 11.11—Accused selling ice cream of skimmed milk with fat content—Such ice cream—Whether comes within the definition of “adulterated article of food”—Trial Court while convicting the accused under section 16(1) (a) (i)—Whether entitled to take lenient view in the matter of sentence.

Held, that if an accused person sells ice cream of skimmed milk with a fat of 7 per cent while the prescribed limit of fat content in such an ice cream is nil, the case is covered by the definition of “adulterated article of food” within the meaning of section 2(i) (e) of Prevention of Food Adulteration Act, 1954. In such a case, the trial Court, while convicting the accused under section 16(1) (a) (i) of the Act is entitled to take lenient view of the sentence as given in proviso (i) appended to sub-section (1) of section 16 of the Act. (Para 6)

Case reported by Shri O. P. Saini, Additional Sessions Judge, Amritsar, with his letter No. 329, dated 9th January, 1968, for revision of the order of Shri H. S. Ahluwalia, Judicial Magistrate, 1st Class, Amritsar, dated 19th January, 1967, convicting the respondent.

CH. ROOP CHAND AND R. S. MONGIA, ADVOCATES, FOR ADVOCATE-GENERAL, PUNJAB, for the petitioner.

H. L. SIBAL, SENIOR ADVOCATE, WITH K. S. KAWATRA, AND S. C. SIBAL, ADVOCATES, for the respondent.

JUDGMENT.

GOPAL SINGH, J.—This is reference under section 438, Criminal Procedure Code made by Shri O. P. Saini, Additional Sessions Judge, Amritsar, on November 30, 1967 recommending that the sentence of the respondent be enhanced from simple imprisonment till the rising of Court and a fine of Rs. 1,000 or in default to further suffer rigorous imprisonment for three months to rigorous imprisonment for six months and fine of Rs. 1,000 or in default to further undergo rigorous imprisonment for three months. Shri H. S. Ahluwalia, Judicial Magistrate, 1st Class, Amritsar,, by judgment, dated January 19, 1967, convicted the respondent under section 16(1) (a) (i) of the

Prevention of Food Adulteration Act, 1954 and sentenced him to imprisonment till the rising of the Court and to fine of Rs. 1,000 or in default of payment of fine to further suffer rigorous imprisonment for three months. The respondent filed an appeal against his conviction in the Court of Sessions while Municipal Committee, Amritsar, preferred petition for revision for enhancement of the sentence. The appeal of the respondent was dismissed. The present reference has arisen out of that revision petition. The respondent in that revision petition has also filed revision petition No. 169 of 1968, from the judgment of Shri O. P. Saini, Additional Sessions Judge, Amritsar, passed in appeal upholding his conviction. That revision petition came up on April 29, 1968. It was directed to be heard along with the reference. As I have dismissed today the revision petition without admitting it to hearing, nothing survives for reconsideration of the conviction of the petitioner in that revision petition. The only question that arises for consideration is as to whether the enhancement of sentence as recommended by the Additional Sessions Judge is called for.

(2) It has been contended by the Counsel for Bhupinder Singh respondent, that by virtue of proviso (i) appended to sub-section (1) of Section 16 of the Prevention of Food Adulteration Act, Court can impose sentence of imprisonment for a term less than six months. Sub-section (1) of section 16 of the Act provides that in addition to penalty to which an accused person be liable under the provisions of section 6 of the Act, he shall be punishable with imprisonment for a term, which shall not be less than six months. Proviso (i) to sub-section (1) of Section 16 of the Act would apply to the case against the respondent, if the offence committed by the respondent falls under sub-clause (i) of clause (a) of Section 16(1) of the Act and is with respect to an article of food, which is adulterated as defined in sub-clause (1) of clause (i) of Section 2 of the Act. Sub-clause (i) of clause (a) of sub-section (1) of Section 16 of the Act runs as follows :—

“If any person—

(a) whether by himself or by any other person on his behalf imports into India or manufactures for sale, or stores, sells or distributes any article of food—

(i) which is adulterated or misbranded or the sale of

which is prohibited by the Food (Health) authority in the interest of public health.'

(3) Sub-clause (i) of clause (i) of Section 2 of the Act, which is to be read in conjunction with the above provision of Section 16, runs as follows :—

“In this Act, unless the context otherwise requires,—

(i) An article of food shall be deemed to be adulterated—

(a) to (k)—

(1) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities, which are in excess of the prescribed limits of variability.”

(4) The prescribed standard for quality or purity of ice-cream is given in rule A.11.11 of the Prevention of Food Adulteration Rules, 1955. That rule runs as follows:—

“ ‘Ice-cream’ means the frozen food made with cream, milk or other milk products, sweetened with sugar or honey and with or without (a) egg, (b) fruits, (c) nuts, (d) chocolates, (e) stabiliser not more than 0.5 per cent of the finished product and (f) permissible flavour or colour. It shall contain not less than 36 per cent by weight of solids and 10 per cent by weight of milk fat except that when the ice-cream contains fruits or nuts or both, the content of milk fat may be proportionately reduced but not less than 8.0 per cent by weight. It shall not contain any starch, artificial sweetening agent or any other extraneous matter. Ice-cream prepared from skimmed milk shall not contain less than 8.5 per cent of milk solids other than milk fat.”

(5) As the above rule shows, it is open to a seller of ice-cream containing by weight 10 per cent of milk fat or when the ice-cream contained fruits or nuts or both, the content of milk fat should not be less than 8 per cent and it need not contain any milk fat at all if it has been prepared from skimmed milk. Thus, it is open to a person to sell ice-cream with milk fat content of 10 per cent, 8 per cent or nil, subject to the condition that other constituents other

than fact content are present as prescribed. The respondent sold ice-cream containing 7 per cent of milk as found by Public Analyst. In other words, ice-cream sold by the respondent suffered in quality to the extent of deficiency of 3 per cent of milk fat, if it had been prepared from unskimmed milk. The case of the respondent is that he sold ice-cream prepared from skimmed milk. Ice-cream prepared from skimmed milk also recognized to be ice-cream by the above rule will have no milk fat at all. The fat content found is 7 per cent. Thus the quality of the ice-cream has fallen below the prescribed standard of fat content of 10 per cent, if prepared from unskimmed milk and the fat content of 7 per cent is in excess of the limit of fat being nil, if prepared from skimmed milk.

(6) The case is covered by the definition of, 'adulterated article of food' within the meaning of Section 2(i) (1) of the Act. As the article sold falls within the scope of that provision, the trial Court was entitled to take lenient view of the sentence as given in proviso (i) appended to sub-section (1) of Section 16 of the Act. At the time, the ice-cream was sought to be purchased by Ram Parkash, Food Inspector from the respondent, the latter was served with notice, Exhibit P.A. On the back of that notice, the respondent noted as follows :—

“Sample of the ice-cream with the addition of cream.”

(7) This endorsement is marked Exhibit P.A./1. Shri K. J. Kavis, ex-Municipal Engineer, appearing as D.W. 2 has specifically stated that the fact of the ice-cream being of frozen milk was specifically brought to the notice of the Food Inspector effecting recovery of the ice-cream for purposes of taking the sample for analysis.

(8) The case of the respondent falls under proviso (i) appended to clause (1) of sub-section (1) of Section 16 of the Prevention of Food Adulteration Act. The respondent is entitled to consideration of lenient sentence less than that prescribed as minimum sentence. Thus, the trial Court could impose the sentence of imprisonment till the rising of Court and fine of Rs. 1,000 or in default of payment of fine to further rigorous imprisonment for three months.

(9) In the result, I decline the reference and uphold the sentence awarded to the respondent by the trial Court.

N. K. S.