

construed to authorise sub-delegation of powers of Food (Health) Authority, Punjab to the Food Inspector, Faridkot. If so construed, as it must, it would mean that the Food (Health) Authority, was the person authorised by the State Government to initiate prosecutions. It was also permissible for the Food (Health) Authority being the person authorised under Section 20(1) of the Act to give his written consent for the institution of such prosecutions by the Food Inspector, Faridkot as laid down by this Court in *State of Bombay v. Purshottam Kanaiyalal and Corpn. of Calcutta v. Md. Omer Ali.*" (1961)1 SCR 458 and (1976) 4 SCC 527 respectively.)

In view of *A. K. Roy's case* (supra), this criminal revision is accepted conviction and sentence awarded to the petitioner are set aside and he is acquitted of the charge. Fine, if paid, be refunded.

S.C.K.

Before Ujagar Singh. J.

REET SINGH,—*Petitioner.*

versus

STATE OF HARYANA,—*Respondent.*

Criminal Revision No. 5 of 1986

April 24, 1989.

Prevention of Food Adulteration Act (XXXVII of 1954)—Ss. 7, 16(1) (a) (i)—Sample of Cow's milk found deficient of milk solid not fat by 11 per cent—Fat contents found to be more than required—Evidence to the effect that stirring was not properly done—Milk sample not true representative of whole quantity—Delay in launching proceedings—Conviction set aside.

Held. that the stirring was not carefully done so as to make the sample as representative of the whole quantity of milk contained in the drum. It caused serious prejudice with the result that the conviction is set aside. *Held,* further that there was no explanation from the side of the prosecution, why there was undue delay of six months after the sample was analysed by Public Analyst. On this score also, the petitioner is at least entitled to benefit of doubt.
(Para 5)

Reet Singh v. State of Haryana (Ujagar Singh, J.)

Petition for revision of the order of Shri M. S. Nagra, Addl. Sessions Judge (II), Jind, dated 6th December, 1985, affirming that of Shri R. S. Baswana, Sub Divisional Judicial Magistrate, Narwana dated 27th April, 1985, convicting and sentencing the petitioner.

CHARGE: Under Section 7 read with section 16(c)(a)(i) of the prevention of Food Adulteration Act, 1955.

SENTENCE : R.I. for 6 months and a fine of Rs. 1,000 or in default further R.I. for 1½ months.

Y. K. Sharma, Advocate, for the petitioner.

Y. P. Malik, Advocate, for the respondent.

JUDGMENT

Ujagar Singh, J.

(1) The revision-petitioner was checked when he was found carrying 20 Kg of cow's milk in a drum, at 10.40 a.m., at Narwana, District Jind. The Government Food Inspector, after giving the required notice, took a sample of 660 ml of cow's milk on payment of Rs. 2 in presence of Dr. R. P. Leeka, Medical Officer, Civil Hospital, Narwana. The sample was divided into three parts. One of the parts of the sample milk was sent to the Public Analyst according to the procedure laid down. The Public Analyst,—*vide* his report Ex. PD, found milk fat 4.2 per cent and milk solids not fat 7.6 per cent after analysis of the sample on 6th August, 1982. Complaint dated 2nd February, 1983 was presented on 3rd February, 1983 by the Government Food Inspector Moti Ram. After examining Government Food Inspector Ram Singh (PW1) and Government Food Inspector Moti Ram (PW2), the prosecution evidence was closed for the purposes of charge. The charge was framed on 13th April, 1983. Thereafter Government Food Inspector Moti Ram was produced for cross-examination, but he was not cross-examined. The prosecution examined Fateh Singh, a clerk from the Local Health Authority (PW3) and Dr. Prem Leeka, Senior Medical Officer, Civil Hospital, Rewari. Government Food Inspector Ram Singh was produced for cross-examination on 20th March, 1985 and on the same date, the prosecution evidence was closed. The prosecution has also tendered in evidence Ex. PD report of the Public Analyst. The petitioner was examined under section 313 of the Code of Criminal Procedure wherein he denied the charge. After hearing arguments and going through the file, the trial Court convicted the petitioner and sentenced him to undergo rigorous imprisonment for six months u/s 7

read with S. 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 and a fine of Rs. 1,000. In default of payment of fine, he was directed to suffer RI for a further period of 1½ months. The appeal preferred by the petitioner was found to have no merit and was dismissed by the Additional Sessions Judge. He has challenged his conviction and sentence by this criminal revision.

(2) Government Food Inspector Ram Singh (PW1) had intercepted the petitioner on the above said date and taken the sample after giving notice Ex. PA and after taking the sample of the said quantity, paid a sum of Rs. 2 as price of the sample milk. The cash receipt is Ex. PB. Ex. PC is the memo prepared at the spot with regard to the taking of the sample. He has supported the prosecution case. Government Food Inspector Moti Ram instituted the complaint and his statement is that he did so on the basis of the said documents. He has proved the complaint. Fateh Singh, a Clerk in the Local Health Authority (PW3) proved that notice about the report of the Public Analyst was sent by registered post on 28th February, 1982. Copy thereof is Ex. PE. Dr. Prem Leeka (PW4) is the witness in whose presence the sample was taken. The prosecution, thus, relies upon the testimonies of Government Food Inspector Ram Singh and Dr. Prem Leekha (PW4).

(3) The learned counsel for the petitioner has vehemently argued that the milk contained in the drum was not properly stirred and as a result thereof, the sample was not taken carefully. The learned counsel argues that the report Ex. PD of the Public Analyst does not find any deficiency in milk fat and it is more than required. However, milk solids not fat have a deficiency of 11 per cent. According to him, such a result is normally because of not stirring the milk properly. The learned State Counsel urges that both the prosecution witnesses Government Food Inspector Ram Singh (PW1) and Dr. Prem Leekha (PW4) are official witnesses and they have no motive to falsely implicate the petitioner. The conviction and sentence have, therefore, been properly awarded.

(4) I have heard the learned counsel for the parties and gone through the record.

(5) Apart from the words that stirring was done, as mentioned in the statement of the Government Food Inspector Ram Singh (PW1), there are no details given how it was done. We have the details in the testimony of Dr. Prem Leekha (PW4) and she has stated that "when the milk was shaken by the Food Inspector with

Reet Singh v. State of Haryana (Ujagar Singh, J.)

the measure, the whole of the measure was dipped in the milk, but the hand of the Food Inspector did not dip into the milk. The drum was $3/3\frac{1}{2}$ feet in height. It was half-filled. The measure was about 7"-8" in length. I do not remember exactly whether it was half-kg or one-kg measure. When the milk was shaken by the Government Food Inspector with the measure, the whole of the measure was dipped in the milk, but hand of the Food Inspector did not dip into the milk". From this statement it is clear that the measure which was 7"-8" in length and was not as long as the depth of the milk. The depth of the milk was at least $1\frac{1}{2}$ ft. or $1\frac{3}{4}$ ft. The length of the measure was only 7" or 8". From the detail given by Dr. Prem Leekha (PW4) for stirring the milk, one cannot arrive at a conclusion that the stirring was proper as to make the milk homogeneous. There are certain guidelines laid down in case *State of Rajasthan v. Kechab* (1), wherein a Division Bench of that High Court, after going through the evidence in that case, held that there was no evidence on the record that the Government Food Inspector before taking the sample, thoroughly mixed the milk either by stirring it with a long handled dipper or by pouring it from the vessel to another or by shaking it gently. It is possible that the sample of milk might not have been a true representative of the whole body of milk contained in the container on account of presence of food globules or bubbles in it. In that judgment, reference was made to a book "A Laboratory Manual of Milk Inspection" by A. C. Aggarwala and B. M. Sharma, Fourth Edition, 1961 from which the following guidelines were reproduced :

"General Sampling : The careful and accurate sampling of milk is of utmost importance in all analyses of milk. Probably more errors are caused through careless preparation of samples than in the actual performance of the tests. The most important thing to bear in mind in this connection is that the whole body of milk from which a sample is to be drawn should be uniform throughout in its composition and any sample of milk drawn out of it for analysis must necessarily be a true representative of the whole body of milk. The factors disturbing the uniformity of composition of milk are mainly the separation and partial churning of fat. Through mixing of milk must first be ensured either by stirring with a long handled dipper if the container is big or by pouring from one vessel to another or by shaking gently."

(1) 1980 CRI.L.J. 894.

Similarly, in case *Krishan Lal v. State of Haryana* (2), M. M. Panchhi, J. held as under:—

“Curd has to be vertically cut and entire cut component has to be taken out, then churned and later divided into three equal bottles. This method obviates possibility of layer of non-fat milk solids or milk solid fat to predominate in one sample or the other out of the three samples to be taken. Stirring is not churning.”

It was held that the prosecution evidence indicated that curd was stirred and put in sample bottle, but because of laxity in taking sample, samples taken are not representatives of entire substance and it caused serious prejudice with the result that conviction was set aside. Keeping in view the observations in the above case and applying the principles laid down therein, it can be safely held in this case that stirring was not carefully done so as to make the sample as representative of the whole quantity of milk contained in the drum.

(6) Another point raised by the learned counsel for the petitioner is that in the present case, sample was taken on 17th July, 1982. It was tested by the Public Analyst on 6th August, 1982, but the prosecution was launched only on 2nd February, 1983, i.e. after about 6 months of the receipt of the report Ex.PD. The petitioner appeared in Court only on 23rd February, 1983. In this connection, he has relied upon a case, *Shiv Dayal v. State of Madhya Pradesh* (3), wherein sample of milk for analysis was taken on 12th September, 1968. It was analysed on 16th October, 1969. The prosecution was launched on 24th June, 1969 and the applicant appeared on 9th September, 1969. In that case there was no explanation from the side of the prosecution, why there was undue delay of eight months after the sample was analysed by the Public Analyst. It was observed therein as under:

“So considering the various authorities cited above, it can be said that a sample of milk, even after adding preservative, can remain fit for analysis at the most for a period of 6 months, if kept under refrigeration. The period given in the *Encyclopaedia of Britannica* is of course under the

(2) 1982 CRI. LJ NOC 37 Punjab and Haryana.

(3) 1977 CRI. LJ 1548.

Jugal Kishore and ors. v. Bhagwan Dass and others (J. V. Gupta, J.)

conditions prevailing in cold countries but our climate is much warmer. In fact, temperature is normally above 70°F. throughout the year, the summer temperature being very much higher. There are also not such facilities available here for preservation of the samples as in those advanced countries. So even if the applicant had kept the sample bottle with him, still no useful purpose would have been served after lapse of one year because by that time the sample must have decomposed and would not have been fit for analysis. In view of the inordinate delay in this case, it does not matter that the applicant did not apply under Section 13(2) of the Act for sending the sample bottle to the Director of Central Food Laboratory.....”

On this score also, the petitioner is atleast entitled to the benefit of doubt.

(7) In view of the foregoing discussion, I accept this Criminal Revision; set aside the conviction and sentence awarded to the petitioner and acquit him of the charge. Fine, if paid, be refunded to him.

P.C.G.

Before J. V. Gupta, J.

JUGAL KISHORE AND ORS.,—*Petitioners.*

versus

BHAGWAN DASS AND OTHERS,—*Respondents.*

Civil Revision No. 2591 of 1988

February 28, 1989.

Code of Civil Procedure (V of 1908)—O. 35, Rl. 5—Applicability and scope of—Tenant filing interpleader suit against his landlord—Such suit—Whether maintainable.

Held, that according to Orders 35, Rl. 5 of the Code of Civil Procedure, the tenant could not sue his landlords for the purposes of compelling them to inter-plead with any person other than persons making claim through such principals or landlords.

(Para 5)