

The Indian Law Reports

REVISIONAL CRIMINAL

Before R. P. Khosla and P. D. Sharma, JJ.

MELA SINGH,—Petitioner.

versus

THE STATE,—Respondent.

Criminal Revision No. 920 of 1962.

Prevention of Food Adulteration Act (XXXVII of 1954)
—Ss. 16 (1) (a) (ii) and 25 (2)—Punjab Pure Food Rules,
(1930) as amended upto 1952—Schedule—Item (3)—Mixed
milk of cow, buffalo and goat—Standard of purity stated—
Item whether applicable to mixed milk of cow and buffalo—
Mixture of sub-standard milk of cow and buffalo—Whether
permissible.

1963

Dec., 11th

Held, that the Rules framed under Prevention of Food Adulteration Act, 1954, do not lay down any standard regarding mixed milk and therefore under section 25 (2) of the Act the relevant provisions of the Punjab Pure Food Rules, 1930 would be applicable. These rules were framed under section 22 of the Punjab Pure Act, 1929 and were amended from time to time upto 1952. Under Item (3) of the Schedule to these Rules as amended, mixed milk of cow, buffalo and goat is deemed to be deficient when the milk fat, contents are less than 5 per cent or milk solids not fat less than 8.6 per cent or both.

Held, that item (3) of the Schedule to the Punjab Pure Food Rules, 1930, is not applicable to the mixed milk of cow and buffalo only. The plain reading of the item points out that the mixed milk mentioned therein is a mixture of cow, buffalo and goat milk.

Held, that a person by mixing sub-standard milk of cow and buffalo cannot escape the consequences which he would

have met if he had sold such sub-standard milk of cow and buffalo, separately.

Petition under Section 439 Criminal Procedure Code for revision of the order of Shri D. R. Puri, Additional Sessions Judge, Amritsar, dated the 16th June, 1962, modifying that of Shri Gian Singh Chamail, Magistrate Ist Class, Amritsar, dated the 17th May, 1962, convicting the petitioner.

J. N. SETH, ADVOCATE, for the Petitioner.

D. D. JAIN, ADVOCATE, for ADVOCATE-GENERAL, for the respondent.

JUDGMENT

Sharma, J.

SHARMA, J.—Ram Parkash Food Inspector, Municipal Committee, Amritsar, on 13th September, 1961, purchased a sample of mixed milk of buffalo and cow according to rules from Mela Singh, accused-petitioner and sent the same to the Public Analyst for analysis. The Public Analyst in his report dated 14th September, 1961, certified that the said sample contained milk fat 5.2 per cent. and milk solids not fat 8.2 per cent instead of 8.5 per cent. and so in his opinion the sample was adulterated with water to an extent of about 3 per cent. The Food Inspector on the basis of this report lodged a complaint under section 16 of the Prevention of Food Adulteration Act, 1954. (hereinafter referred to as the Act) and also mentioned therein that the accused had previously been convicted under the same provision of law and sentenced to pay a fine of Rs. 300 or in default to undergo simple imprisonment for four months. This came up for hearing before Shri Gian Singh Chambial, Magistrate First Class, Amritsar. The accused before him contended that he sold cow milk and not mixed milk of cow and buffalo. The learned Magistrate, however, found the complaint as correct and, consequently, convicted the accused under section 7 read with section 16(1)(a)(ii) of the Act and sentenced him to rigorous imprisonment for one year and to pay a fine of Rs. 2,000 or in default to undergo rigorous imprisonment for a further period of six months. Half of the amount of fine, if and when

realised, was made payable to the Municipal Committee, Amritsar. The learned Additional Sessions Judge, Amritsar, in appeal by the accused maintained his conviction as the propriety thereof had not been challenged before him but reduced the sentence to the payment of a fine of Rs. 1,000 only or in default to undergo rigorous imprisonment for a period of six months. The accused in due course came up in revision against the above order to this Court. His revision was laid before Bedi, J. The learned counsel for the accused-petitioner before him referred to the case, *The State v. Raja Ram and another* (1), which laid down:

“As the rules framed under the Prevention of Food Adulteration Act, 1954, do not lay down any standards regarding mixed milk, therefore, under section 25(2) of the Act of 1954, the relevant part of the Punjab Pure Food Rules, 1930, is applicable, and further, that when mixed milk exceeds the requisite quantities of milk fat and lactose as mentioned in item (3) of the Schedule to the Punjab Food Rules, 1930, it cannot be held that the milk is adulterated and the accused could not be convicted of an offence under sections 7(1) and 16(1)(a)(ii) of the Prevention of Food Adulteration Act.”

Item (3) of the Schedule to the Punjab Food Rules, 1930, provides that mixed milk is deemed to be deficient when the milk fat contents are less than 3.5 per cent. and lactose less than 4 per cent. The learned counsel, therefore, urged that as the percentage of milk fat and milk solids not fat in the sample of mixed milk in question exceeded the requirements of the rule the same could not have been considered as adulterated. The learned counsel for the State, however, maintained

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that the learned Judges, who decided *Raja Ram's case* relied on a rule which had been amended subsequently and the amended rule prescribed that mixed milk (cow's buffalo's and goat's) should be deemed to be deficient when the milk fat contents are less than 5.0 per cent. or milk solids not fat less than 8.6 per cent or both. The learned Judge felt that in view of arguments advanced by the learned counsel for the parties the case should be decided by a larger Bench. This is how it has come up before us for decision.

The learned counsel for the accused-appellant and the State both agreed that as the rules framed under the provisions of the Act do not lay down any standard regarding mixed milk, therefore, under section 25(2) of the Act the relevant part, if any, of the Punjab Pure Food Rules is applicable. The Punjab Government in exercise of the powers conferred by section 22 of the Punjab Pure Food Act, 1929, by Notification No. 32454, dated 5th November, 1930, published in Part 1 of the Punjab Gazette of November 7, 1930, framed the Punjab Pure Food Rules, 1930, relevant part of rule 3 thereof runs as :—

“3. The excess or deficiency shown in columns 4 and 5 of the schedule below in the constituents of the articles of food specified in the second column of the said schedule shall be deemed to render such articles below the standard mentioned in clause (iv) of section 4 of the Act:—

SCHEDULE

Serial No.	Article of food	Description	Excess in the constituents	Deficiency in the constituents
1	*	*	*	*
2	*	*	*	*
3	Mixed milk (Cows' and buffaloes')	A mixture in any proportion of cows' and buffaloes' milk	*	Milk fat less than 3.5 per cent. and lactose less than 4 per cent.
4	*	*	*	*

This schedule was amended by Punjab Government Notification No. 5276-M-45|26755, dated 10th October, 1945, published in Part I of the Punjab Gazette of October 12, 1945, which prescribed the deficiency in the constituents of the mixed milk (cow's, buffalo's and goat's) as milk fat less than 3.5 per cent or milk solids not fat less than 8.6 per cent or both. This part of the schedule was further amended by the Punjab Government on 19th September, 1952, substituting the figure 3.5 per cent by 5 per cent,—*vide* their Notification No. 8797-3HB-52|4958, published in Part I of the Punjab Government Gazette of October 3, 1952. The net result is that mixed milk (cow's, buffalo's and goat's) is deemed to be deficient when the milk fat contents are less than 5 per cent. or milk solids not fat less than 8.6 per cent or both. The amended rule was not brought to the notice of the learned Judges, who decided *Raja Ram's case* which led to the mistake, the benefit of which the learned counsel for the accused-petitioner now seeks in this Court. But this Punjab rule lays down standards for mixed milk (cow's, buffalo's and goat's) and not for mixed milk (cow's and buffalo's), hence it cannot be made applicable to the present case because here also the mixed milk is of buffalo and cow. The learned counsel for the accused-petitioner went on to urge that in the absence of any provision regarding mixed milk (cow's and buffalo's) either in the Punjab Pure Food Rules, 1930, as amended up to 1952, or the Prevention of Food Adulteration Rules, 1955, the accused-petitioner cannot be said to have committed any offence under section 7 read with section 16(1)(a)(ii) of the Act even if the percentage of milk solid not fat in the sample milk was 8.2. The learned counsel for the State on the other hand maintained that the relevant item of rule 3 of the Punjab Pure Food Rules, 1930, amended up-to-date could be interpreted to mean as mixed milk (cow's, buffalo's and goat's, all or any two) and so the sample

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of milk in the instant case had to be adjudged in the light of the standard laid down therein. This was strenuously controverted by the opposite side, on the ground, that interpretation of the rule as suggested above would lead to incongruities. In support of his argument he mentioned that the standard fixed for purity separately for cow and goat milk so far as milk fat content was concerned is 3.5 per cent. In the nature of things a mixture of these two kinds of milk cannot be expected to have milk fat contents more than 3.5 per cent, but the standard prescribed in rule 3 for milk fat in mixed milk is 5.0 per cent. Similarly if pure milk of buffalo and goat is mixed, the percentage of milk fat will be less and of milk solids not fat more than the prescribed standard. It will, therefore, be not logical to interpret the rule in a manner which may lead to absurdity. The plain reading of the rule as well points out that mixed milk is a mixture of cow, buffalo and goat milk. The learned counsel for the State in the alternative relied on a Full Bench decision of the Allahabad High Court in *Prem Das v. State* (2). In that case the accused sold a mixture of buffalo and cow milk a sample of which was taken by an Inspector and sent for chemical analysis. The Public Analyst reported that the sample contained 5.9 per cent milk fat and 7.0 per cent non-fat solids and that it contained 7.20 per cent added water. Even though the proportion in which the buffalo milk and cow milk mixed was not known he treated the sample as if the two kinds of milk were mixed in equal proportion. It was on the basis of that report of the Public Analyst that the sample was found by the Court below to be adulterated and the applicant was convicted under section 16 of the Act for infringement of the provisions of section 7 which prohibits sale of adulterated food. The case

came up in revision before the High Court which was finally disposed of by the Full Bench. It laid down:—

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“Whatever might have been the proportion in which the two kinds of milk were mixed, the total quantity of the non-fatty solids could not have been less than 8.5 per cent fixed for cow’s milk, if neither of them was adulterated. Since in the instant case the percentage of non-fatty solids was less than the prescribed minimum for cow milk, the mixture of cow milk and buffalo milk was adulterated within the meaning of section 2(i)(1), and the accused was guilty under section 16.”

I am in respectful agreement with the principles enunciated in *Prem Das’ case*. A person by mixing sub-standard milk of cow and buffalo cannot escape the consequences, which he would have met if he had sold such sub-standard milk of cow and buffalo separately. In the instant case the percentage of milk solids not fat was 8.2 and not even 8.5 prescribed by item A 11.01 contained in Appendix B of the Punjab Prevention of Food Adulteration Rules, 1955, for cow milk in the Punjab, and as such the sample milk was adulterated. The accused-petitioner was, therefore, rightly convicted by the Court below. His learned counsel finally prayed for reduction in sentence which I consider is not called for as he had previously been convicted of an offence of this very nature.

In the result the revision petition fails and is dismissed.

R. P. KHOSLA, J.—I agree.

Khosla, J.

K.S.K.