

Before A. S. Bains and S. P. Goyal JJ

MUNICIPAL COMMITTEE, AMRITSAR,—Appellant.

versus

KARNAIL SINGH,—Respondent.

Criminal Appeal No. 193 of 1974.

October 3, 1977.

*Prevention of Food Adulteration Act (XXXVII of 1954)—Section 16(1)(a)(i)—Prevention of Food Adulteration Rules, 1955—Rules 5 and 18—Right of an accused to get his sample tested frustrated for no fault of the prosecution—Accused—Whether can be convicted on the report of the Public Analyst—Marginal deviation from the prescribed standards—Whether amounts to adulteration—Conviction—Whether can be recorded on the solitary statement of the Food Inspector—Deficiency in solids not fat—Whether can be ignored—Rule 18—Whether directory.*

*Held*, that it is only where the right of an accused to get his sample tested is frustrated by the conduct of the prosecution that he cannot be convicted on the basis of the report of the Public Analyst but not otherwise. If the conduct of the prosecution is above board and in all fairness, the sample kept by the accused was sent to the Director, Central Food Laboratory, for testing and the bottle got smashed in transit and its contents leaked, conviction can be based on the report of the Public Analyst and the conduct of the prosecution does not in any way result in the denial to the accused of any opportunity to exercise his right in such a situation.

(Para 8)

*Held*, that even a marginal deficiency from the standards prescribed under rule 5 of the Prevention of Food Adulteration Rules, 1955, is adulteration.

(Para 9)

*Held*, that a Food Inspector cannot be equated with an accomplice. His evidence cannot also be equated with a case of wills etc., where the law makes it obligatory to examine an attesting witness under section 68 of the Evidence Act to prove the execution of the will. The evidence of the Food Inspector is enough, if believed, for proving that the samples were taken as required by law and conviction can be recorded on his solitary statement.

(Para 10)

*Held*, that the deficiency in solids not fat cannot be ignored as under the Act deficiency in solids below the prescribed standards is also adulteration.

(Para 11)

Sultan Shah *v.* State, 1973, Cr.L.J. 1413

DISSENTED FROM

*Appeal from the order of Shri M. L. Mirchia, Additional Sessions Judge, Amritsar, dated the 10th May, 1973, modifying that of Shri P. Lall, J.M.I.C., Amritsar, dated 2nd March, 1973, affirming the conviction of the accused—respondent U/s 16(1)(a)(ii) and acquitting him U/s 16(1)(a)(i) of Prevention of Food Adulteration Act.*

Harinder Singh, Advocate, *for the appellant.*

M. K. Mahajan, Advocate, *for the respondent.*

#### JUDGMENT

*Ajit Singh Bains, J.—*

(1) Municipal Committee, Amritsar, has filed this appeal against the judgment of acquittal recorded by the learned Additional Sessions Judge, Amritsar, on 10th May, 1973, of Karnail Singh, respondent, who was convicted and sentenced under section 16(1)(a)(i) and section 16(1)(a)(ii) of the Prevention of Food Adulteration Act, 1954 (hereinafter called the Act).

(2) The prosecution case as unfolded by Shri Sat Pal, Food Inspector, is as follows:—

(3) On 24th June, 1971, at 6.30 a.m. Shri Sat Pal, Food Inspector, accompanied by Dr. Joginder Singh, was present in Chowk Pasian, Amritsar, where Karnail Singh respondent (accused) came with a 'valtoha' (milk-can) of milk weighing about 24 litres. The milk was meant for public sale. Sat Pal disclosed his identity and served the respondent with notice Exhibit P.A. in the presence of two witnesses, namely, Nathu Ram and Faqir Chand. The entire milk of the *valtoha* was then transferred into a tube and was stirred with the help of a *daloo* so as to make it homogenous. Out of the said stirred milk the Food Inspector purchased 660 ml. of milk

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against 70 paise,—*vide* receipt Exhibit P.B., which was then transferred into three dry and clean bottles and after adding 18 drops of formalin of the prescribed standard as preservative the bottles were secured, fastened and sealed. One sealed bottle was given to the respondent against receipt Exhibit P.C., the second one was sent to the Public Analyst for analysis and the third one was retained in the office of the Municipal Officer of Health, Municipal Committee, Amritsar.

(4) The Public Analyst gave his report Exhibit P.F. in duplicate, a copy of which was handed over to the respondent,—*vide* receipt Exhibit P.F./1. According to him, milk fat was found to be 4.3 per cent and milk solids not fat were found to be 7.3 per cent. He thus declared the milk as adulterated as it was deficient in milk solids not fat to the extent of 1.2 per cent. It may be added here that the respondent had no licence with him to sell milk.

(5) On the basis of the analysis, the Food Inspector filed a complaint against the respondent for the contravention of the provisions of section 16(1)(a)(i) and (ii) of the Act.

(6) Food Inspector was examined. He reiterated the facts as set down in the prosecution story and upon consideration of the statement of the Food Inspector and after going through the other evidence, the trial Court found a *prima facie* case against the respondent and he was charged accordingly. The respondent pleaded not guilty to the charge and claimed trial. Prosecution examined Sat Pal, Food Inspector, as P.W. 1 and Nathu Ram as P.W. 2. When examined under section 342, Criminal Procedure Code, the respondent denied all the allegations. The trial Court convicted the respondent under section 16(1)(a)(i) and sentenced him to undergo rigorous imprisonment for six months and to pay a fine of Rs. 1,000 or in default of payment of fine to undergo further rigorous imprisonment for three months. The trial Court also convicted him under section 16(1)(a)(ii) and sentenced him to pay a fine of Rs. 200 or in default to undergo rigorous imprisonment for one month. The trial Court directed that half of the fine, if realised shall be paid to the Municipal Committee, Amritsar.

(7) Karnail Singh, respondent, successfully appealed to the Additional Sessions Judge and his conviction and sentence under section 16(1)(a)(i) was set aside. Since the respondent did not

challenge his conviction under section 16(1)(a)(ii), his conviction and sentence was maintained.

(8) Mr. Harinder Singh Giani, learned counsel for the appellant, has urged that the learned Additional Sessions Judge has committed a legal error in acquitting the respondent under section 16(1)(a)(i) of the Act and hence the acquittal is not at all justified. We find merit in this contention. The learned Additional Sessions Judge acquitted the respondent on the ground that since the appellant was positively prejudiced in his defence, therefore, his conviction and sentence was set aside. In this observation the learned Additional Sessions Judge seems to be factually wrong. It was at the argument stage that the respondent had requested that the sample bottle with him be sent to the Director, Central Food Laboratory, Calcutta, for analysis. The trial Court found that the wrappers of the bottle which was with the respondent were torn and it was also not satisfied about the marking and seals of the bottle. However, the trial Court sent the sample which was kept with the Municipal Committee to the Director, Central Food Laboratory, Calcutta, for analysis, but the same could not be tested as the bottle had smashed during transit and its contents leaked. It may be mentioned here that the sample from the respondent was taken on 24th June, 1971. Complaint was filed in the Court by the Food Inspector on 27th July, 1971. The respondent appeared in the Court on 25th May, 1972, that is, about ten months after the issue of summons and then he applied to the Court for sending his sample at argument stage on 19th January, 1973, i.e., after about 7/8 months of his appearance in Court. If he was interested in availing of that opportunity, such an opportunity should have been availed of at an early stage. He made a request for sending his sample after a long time when his own sample was tampered with and its seals etc. were not in tact. The sample bottle which was sent by the Municipal Committee was smashed and its contents leaked during transit, for which the prosecution is not to be blamed at all. Hence in such a situation, no prejudice is caused to the accused in his defence. The view which we are taking finds support from a decision of the Supreme Court in *Municipal Corporation of Delhi v. Ghisa Ram* (1), wherein it has been held as under :—

“We are not to be understood as laying down that, in every case where the right of the vendor to have his sample

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tested by the Director of the Central Food Laboratory, is frustrated, the vendor cannot be convicted on the basis of the report of the Public Analyst. We consider that the principle must, however, be applied to cases where the conduct of the prosecution has resulted in the denial to the vendor of any opportunity to exercise this right. Different considerations may arise if the right gets frustrated for reasons for which the prosecution is not responsible”.

The observations made by their Lordships of the Supreme Court show that it is only where the right of the accused is frustrated by the conduct of the prosecution that he cannot be convicted on the basis of the report of the Public Analyst but not otherwise. In the present case, the conduct of the prosecution is above board. In all fairness, the sample which was kept with the appellant-Committee was handed over to the trial Court and the latter sent it to the Director, Central Food Laboratory, Calcutta, for testing but the bottle got smashed in transit and its contents leaked, for which the prosecution is not at all responsible. The sample which was kept by the respondent was tampered with and, therefore, it was not sent. In such case, conviction can be based on the report of the Public Analyst. Hence, we hold that in the present case the conduct of the prosecution has not resulted in the denial to the respondent of any opportunity, to exercise this right and, in such a situation, it cannot be said that the right of the respondent to get the sample tested by the Director of the Central Food Laboratory, Calcutta, is frustrated. Similar view was taken in the *Municipal Committee, Amritsar v. Behari Lal* (2), wherein it was observed as under :—

“Adverting to the facts of the case in hand, it will be noticed that even at the stage of his examination under section 342, Criminal Procedure Code, Behari Lal did not indicate his intention to exercise the right aforesaid. About a fortnight thereafter, on 12th May, 1970, he applied that the sample kept by the Food Inspector be sent to the Director. The Magistrate allowed the application. Then, on the following 19th, when Behari Lal deposited the fee for testing the sample, the same was despatched to the

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(2) 1974 Food Adulteration cases 432.

Director. Something happened to the bottle in transit. When it reached the Director, it was found that the milk had leaked out. The Director certified accordingly. Surely, it cannot be said that Behari Lal was deprived of his right by anything done by the prosecution. The contention of the learned counsel for the complainant that quite often the accused-persons in connivance with the postal authorities get their samples damaged in transit gets no support from any fact on record. As such, for the damage of the sample, Behari Lal cannot be held blame-worthy. There is yet another important aspect of the instant case. The sample aforesaid having been damaged it was open to Behari Lal to send the bottle of sample in his possession to the Director. Faced with this situation, he, in his application dated 12th May, 1970, averred that the sample had got misplaced. No circumstance to substantiate the averment has been brought to our notice, nor has it been shown that this loss was despite due care and caution on the part of Behari Lal. There is thus no escape from the conclusion that Behari Lal himself is responsible for the frustration of his right."

(9) Mr. Mahajan, learned counsel for the respondent, contended that there has been only negligible or marginal deviation from the prescribed standards and in fact the deficiency is in solids not fat. Whatever may be the deviation but the fact remains that the solids were deficient than the standard prescribed under Rule 5 of the Prevention of Food Adulteration Rules, 1955 (Appendix B-A 11-10-11). Even a marginal deficiency from the prescribed standards in solids not fat is adulteration. In *State of Punjab v. Teja Singh* (3), it was held by the Full Bench of this Court as under :—

"Negligible or marginal deviation from the prescribed standards laid down by the Act cannot be ignored and acquittal recorded on that basis."

Mr. Mahajan placed reliance on the decisions in (4) *Municipal Committee, Amritsar v. Hakumat Ram* and (5), *Municipal Committee, Amritsar v. S. Gurdial Singh*. There is no dispute about the law as laid down in these authorities, but the facts of the present case are entirely different.

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(3) 1976 P.L.R. 433.

(4) Cr. A. 705—1973 decided on 19th January, 1977.

(5) Cr. A. 804—1973 decided on 27th January, 1977.

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(10) Mr. Mahajan next argued that it will not be safe to convict the respondent on the basis of the solitary evidence of the Food Inspector as the other witness has not supported the prosecution version and was declared hostile. There is no merit in this contention as the Food Inspector had complied with the requirements of Section 10(7) of the Act. Food Inspector cannot be equated with an accomplice. His evidence cannot also be equated with a case of wills etc. where the law makes it obligatory to examine an attesting witness under section 68 of the Evidence Act to prove the execution of the will. The evidence of the Food Inspector is enough, if believed, for proving that the samples were taken as required by law. In the present case, there is no infirmity in the evidence of the Food Inspector. There is no allegation of *mala fide* against the Food Inspector and the learned counsel for the respondent could not point out as to why the Food Inspector is not to be believed. His only contention is that it is not safe to convict the respondent on the sole testimony of the Food Inspector. This argument is untenable, as observed earlier. In similar situation, their Lordships of the Supreme Court in *Babulal Hargovindas v. State of Gujarat*, (6), have observed as under:—

It is not a rule of law that the evidence of the Food Inspector cannot be accepted without corroboration. He is not an accomplice nor is it similar to the one as in the case of wills where the law makes it imperative to examine an attesting witness under section 68 of the Evidence Act to prove the execution of the Will. The evidence of the Food Inspector alone if believed can be relied on for proving that the samples were taken as required by law. At the most Courts of fact may find it difficult in any particular case to rely on the testimony of the Food Inspector alone though we do not say that this result generally follows. The circumstances of each case will determine the extent of the weight to be given to the evidence of the Food Inspector and what in the opinion of the Court is the value of his testimony. The provisions of section 10(7) are akin to those under section 103 of the Criminal Procedure Code when the premises of a citizen are searched by the Police. These provisions are enacted to safeguard against any possible allegations of excesses or resort to unfair means either by the Police

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(6) A.I.R. 1971 S.C. 1277.

officers or by the Food Inspectors under the Act. This being the object it is in the interests of the prosecuting authorities concerned to comply with the provisions of the Act, the non-compliance of which may in some cases result in their testimony being rejected. While this is so we are not to be understood as in any way minimising the need to comply with the aforesaid salutary provisions. In this case, however, there is no justification in the allegation that the provisions have not been complied with because the Panch witness had been called and his signatures taken which he admits. In these circumstances the Courts were justified on the evidence of the Food Inspector that he had complied with the requirements and that the samples were seized in the presence of the Panch witness whose signatures were taken in the presence of the accused."

(11) Another argument advanced by Mr. Mahajan is that when there is no deficiency in fat and fat is above the percentage prescribed, then the deficiency in solids cannot be taken notice of. Fallacy of this argument is obvious. Under the Act deficiency in solids below the prescribed standards is also adulteration. Mr Mahajan relied upon *Sultan Shah v. State* (7). With respect we do not agree with this view of the learned Single Judge of the Allahabad High Court.

(7) Lastly, Mr Mahajan took shelter of Rule 18 of the Prevention of Food Adulteration Rules, 1955 and contended that the copy of the memorandum and specimen impression of the seal used to seal the packet have to be sent separately to the public analyst and that in this case it was not done so. This argument is also to be repelled as no such question was put to the Food Inspector and that in any way Rule 18 was infringed. Moreover, we are of the opinion that Rule 18 is merely directory and not mandatory. Rule 18 is in the following terms:—

"A copy of the memorandum and specimen impression of the seal used to seal the packet shall be sent to the public analyst separately by registered post or delivered to him or to any person authorised by him."



Prem Singh v. The Union Territory of Chandigarh, etc.  
(S. P. Goyal, J.)

The whole purpose of sending the memorandum specimen impression of seal which was used to seal the packet is that the public analyst may be able to compare the memorandum and the impression of seal with each other, it is not that these are to be sent in separate bundles and separately by post or by messenger.

(13) Before we part with the judgment, we must observe that the food adulteration has reached its saturation point. Hardly anything pure is available in the market. Even medicines are adulterated. It is the most heinous crime against the society and persons like the respondent are playing havoc with the human lives by supplying adulterated stuff to the consumers. In spite of the stringent measures of the Act, adulteration has not in any manner decreased. It is high time that the State may think of adopting some other measures to curb this crime. One such measure can be that there may be a whole time department under the charge of a person with missionary zeal at the State level with its branches at the district and tehsil headquarters to deal with such social offences.

(14) No other point is urged.

(15) For the reasons recorded above, this appeal is allowed and the order of the learned Additional Sessions Judge, Amritsar acquitting the respondent is set aside. The respondent is convicted and sentenced till rising of the Court and to a fine of Rs 3,000 or in default to undergo rigorous imprisonment for a period of one year.

H.S.B.

Before S. P. Goyal, J.

PREM SINGH,—Petitioner.

versus

THE UNION TERRITORY OF CHANDIGARH, ETC.,—Respondents.

Civil Writ Petition 1704 of 1977.

February 10, 1978.

Punjab Municipal Act (III of 1911)—Sections 242 and 244—  
Reconstitution of a Notified Area Committee by dropping some  
members—Whether amounts to removal of such members—Show