

conviction of the accused cannot be maintained. There has to be something more than such an error or omission was false to the knowledge or belief of the accused. No doubt, the second ingredient is to be proved by raising inference from a given set of circumstances in a particular case and there may not be any direct evidence as has been argued by counsel for the appellant. However, in the present case when such a finding has been recorded by the Tribunal in the order Ex. DA, which was passed during the pendency of the present criminal proceedings, the same being relevant was rightly taken into consideration in coming to the conclusion that the second ingredient of Section 277 was not made out. Finding no merit in the appeal, the same is dismissed.

R.N.R.

*Before A. L. Bahri and S. S. Grewal, JJ.*

STATE OF PUNJAB,—*Appellant.*

*versus*

BHAJAN SINGH,—*Respondent.*

*Criminal Appeal No. 272-DBA of 1983.*

29th May, 1991.

*Prevention of Food Adulteration Act, 1954—Ss. 7, 16(1) (a) (i) & (ii)—Sample of milk—Analysis at different laboratories—Varying reports—Report of Director, Central Food Laboratory supersedes that of Public Analyst.*

*Held*, that when the samples of milk have been analysed first by the Public Analyst and then by the Director, Central Food Laboratory, the reports of the latter are final and conclusive proof of the contents. These reports supersede the reports of the Public Analyst. Since the Director had found the samples of milk deficient in milk solids not fat, the samples are, therefore, held to be adulterated and both the accused in these cases are held guilty of commission of offence under S. 16(1) (a) (i) read with S. 7 of the Prevention of Food Adulteration Act. (Para 4)

*Appeal from the order of the Court of Shri R. L. Anand, PCS, Addl. Chief Judicial Magistrate, Kapurthala, dated the 17th November, 1983.*

*Acquitting the accused.*

**State of Punjab v. Bhajan Singh (A. L. Bahri, J.)**

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*Charge : Under Section 16(1) (a) (i) read with Section 7 of the P.F.A. Act.*

*Order : Acquittal.*

*Complaint No. 35 of 23rd July, 1981.*

*It has been further prayed in the grounds of appeal that appeal be accepted and respondent dealt with according to law.*

*It is further prayed that the warrants of arrest of the accused/ respondent under Section 390 Cr. P.C. may kindly be issued.*

*S. K. Sharma, Advocate, for the Appellant.*

*J. S. Virk, Advocate, for the Respondent.*

**JUDGMENT**

*A. L. Bahri, J.*

(1) *Vide* this judgment two appeals (Crl. Appeal Nos. 272-DBA and 275-DBA of 1983) are being disposed of as similar question is involved in both the cases which has been argued in these appeals. In Criminal Appeal No. 272-DBA of 1983 Bhajan Singh is the accused from whom a sample of milk was purchased by the Food Inspector on May 27, 1981. As usual the sample was divided into 3 parts and put in the three clean and dry bottles. 18 drops of formalin, a preservative, was added in each of the bottles. The samples were duly sealed. On analysis the Public Analyst found that the sample of cow's milk contained milk fat 7.1 per cent and milk solids not fat 8.1 per cent. The sample was thus found to be deficient in milk solids not fat by 5 per cent of the prescribed standard. Bhajan Singh was therefore, tried for commission of offence under section 16(1) (a) (i) read with section 7 of the Prevention of Food Adulteration Act (hereinafter referred to as 'the Act'). Additional Chief Judicial Magistrate, Kapurthala, on November 17, 1982 recorded conviction of Bhajan Singh for contravention of Rule 50 of the Rules framed under the Act punishable under section 16(1)(a)(ii) of the Act. He was sentenced to imprisonment till the rising of the Court and to pay a fine of Rs. 250, in default of payment thereof to undergo further rigorous imprisonment for one month.

(2) In Criminal Appeal No. 275-DBA of 1983 Anokh Singh is the accused from whose possession a sample of cow's milk was

purchased by the Food Inspector on June 19, 1981. As per report of the Public Analyst the sample contained milk fat 7.4 per cent and milk solids not fat 8.1 per cent. In respect of milk solids not fat it was deficient by 5 per cent of the standard prescribed. In this case the additional Chief Judicial Magistrate, Kapurthala, recorded conviction of Anokh Singh under Section 16(1) (a) (ii) of the Act for contravening Rule 50 of the Rules and he was sentenced to imprisonment till the rising of the Court and to pay a fine of Rs. 250, in default of payment thereof to further undergo rigorous imprisonment for one month. In both the cases State has come up in appeal.

(3) In both these cases the samples of food were sent to the Central Food Laboratory and reports of the Director, Central Food Laboratory, were received. There was variation in the report of the Director/with that of the Public Analyst. The trial Court in Bhupinder Singh's case while referring to the report of the Director observed that milk fat was found to be 6 per cent as against 4 per cent prescribed standard and milk solids not fat 8 per cent. It was not mentioned in the report that the milk was stirred at the time of its analysis. Following the decision in *Ram Kumar v. The State of Punjab*, 1982(1) F.A.C. 68, it was held that it was not a case of adulteration and on that charge of the accused was acquitted. Likewise in the other case, Anokh Singh was acquitted of the charge as the Director, Central Food Laboratory, reported milk fat 6.9 per cent and milk solids not fat 8.1 per cent. Milk solids not fat was less than the minimum standard prescribed as per opinion given by the Director.

(4) In both the cases Addl. Chief Judicial Magistrate relied upon the decisions of this Court in *Ujagar Singh vs. The State of Punjab* (1), *Ram Kumar vs. The State of Punjab* (2) and *Sultan v. The State of Haryana* (3). While acquitting the accused in *Ujagar Singh's case* (supra) it was observed that the deficiency in the milk solids not fat could be on account of non-availability of nourishing the sufficient quantity of food to the cattle as the quantity of Food given to the animal could affect to some extent the quality of the milk produced. It was further observed that it was not possible to take out non-fatty solids from milk without reducing or affecting

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(1) 1980(1) F.A.C. 432.

(2) 1982(1) F.A.C. 68

(3) 1983 (1) F.A.C. 116.

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the fat contents. The accused did not intentionally effect any adulteration in the milk. Similar view was taken in *Ram Kumar's case* (supra). In *Sultan Singh's case* (supra) it was observed that it was not mentioned in the report of the Public Analyst that he had properly stirred the milk before analysing it. In that case also there was deficiency in milk solids not fat. The view expressed in the aforesaid judgments which was relied upon by the trial Court is not correct. The Full Bench in the *State of Punjab vs. Teja Singh* (4), discarded theory of clubbing of different constituents as found in the sample of milk by the Public Analyst to deduce the conclusion therefrom about the fat deficiency or otherwise of the milk from its prescribed standard. It was observed that the Court was not entitled to assume a slight or reasonable margin or error in the conclusions recorded by the Public Analyst during the course of analysis of the milk. It was further held that negligible or marginal deviation from the prescribed standard laid down by the Act could not be ignored. Subsequently the matter was considered by the Division Bench in *State of Haryana v. Harpat and another*, (5). The decision in *Sultan Singh's case* (supra) was over-ruled by the Division Bench. The matter was again considered by another Division Bench of this Court in *Mewa Singh vs. Union Territory, Chandigarh*, (6). As the matter was referred in view of different views taken in *Hans Raj vs. State of Punjab* (7), *Jagat Ram vs. State of Haryana*, (8) and on the other hand in *State of Punjab vs. Teja Singh*, (9), it was observed that the judgments in *Hans Raj's case* and *Jagat Ram's case* were overruled. In *Gopal Datt vs. State of Haryana*, (10). *Sultan Singh's case*, as already stated above was stated to be overruled in Harpat's case. In view of the position of law as laid down by the Full Bench in *Teja Singh's case*, the view expressed in *Ujagar Singh and Ram Kumar's cases* stands overruled. The orders of the trial Court cannot be sustained in this respect.

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(4) 1976 P.L.R. 433.

(5) Criminal Appeal No. 571-DBA, 1980, decided on 3rd March, 1982.

(6) 1982 (II), FAC 315.

(7) 1980 (II), FAC 396.

(8) 1987(2) FAC 119.

(9) 1976 PLR 433.

(10) Criminal Revision No. 1294 of 81, decided on 27th July, 1982.

The reports of the Director, Central Food Laboratory, are final and conclusive proof of the contents. These reports supersede the reports of the Public Analyst in these cases. Since the Director had found the samples of milk deficient in milk solids not fat, the samples P-6 are, therefore, held to be adulterated and both the accused in the two cases referred to above are held guilty of commission of offence under section 16(1)(a)(i) read with section 7 of the Act.

(5) In these cases samples of milk were purchased about 10 years ago and they are now to be sentenced for selling adulterated milk. They were earlier sentenced under section 16(1) (a) (ii) of the Act for selling milk without any licence as stated above. It will not be appropriate after 10 years to send the accused to jail. The ends of justice would be met if they are sentenced to imprisonment already undergone and to pay an additional fine of Rs. 1,000 each in default of payment of fine, they would undergo rigorous imprisonment for three months. It is so ordered while accepting the appeal.

R.N.R.

*Before V. K. Jhanji, J.*

MOHINDER SINGH,—*Petitioner.*

*versus*

THE ESTATE OFFICER, U.T. ADMINISTRATION, CHANDIGARH  
AND ANOTHER,—*Respondents.*

*Civil Revision No. 2524 of 1986.*

30th May, 1991.

*Arbitration Act, 1940—Ss. 14, 16, 17—Arbitration award—Amount, however, left undetermined—Arbitrator remitting the matter to Estate Officer for determining the amount claimed—Application moved for making award rule of the Court—Award liable to be remitted to Arbitrator for full determination.*

*Held, that where the Arbitrator has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration and such matter cannot be separated without affecting the determination of the matters referred, the*