

Gopal Dutt v. State of Haryana (S. S. Sandhawalia, C.J.)

to have the second sample, in his possession, analysed. In this context it hardly lies in the mouth of the accused to say that the report of the Public Analyst does not satisfy the statutory prescription.

12. Learned counsel for the petitioner raised no other argument whatsoever on merits of the case and indeed it was common ground before me sitting singly as also before us that only the aforesaid legal issues were involved which have been decided against the petitioner. Affirming the findings and the reasonings of the courts below, we up-hold the conviction and the sentence of the petitioner and dismiss this Revision Petition.

N. K. S.

Before S. S. Sandhawalia, C.J. & I. S. Tiwana, J.

GOPAL DUTT,—Petitioner.

versus

STATE OF HARYANA,—Respondent.

Criminal Revision No. 1294 of 1981.

July 27, 1982.

Prevention of Food Adulteration Act (XXXVII of 1954)—Sections 11(3) and 16(1)(a)—Sample of milk deficient in solids but not in fat—Fat found in excess of the prescribed limit—Accused—Whether guilty of adulteration—Marginal delay in the despatch of the sample to the Public Analyst—Such delay in the absence of proof of prejudice to the accused—Whether material—Provisions of section 11(3)—Whether directory.

Held, that it seems to be plain that no resort can be had to the process of any addition or subtraction of the percentages of deviation from the prescribed standard for arriving at a conclusion that the article is not adulterated or that marginal deviation from the prescribed standard could be ignored.

(Para 4)

Jagat Ram v. State of Haryana 1981, Chandigarh Law Reporter 684 (Pb. & Haryana).

Hans Raj v. The State of Punjab, 1980(2) P.F.A. cases 396.
OVERRULED

Held, that assuming that there was a marginal delay in the despatch of the sample on the immediately succeeding working day, such delay is not material in the absence of proof of prejudice to the accused. Moreover, the rule in section 11(3) of the Act as to the time limit of the despatch of the sample is only directory and not mandatory. However, there is a duty cast on the Food Inspector to send the sample to the Public Analyst without the least delay.

(Para 5).

Petition Under Section 401 Cr. P. C. for revision of the order of Shri Ram Saran Bhatia, Additional Sessions Judge, Gurgaon, dated 12th November, 1981 partly modifying that of Shri Tarlochan Singh, J.M.I.C. Palwal, dated 23rd September, 1980, (Gopal Dutt, was convicted under Section 7 read with section 16(1) (a) (i) of the Prevention of Food Adulteration Act, 1954 (for short the Act), and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 5,000 (Rs. Five thousand). In default of payment of fine, the accused-appellant was to further undergo rigorous imprisonment for a period of six months) to the extent of that reducing the rigorous imprisonment for six months and to a fine of Rs. 2,000 (Rs. Two thousand). In default of payment of fine the appellant shall further undergo R.I. for six months.

CHARGES:—Under Section 7 read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954.

Ashok Kumar Aggarwal, Advocate, for the Petitioner.

G. L. Batra, Sr. D.A.G., for the Respondent.

JUDGMENT

S. S. Sandhwalia, C.J.

(1) A categorical doubt about the ratio in *Jagat Ram v. State of Haryana* (1), had necessitated the hearing of this criminal revision by the Division Bench.

(2) Since the primary issue herein is the correctness or otherwise of the aforesaid precedent, it is unnecessary to advert to the facts in any great detail. Gopal Dutt, petitioner was brought to

(1) 1981 Ch. Law Reporter 684 (Punjab and Haryana).

Gopal Dutt v. State of Haryana (S. S. Sandhawalia, C.J.)

trial on charges under section 16 read with section 7 of the Prevention of Food Adulteration Act before the Judicial Magistrate, 1st Class, Palwal, and having been found guilty thereof was convicted and sentenced to one year's rigorous imprisonment and a fine of Rs. 500. On appeal the learned Additional Sessions Judge, Gurgaon, upheld the conviction but reduced the sentence to six months rigorous imprisonment and a fine of Rs. 2,000. The appellate Court in its judgment, remarkable both in its exhaustiveness and lucidity, specifically noticed the six contentions raised on behalf of the petitioner and adverting to each one of them repelled the same. Reliance on behalf of the petitioner was primarily placed on *Jagat Ram's case* (supra) for pressing his stand that the deficiency found in the sample by the Public Analyst being in respect of solids not fat only and the fat being in excess of the prescribed limit, no offence was made out. The appellate Court, however, rejected this contention whilst noticing that the Full Bench in *State of Punjab v. Teja Singh* (2), and the other High Courts and the Supreme Court had taken a view at variance with that in *Jagat Ram's case*. As already noticed the view in *Jagat Ram's case* was doubted at the motion stage itself and the petition was admitted to hearing by the Division Bench.

3. Before us learned counsel for the petitioner had vigorously canvassed for the adoption of the view in *Jagat Ram's case* (supra). Reliance was also placed on the observations to the same tenor in *Hans Raj v. The State of Punjab* (3). On these premises it was contended that because the sample of the milk was found on analysis to have milk fat in excess of the minimum prescribed standard and was merely deficient in milk solids not fat than the prescribed limit of 8.5 per cent the said variations could be set off against each other and the milk could not be held as adulterated within the definition under the Act. There is no gain-saying the fact that the observations in *Jagat Ram's case* as also those in *Hans Raj's case* (with regard to one of the two grounds for acquittal) lend signal support to the stand taken on behalf of the petitioner. It is, however, equally manifest that these are in direct conflict with what has been authoritatively laid down by the Full Bench in *State of Punjab v. Teja Singh* (4). Therein the specific

(2) 1976 P.L.R. 433.

(3) 1980 (2) P.F.A. Cases 396.

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

legal issues which fell for consideration were formulated in the following terms:—

- (1) Whether it is permissible to all the percentages of the various constituents of milk disclosed by the Public Analyst and thereafter to deduce a conclusion therefrom about the overall deficiency or otherwise of the milk from its prescribed standards ?
- (2) Whether the Court is entitled to assume a slight or reasonable margin of error in the conclusions recorded by the Public Analyst during the Course of analysis of the milk ?
- (3) Whether a negligible or marginal deviation from the prescribed standard laid down by the Act can be ignored and acquittal recorded on that basis ?

It was authoritatively and categorically held that the answer to all the aforesaid three questions must be returned in the negative.

4. In view of the above it seems to be plain that no resort can be had to the process of any addition or subtraction of the percentages of deviation from the prescribed standard for arriving at a conclusion that the article is not adulterated or that marginal deviation from the prescribed standard could be ignored. This, however, is what exactly seems to have been done both in *Jagat Ram's case* and *Hans Raj's case*. A perusal of the judgments recorded would show that the counsel were sorely remiss in not bringing to the notice of the Court the authoritative enunciation in *Teja Singh's case* (supra) aforesaid. With the greatest respect to the learned Judges the view expressed by them is in conflict with the Full Bench and has, therefore, to be and is hereby overruled.

5. Repelled on the main ground, counsel then fell back to contend that there was a plain infraction of section 11(3) of the Act in so far as the prosecution had not in terms established that the Food Inspector had sent the sample to the Public Analyst on the immediately succeeding working day. The appellate Court had in terms adverted to the established facts and came to the conclusion that the petitioner had not chosen to get the precise date of the despatch established from the Food Inspector when he was in the witness-box. It was found that the sample having been sent by the railway parcel after it had been taken on the 6th had reached

Gopal Dutt v. State of Haryana (S. S. Sandhawalia, C.J.)

to the Public Analyst on the 13th and this could be consistent with its despatch on the immediately succeeding working day. This apart, learned counsel could not show even a hint of prejudice to the petitioner by a marginal delay in the despatch of the sample. Whether the rule in section 11(3) of the Act is mandatory or directory has been the subject of elaborate discussion in *G. Chandramouli and another v. The State* (5). After adverting to principle and precedent it has been concluded in this context as follows:—

“Following the above principles, if we examine the provisions of section 11(3) from the point of the scheme of the Act it must be held that the time limit is not insisted as a protection for safeguarding the right of the person and it is also not in the nature of a public duty and any delay does not cause general inconvenience or injustice. Therefore, the provision is only directory and not mandatory. On the other hand, the interpretation that the provision is mandatory does not in any way promote the main object of the legislature. However, it shall not be understood that there is no duty cast on the Food Inspector to send the sample to the Public Analyst without the least delay. As already mentioned, this is a provision to check the Food Inspectors from indulging in corrupt practices and also a measure to ensure that the samples are sent without any delay, so that they may be fit for analysis.”

To avoid treading the same ground over again it suffices to observe that we are in respectful agreement with the reasoning and the conclusion arrived at in the aforesaid case. Consequently this contention raised on behalf of the petitioner must also be rejected.

6. Learned counsel for the petitioner had then raised the identical contentions which stand ably repelled in the exhaustive judgment of the appellate Court. In the revisional jurisdiction it suffices to say that we are in agreement thereof and the same are hereby affirmed. The Criminal Revision is without merit and is hereby dismissed.

N. K. S.

(5) 1978 Cr. L.J. 549.