

*Before Ujagar Singh, J.*

MANGE RAM,—*Petitioner.*

*versus*

STATE OF HARYANA,—*Respondent.*

*Criminal Revision No. 1301 of 1985.*

April 20, 1989.

*Prevention of Food Adulteration Act (XXXVII of 1953)—S. 7 read with S. 16(1)(1)(i)—Milk boiled and then cooled—Layer of cream on top of milk—Milk not properly stirred while taking sample—Deficiency in milk fats—Effect of such deficiency.*

*Held, that the milk had been boiled and it is cooled down as a result thereof, layer of cream was on the top of the milk. When the layer of the cream is on the top of the milk and it is not properly stirred the sample taken may indicate deficiency in milk solids not fat. In this case the deficiency of milk solids not fat is 11 per cent and this deficiency seems to be the result of the milk not having been properly stirred. The petitioner is acquitted of the charge.* (Para 7).

*Petition for revision of the order of Shri A. S. Garg, Addl. Sessions Judge, Jind, dated 30th September, 1985 modifying, that of Shri P L. Ahuja Chief Judicial Magistrate, Jind dated 1st October, 1984, convicting and sentencing the petitioner.*

*Charge : Under Section 16(1)(a) (i) read with Section 7 of the Prevention of Food Adulteration Act.*

*Sentence : R. I. for 6 months & a fine of Rs. 1,000 or in default further R.I. for four months.*

Mr. C. B. Goel, Advocate, for the Petitioner.

#### JUDGMENT

*Ujagar Singh J.*

(1) This criminal revision challenges the conviction and sentence awarded to the petitioner under Section 7 read with Section 16(1)(a) (i) of the Prevention of Food Adulteration Act (hereinafter called as the Act).

(2) The facts giving rise to this petition are that on 20th August, 1983 at 5.00 P.M. Government Food Inspector Shri A. N. Gupta took a sample of 660 ml mixed milk of buffalo and cow from 10 kgs of mixed milk in possession of the petitioner. This quantity of milk was contained in a *Patila* of aluminium. Notice in form VI Ex. PA was given before purchasing the milk, for analysis against an amount of Rs. 2.65. Receipt Ex. PB was given to the petitioner. The sample was divided into three equal parts, and poured into three dry and clean bottles after adding 18 drops of formaline in each bottle and thereafter Food Inspector completed the required formalities. One of the sample bottle was sent to the Public Analyst and Ex.PD is his report, according to which the milk fat was 6.0 per cent and milk solids not fat 7.6 per cent, with the result that there was no deficiency in the milk fat but milk solids not fat were deficient by 11 per cent.

(3) The prosecution examined PW1 Shri A. N. Gupta G.F.I., PW2 Dr. D. D. Setia and PW3 Fateh Singh a clerk from the C.M.O.'s office. Report Ex.PD was tendered in evidence and Vijay Kumar a witness from the public was given up as having been won over. The petitioner was examined under section 313 Cr. P.C. The trial Court considered the facts brought on the file and convicted and sentenced the petitioner. The appeal against the said conviction and sentence was disposed of by the Sessions Court and except reducing the sentence to six months rigorous imprisonment, the remaining sentence was maintained.

(4) The counsel for the petitioner has argued that there is no averment in the complaint that the milk was stirred before taking the sample. Mere evidence on this point cannot fill up the lacuna. The other argument raised by the counsel is that the milk had been boiled and it had cooled down. As a result thereof, layer of the cream was on the top of the milk and the witnesses are discrepant about this fact. The counsel also raised the question of absence of notice about the report leading to the prejudice to the petitioner inasmuch as he could not apply for sending one of the sample bottles with the Local Health Authority, to the Director, Central Food Laboratory.

(5) Counsel for the State has argued that PW1 Shri Amar Nath Gupta Food Inspector and PW2 Dr. D. D. Setia, official witnesses have no axe to grind by falsely implicating the accused. He points

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out that PW3 Fateh Singh proved the despatch of the notice to the petitioner about report Ex. PD and this witness has said that acknowledgement receipt has not been received back. In these circumstances, State counsel lays stress that once notice is proved to have been sent through registered letter, presumption arises that the petitioner had received it.

(6) I have considered the arguments of the counsel for the parties and have gone through the record. At the time of taking the sample, Ex. PC was prepared and the same is signed by the Food Inspector, the petitioner and the witnesses. Item No. 8 of this document shows that the milk was stirred in the *Patila* properly before taking the sample. This document further shows that it was a mixed milk of buffalo and cow. Although in the complaint, which is on a printed form with blanks filled up, there is no mention about stirring of milk at the time of taking the sample but the document Ex. PC contains those allegations specifically, with the result that petitioner could not have been prejudiced by non-mention thereof in the complaint. Statement of PW3 Fateh Singh fully proves that copy of the report Ex. PD was sent to the petitioner by registered post with acknowledgement due and this acknowledgement due was not received back. In cross-examination of this witness nothing substantial has been elicited. In spite of this fact, there was no application moved on behalf of the petitioner to get one of the samples, with the Local Health Authority, tested from the Central Food Laboratory. It is not a case where the right of the petitioner can be said to have been denied. Rather the opportunity given to the petitioner was not availed of, with the result that there was no prejudice to him.

(7) The statement of PW1 Shri A. N. Gupta is quite vague as to whether the milk had been boiled or not. Rather he has expressed ignorance about this fact. He stated that he could not say whether the milk had been boiled or not. He could not say if the milk had been boiled and then cooled down. Rather he stated that he had no experience about the difference between the boiled milk having cooled down and fresh milk. PW2 who is also a doctor and at that time was Deputy Chief Medical Officer (Health) in Civil Hospital admitted in cross examination that milk had been boiled and had cooled down. He further admitted that there was a layer of cream on the top of the milk in the container. He expressed ignorance whether there was or was not a board in front of the shop indicat-

ing that only cow's milk is being used in the shop. In view of this contradiction in the statements of PW1 Amar Nath Gupta and PW2 Shri D. D. Setia, it is difficult to believe that PW1 Shri A. N. Gupta did not know the said difference. It looks that the Government Food Inspector is trying to evade the correct answer. May be he did it to support his complaint and did not want that the petitioner should get any benefit of the facts proved on the file. Normally when the layer of the cream is on the top of the milk and it is not properly stirred, the sample taken may indicate deficiency in milk solids not fat. In this case deficiency in milk solids not fat is 11 per cent and this deficiency seems to be the result of the milk not having been properly stirred.

(8) With the observations, this criminal revision is accepted, conviction and sentence awarded to the petitioner are set aside and the petitioner is acquitted of the charge. Fine, paid by the petitioner, be refunded to him.

S.C.K.

*Before V. Ramaswami, C.J. and G. R. Majithia, J.*

R. D. GULHATI,—Appellant.

*versus*

PARBHA BATRA,—Respondent.

*Letters Patent Appeal No. 261 of 1989.*

May 9, 1989.

*Letter Patent, 1919—Clause X—Interim order in civil revision—  
Letters Patent Appeal against such order—Maintainability of the  
appeal.*

*Held, that the order sought to be appealed against shall also be treated as one made in exercise of revisional jurisdiction. As against the order made in the revisional jurisdiction, no appeal lies under Clause X of the Letters Patent. The appeal against interim order is accordingly dismissed as being not maintainable.*

(Para. 1).

*Letters Patent Appeal Under Clause X of the Letters Patent  
against the order dated 14th October, 1988 passed by Hon'ble*