

defendants against whom there is no cause of action or the suit is barred by law, have to be struck off and the suit has to proceed against the remaining defendants. The case would now go back to the learned Single Judge for disposal on merits.

KOSHAL, J.—I fully agree and would like to emphasise that the very idea of a plaint being rejected “in part” is repugnant to the provisions of rule 11 of order VII of the Code of Civil Procedure. The plaint in a suit is the document evidencing the suit and not the suit itself and can, therefore, either be rejected or retained which, in other words, merely means that it can either be thrown out or proceeded with. It cannot be torn up in two parts, one of which is discarded and the other entertained. This is clearly deducible from the language of the rule. Expressions like “in its entirety” or “in part” are thus wholly inept in relation to the rejection of the plaint

SANDHAWALIA, J.—I agree with my learned brother Jain, J.

B. S. G

FULL BENCH

*Before S. S. Sandhawalia, Man Mohan Singh Gujral and*

*S. C. Mital, JJ.*

THE STATE OF PUNJAB,—*Plaintiff-Appellant.*

*versus*

TEJA SINGH, SON OF HARNAM SINGH,—*Respondent.*

Criminal Appeal No. 1280 of 1971.

February 16, 1976.

*Prevention of Food Adulteration Act (XXXVII of 1954)—Section 16(a)—Prevention of Food Adulteration Rules (1955)—Rule 5, Appendix B, Clause A, 11—Analysis of milk—Public Analyst disclosing the percentages of the various constituents thereof—Such percentages—Whether can be added to determine the overall deficiency or otherwise of the milk from its prescribed standard—Court—Whether entitled to assume a slight or reasonable margin of error in the conclusions of the Public Analyst—Negligible or marginal deviation from the prescribed standard—Whether can be ignored and acquittal recorded.*

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*Held*, that the standard fixed under the Prevention of Food Adulteration Act, 1954 is one that is certain. If it is varied to any extent, the certainty of a general standard would be replaced by the vagaries of a fluctuating standard. The disadvantages of the resulting unpredictability, uncertainty and impossibility of arriving at fair and consistent decisions are great. Hence it is not permissible to add 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 as given in clause A. 11 of Appendix B under Rule 5 of Prevention of Food Adulteration Rules, 1955.

*Held*, that Courts are not 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.

*Held*, that the Prevention of Food Adulteration Act, 1954, or Rules framed thereunder do not provide for exemption of marginal or border line variations of the standard from the operation of the Act. In such circumstances to condone such variations on the ground that they are negligible is virtually to alter the standard itself fixed under the Act and the Rules. Hence even a negligible or marginal deviation from the prescribed standards laid down by the Act cannot be ignored and acquittal recorded on that basis.

1971 PLR 846 (DB); 1974 (1) CLT 154 (DB), 1975 PLR 380; and Single Bench, Judgments and following the same overruled.

*Case referred by Hon'ble Mr. Justice S. S. Sandhawalia and Hon'ble Mr. Justice Pritam Singh Pattar on 29th July, 1975 to a Larger Bench for decision of an important question of law involved in the case. The case was finally decided by a Full Bench consisting of Hon'ble Mr. Justice S. S. Sandhawalia, Hon'ble Mr. Justice Man Mohan Singh Gujral and Hon'ble Mr. Justice S. C. Mital on 16th February, 1976.*

*Appeal from the order of Shri Gurdip Lal Chopra, Judicial Magistrate 1st Class, Amritsar, dated the 10th August, 1971 acquitting the respondent.*

D. N. Rampal, D.A.G., for the appellant.

Y. P. Gandhi, Advocate, for the respondent.

**ORDER**

S. S. Sandhawalia, J.—(1) In this appeal preferred by the State of Punjab against the acquittal of the respondent on a charge under Section 16 of the Prevention of Food Adulteration Act, three

salient legal issues arise, which can be conveniently formulated in the following terms :—

- (1) Whether it is permissible to add 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 standards laid down by the Act can be ignored and acquittal recorded on that basis ?

(2) For the determination of the afore-mentioned legal issues, it is not at all necessary to advert to the facts of the present case at the outset. It suffices to mention that the learned trial Court whilst recording the acquittal proceeded on the assumption that the possibility of some marginal error in the course of chemical analysis of the milk sample could not be ruled out. Further by referring to the percentages of fat and milk solids not fat discovered by the analyst, a conclusion has been arrived at that the deviation was of a marginal nature and, therefore, fit to be ignored.

(3) The appellant State herein seriously assails the above said two propositions. It is not disputed that the controversy here flows from certain observations made by their Lordships of the Supreme Court in *Malwa Cooperative Milk Union Ltd., Indore and others v. Bihari Lal and another* (1). Therein, Hadayatullah, J. (as his Lordship then was), speaking for himself and Vaidialingam, J. made certain passing observations, which appeared to lend support to the view that it was permissible for a Court of law to make additions of the percentages of milk fat and milk solids not fat discovered in the chemical analysis of the sample and then to conclude therefrom whether the overall adulteration and the variation from the prescribed standards was either substantial or negligible. After referring to the relevant chemical analysis it was held:—

“It would, therefore, appear that the solids in the milk should be of the order of 14% minimum. In the samples they

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(1) 1973 Food Adulteration Cases—375.

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were almost 14 per cent in the one case being only 1 per cent less and in the other 4 per cent less. The fat content appears to be proportionately less. It is not clear whether the analyst was able to isolate the fat content so successfully as not to have let room for the slight variation. The variation was thus borderline. What is generally extracted is cream and not the other solids.”

It was also opined that perfection cannot be attributed to the

work of the analyst and it was possible that a slight error in the calculation or in the isolation of fat may be made and the ultimate conclusion arrived at was that the variations found in the contents of the milk were not so great as to merit conviction.

(4) On the afore-mentioned premises alongwith others, the Supreme Court reversed the judgment of the learned Single Judge ordering re-trial on the revisional side and upheld the acquittal recorded by the trial Court.

(5) The judgment in the Malwa Cooperative Milk Union's case was rendered on 14th August, 1967. Inevitably it was followed by various High Courts in India. But it is neither possible nor necessary to make a reference to all these decisions. Confining myself to this Court, it may be recollected that Sarkaria, J., speaking for the Division Bench in *Municipal Committee, Amritsar Vs. Karam Singh* (2), relied on the above-mentioned Supreme Court judgment to hold that the milk fat in excess of the prescribed percentage can set off the deficiency discovered in the milk solids not fat. He held that consequently the overall deficiency from the prescribed standards can be worked out by this process and if the result turned out to be negligible then it can be ignored under the principle that law does not take account of trifles. Fortified by the decision in *Karam Singh's* case supra, another Division Bench of this Court, reported in *Municipal Committee, Amritsar, v. Behari Lal* (3), proceeded to determine the overall deficiency in the milk by a process of addition of its various constituents discovered in the course of chemical analysis and thereafter declined to set aside the acquittal on

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(2) 1971 P.L.R. 846.

(3) 1974(1) Cr. L. Ting—154.

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the ground that the ultimate deficiency disclosed was of a marginal nature. The above said two authorities of this Court alongwith the binding precedent in the *Malwa Cooperative Milk Union's case* were then relied upon by a Division Bench in *Municipal Committee, Amritsar v. Shri Jaswant Singh* (4). It was held therein that the percentages of the milk fat and milk solids not fat can be added up together in order to determine the overall deficiency in the milk and thereafter to conclude whether the same was adulterated or not. The argument that no such addition was permissible was rejected in terms and it was further observed that a marginal deviation from the prescribed standards can well be ignored or condoned. I do not propose to burden this judgment by references to numerous Single Bench authorities of this Court both reported and otherwise, which have necessarily followed the three Division Bench authorities of this Court, flowing as they do from the observations in the *Malwa Cooperative Union's case*.

(6) However, it appears to me that the recent pronouncement of their Lordships in *Municipal Committees, Amritsar v. Hazara Singh* (5), has eroded the very corner stone of the foundation upon which the propositions, noticed in the afore-mentioned judgments, had rested. In *Hazara Singh's case* (supra), a large Bench of three Judges, has in express terms now pronounced on what was, or in any case, what is to be the proper *ratio-decidenti* of the *Malwa Co-operative Milk Union's case*. Krishna Iyer, J., speaking for the Bench therein has categorically held that the observations in *Malwa Cooperative Milk Union's case* on the point that minor error in the chemical analysis can be presumed were mere *obiter dicta*. After analysing the true import of that judgment it was held as follows:—

“Indeed, this Court's decision cited above discloses that Hidayatullah, J. (as he then was) was not laying down the law that minimal deficiencies in the milk components justified acquittal in food adulteration cases.”

(7) It was then observed that the real ratio of the *Malwa Co-operative Milk Union's case* was only this that the revisional power of the High Court was reserved for setting right a grave miscarriage of justice and not for being invoked by private prosecutors.

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(4) 1975 P.L.R. 380.

(5) A.I.R. 1975 S.C. 1088.

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As regards the other observations in the *Malwa Cooperative Milk Union's case*, it was said that :

“Such was the ratio, but in the course of the Judgment, Hidayatullah, J., to drive home the point that the case itself was so marginal, referred to the microscopic difference from the set standard. To distort that passage, tear it out of context and devise a new defence out of it in respect of food adulteration cases, is to be grossly unjust to that judgment.”

Now it is trite learning to say that when an earlier judgment of the Supreme Court is analysed and considered by a later Bench of that Court then the view taken by the later as to the true ratio of the earlier case is authoritative. In any case that view is binding on the High Courts. Therefore, nothing more can now be read into the *Malwa Cooperative Milk Union's case* than what has been authoritatively laid down by the recent decision in *Municipal Committee, Amritsar v. Hazara Singh's case* (supra). That, however, is not all. In *Hazara Singh's case*, their Lordships have further in unreserved terms placed their seal of approval on the Full Bench judgment of the Kerala High Court reported as *State of Kerala v. Parmeshwari Pillai Vasudevan Nair* (6). The view expressed in this case, therefore becomes virtually binding. It is hence apt to quote briefly from the leading judgment in the said case regarding the legal issues which fall for determination in the present one. Relevant to the issue whether it is permissible to add the percentages of the different constituents of milk for determining the overall deficiency from the prescribed standard, the Bench has observed as follows :—

“The standard fixed under the Act is one that is certain. If it is varied to any extent the certainty of a general standard would be replaced by the vagaries of a fluctuating standard. The disadvantages of the resulting unpredictability, uncertainty and impossibility of arriving at fair and consistent decisions are great. The Act does not provide for exemption of marginal or border line variations of the standard from the operation of the Act. In such circumstances, to condone such variations on the ground that they are negligible is virtually to alter the standard itself fixed under the Act.”

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On the point of there being any presumed possibility of error in the course of chemical analysis the Full Bench had this to say :

“But where there is only one report or one certificate there is no warrant for the assumption about inaccuracy in any detail mentioned in it or regarding error in calculation or isolation at the stage of analysis. There is nothing in the decision in Criminal Appeals Nos. 235 and 236 of 1964 S.C. (Malwa Cooperative Union's case) to show that it was a different view that was taken by the Supreme Court therein.”

And lastly on the question whether marginal deviations from the prescribed standards can be ignored it was held as follows in unequivocal terms :

“Food pollution, even if it be only to the slightest extent, if continued in practice, would adversely affect the health of every man, woman and child in the country. Hence even marginal or borderline variations of the prescribed standards under the Act are matters of serious concern for all and as public interests are involved in them, the maxim *De Minimis Non Curate Lex*. Law does not concern itself about trifles, does not apply to them.”

(8) As I have already mentioned, the observations in *Hazara Singh's* case are unequivocal and binding and the endorsement of the view of the Kerala Full Bench by the Supreme Court has rendered the said judgment equally authoritative. It is consequently unnecessary to examine the issue any further on principle or first impression. From the afore-mentioned quotations it is obvious that the answers to all the three questions posed in the opening part of the judgment must be returned in the negative.

(9) In view of the above conclusions it is unnecessary to examine in detail the reasoning and rationale of the Division Bench judgments of this Court to which reference has already been made. It is adequate to say that the ratios deducible therefrom are no longer good law in view of the subsequent decision (7) *M. C. Amritsar vs. Hazara Singh*.

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(7) AIR 1975 S.C. 1087.

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I would, therefore, overrule the authorities (8) (*Municipal Committee, Amritsar vs. Karam Singh*); (9) (*Municipal Committee, Amritsar v. Bihari Lal*) and (10) (*Municipal Committee, Amritsar v. Jaswant Singh*). For clarity's sake it may be pointed out that the numerous Single Bench judgments which had followed the abovesaid authorities would also no longer hold the field.

(10) Though the appellant State, thus, succeeds wholly on the legal issues it does not appear to me on an equally sound footing on the factual ones. Reference to the judgment of acquittal recorded by the learned magistrate against which the appeal is directed would show that he did not rest the same merely on the legal ground but, equally on an appraisal of evidence. For good reason, he held that the sample of milk was taken in contravention of the procedural requirements of the law. It was also found that the only public witness namely Ajit Singh P.W. 2 had conceded in cross-examination that, in fact, he was busy in his own work when the sample was being taken from the accused. This witness also confessed ignorance about the fact whether the bottles in which the samples were sealed were adequately washed or whether they were dry. The learned magistrate had further taken notice of the fact that the public witness was lacking in independence and impartiality and was apparently subservient to the Food Inspector. The testimony of P.W. 1 Shri M. P. Singh Sodhi was held by the learned magistrate to be of a nature which could not command absolute reliance standing by itself alone.

(11) The aforementioned findings of fact were not and, in fact, could not be seriously assailed on behalf of the appellant State. That being so it is patent that the judgment does not deserve to be reversed in this appeal directed against the acquittal of the respondent. Consequently, I hereby dismiss the same.

Gujral, J.—I agree.

S. C. Mital, J.—I agree.

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(8) 1971 P.L.R. 846.

(9) 1974(1) Cr. L Times 154.

(10) 1975 PLR 380.



