

Municipal Committee v. Amrik Singh (Gujral, J.)

number of grace marks he is entitled to, he cannot fulfil the requirement of rule 27(A), then rule 27(B) cannot be resorted to. It will, therefore, not be proper to take into consideration rule 27(B) while interpreting rule 27(A). If the petitioner had fulfilled the requirement of rule 27(A), then it had to be seen in what manner the grace marks could be allowed to the petitioner in various subjects or papers or the aggregate to his best advantage. In this view of the matter, I hold that the interpretation placed by the respondent—University on rule 27(A) is the correct one and the petitioner is not entitled to the declaration that he has passed the examination if the grace marks are allowed. The petition is accordingly dismissed but without any order as to costs.

N.K.S.

APPELLATE CRIMINAL

*Before Manmohan Singh Gujral and S. C. Mital, JJ.*

MUNICIPAL COMMITTEE,—Appellant

*versus*

AMRIK SINGH,—Respondent.

**Criminal Appeal No. 231 of 1968.**

May 27, 1973.

*Prevention of Food Adulteration Act (XXXVII of 1954)—Sections 13 and 16(1) (a) (i)—Reports of public analyst and Director, Central Food Laboratory—Variation between—Accused—Whether entitled to benefit of doubt on that score alone.*

*Held*, that having regard to sub-section (3) and sub-section (5) of Section 13 of the Prevention of Food Adulteration Act, 1954, it is not possible to take into account the report of the public analyst where a certificate from the Director of the Central Food Laboratory has subsequently come on record in accordance with the provisions of sub-section (3) of Section 13. Consequently, there is no question of variation between the reports of the public analyst and the Director as the first report of the public analyst stands completely wiped out by the certificate of the Director. It cannot be looked into as evidence of the facts stated therein. Hence merely because there is conflict between the report of the public analyst and the certificate of the Director, the accused cannot be given the benefit of doubt and acquitted. (Para 5)

*Appeal from the order of Shri H. S. Ahluwalia, Judicial Magistrate, Ist Class, Amritsar, dated 31st October, 1967, acquitting the respondent.*

ROOP CHAND, ADVOCATE, for the appellant.

H. L. SARGN, ADVOCATE, for the respondent.

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**JUDGMENT**

**GUJRAL, J.**—(1) This is an appeal by special leave by the Municipal Committee, Amritsar, against the order of the Judicial Magistrate, First Class, Amritsar, dated 31st October, 1967, whereby Amrik Singh respondent was acquitted of the charge under section 16(1) (a) (i) of the Prevention of Food Adulteration Act, 1954, hereinafter called the Act.

(2) The case of the prosecution is that on 13th February, 1967 Amrik Singh was found coming from Albert Road with two vessels containing milk on a cycle about 8.50 a.m. He was stopped by the Food Inspector and, on an inquiry, informed the Inspector that he was carrying cow milk for sale. Milk weighing 660 millilitres was then purchased for analysis and this milk was divided into three equal parts. Each part was put in a separate dry-cleaned bottle and sixteen drops of formalin were added to each bottle as a preservative. After having been stoppered and sealed one of the bottles was sent to the public analyst for analysis, another was given to the respondent and the third was retained by the Food Inspector. On receipt of the report of the public analyst that the milk was adulterated a complaint was filed against Amrik Singh. During the trial of the complaint the respondent applied to the Court that the second bottle which was in his possession be sent to the Director, Central Food Laboratory, Calcutta, under section 13(2) of the Act and this was accordingly done. The certificate of the Director brings out that the milk contained 3.8 per cent milk fats and 8 per cent milk solids other than fats and was consequently adulterated.

(3) Before the trial Court, on the basis of the two judgments of this Court to which reference will be made shortly it was pointed out that as there was divergence between the report of the public analyst and the certificate of the Director the respondent was entitled to the benefit of doubt. This argument found favour with the learned Magistrate with the result that the respondent was acquitted, the case not having been found established against him.

(4) On behalf of the appellant it was mainly contended that the view taken by this Court in *Pritam Dass v. The State* (1), and *Tara*

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(1) Cr. Re. No. 679 of 1965 decided on 8th December, 1965.

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*Singh v. State* (2) is contrary to the provisions of section 13 of the Act and, therefore, needs reconsideration.

(5) In *Tara Singh's case* (2), it was found that according to the report of the public analyst the milk sent for analysis contained four per cent milk fats and 8.5 per cent milk solids other than milk fats while according to the certificate of the Director the milk contained 4.2 per cent milk fats and 6.4 per cent solids other than fats. In view of the divergence in the two reports it was observed as under:—

“No doubt the sample sent to Calcutta was sent after a number of months, but surely as between the analysis and the opinion of the two analysts the difference cannot be much unless either the analysts have not done their job carefully as should be done in criminal cases or there has been some further change in the composition of the sample that was sent to the analyst at Calcutta.

In any case when the two reports of the analysts are considered the case against the petitioner is found very unsatisfactory. He is given the benefit of the doubt and is acquitted.”

Similarly, R. P. Khosla, J., in *Pritam Dass's case* (1), following the view in *Tara Singh's case* (2), held that “benefit of the divergence in the report of the public analyst and the Director, Central Food Laboratory, Calcutta, must go to the petitioner inasmuch as it would be difficult to act upon the divergent analytical result”. With great respect to the Judges who decided *Tara Singh's case* and *Pritam Dass's case* I am unable to accept the view expressed therein having regard to the clear provisions of section 13 of the Act. The relevant provision reads as under:—

“13. (1) The Public analyst shall deliver, in such form as may be prescribed, a report to the food inspector of the result of the analysis of any article of food submitted to him for analysis.

- (2) After the institution of a prosecution under this Act the accused vendor or the complainant may, on payment of the prescribed fee, make an application to the court for sending the part of the sample mentioned in sub-clause (i) or sub-clause (iii) of clause (c) of sub-section (1) of section 11 to the Director of the Central Food Laboratory for a certificate and on receipt of the application the court shall first ascertain that the mark and seal or fastening as provided in clause (b) of sub-section (1) of section 11 are intact and may then despatch the part of the sample under its own seal to the Director of the Central Food Laboratory who shall thereupon send a certificate to the court in the prescribed form within one month from the date of receipt of the sample, specifying the result of his analysis.
- (3) The certificate issued by the Director of the Central Food Laboratory under sub-section (2) shall supersede the report given by the public analyst under sub-section (1).
- (4) Where a certificate obtained from the Director of the Central Food Laboratory under sub-section (2) is produced in any proceeding under this Act or under sections 272 to 276 of the Indian Penal Code, it shall not be necessary in such proceedings to produce any part of the sample of food taken for analysis.
- (5) Any document purporting to be a report signed by a public analyst, unless it has been superseded under sub-section (3), or any document purporting to be a certificate signed by the Director of the Central Food Laboratory, may be used as evidence of the facts stated therein in any proceeding under this Act or under sections 272 to 276 of the Indian Penal Code:

Provided that any document purporting to be a certificate signed by the Director of the Central Food Laboratory shall be final and conclusive evidence of the facts stated therein."

From a plain reading of the above provision it would emerge that after a prosecution is instituted under the Act the accused has a right

to have the part of the sample retained by him sent to the Director of the Central Food Laboratory, Calcutta, for a certificate. The procedure for sending the part of the sample is laid down in sub-section (2) of section 13 and sub-section (3) further provides that the certificate sent by the Director of the Central Food Laboratory shall supersede the report sent by the public analyst under sub-section (1) meaning thereby that for all intents and purposes the report of the public analyst shall cease to exist and only the certificate issued by the Director can be looked into for finding out the result of the analysis of the article whose analysis is required. This aspect is further made clear by sub-section (5) which provides that a document purporting to be a report signed by the public analyst may be used as evidence of the facts stated therein unless it has been superseded under sub-section (3). From this it would follow that once this report cannot be used as evidence of the facts stated therein and only the certificate signed by the Director, Central Food Laboratory, can be used as evidence of the facts stated therein under any provision of the Act. The proviso further puts the matter at rest by conferring finality on the certificate issued by the Director of the Central Food Laboratory with regard to the facts stated in that certificate. It is stated that the certificate of the Director shall be final and conclusive evidence of the facts stated therein. Therefore, having regard to sub-section (3) and sub-section (5) of section 13 of the Act it is not possible to take into account the report of the public analyst where a certificate from the Director of the Central Food Laboratory has subsequently come on record in accordance with the provisions of sub-section (3) of section 13. Consequently, it would not be correct to say that there was variation between the reports of the public analyst and the Director as the first report of the public analyst stands completely wiped out by the certificate of the Director. Taking this view of the matter, I find that the learned trial Court was in error in acquitting the accused on the ground that there was conflict between the report of the public analyst and the certificate of the Director and giving the benefit of that conflict to the respondent. The learned trial Court had only to consider the certificate of the Director for coming to the conclusion whether the milk was adulterated or not.

(6) On behalf of the respondent it was, however, pointed out that in spite of the certificate of the Director the case against the respondent has not been established and the order of the acquittal

cannot be set aside. Relying on the decision of the Supreme Court in *The Malwa Co-operative Milk Union Ltd., Indore and others v. Beharilal and another* (3), the learned counsel for the respondent contended that the deficiency of milk fat and solids other than fat was merely marginal and negligible and the accused was, therefore, entitled to benefit of doubt. In the Supreme Court case mentioned above, it was found that there was slight deficiency in the solids other than fat while the fat contents appeared to be more than the minimum required under the Law. In view of this, and considering that what was generally extracted was cream and not the other solids, the variation was considered borderline. It was observed that a slight error might have crept in while calculating or ascertaining the fat contents. The argument raised on behalf of the State that one would expect near perfection in the milk was accepted by the Supreme Court in this case. In the present case, both the fat and the solids other than fat were deficient and this being the position it cannot be said that there was error in the calculation or isolation of fat. The case of *The Malwa Co-operative Milk Union Ltd.* (3), therefore, does not help the respondent.

From the evidence on record it stands established that the sample milk was taken from the respondent. The respondent in his statement under section 342 of the Criminal Procedure Code has admitted taking of the sample but added that his milk was pure. The report of the Director, Central Food Laboratory, being that the milk was adulterated the case against the respondent stands proved and he is convicted under section 16(1) (a) (i) of the Prevention of Food Adulteration Act, 1954. As regards the sentence, considering that the sample was taken as far back as February, 1967, and more than four years have elapsed since then, I am not inclined to send him to jail especially in view of the fact that the adulteration was not much and was only 1.2 per cent in the milk fat and 1.3 per cent in solids other than fat. Having regard to all these circumstances, I sentence him to a fine of Rs. 1,000, in default of payment of which he shall undergo six months' rigorous imprisonment.

S. C. MITAL. J.—I agree.

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(3) Cr. A. No. 235-236 of 1964 decided by Supreme Court on 14th August, 1967.

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