

Hans Raj v. The State (Sodhi, J.)

which the superstructures stand, being Municipal land, it is exempt from the provisions of the East Punjab Urban Rent Restriction Act in view of the notification. The words of the notification are very clear and admit of no other construction. The result, therefore, would be that no petition for eviction regarding Municipal land can be filed before the Rent Controller under the provisions of the East Punjab Urban Rent Restriction Act. It appears that both the Rent Controller and the appellate authority were obsessed with the idea that the superstructure is something apart from the land but this contention would only mean that the superstructure hang in the air and do not rest on Municipal land. It appears to me, therefore, that the decision of the Rent Controller as well as the appellate authority cannot be sustained so far as the Rent Restriction Act is concerned because the provisions of this Act have been expressly kept in abeyance so far as the Municipal land is concerned. The remedy of the respondent is to seek eviction of the petitioner in a civil Court.

(5) For the reasons recorded above, this petition is allowed. The decisions of the appellate authority and the Rent Controller are set aside and the petition for eviction is dismissed on the short ground that it cannot be filed in the Court of the Rent Controller. In the circumstances of the case, there will be no order as to costs throughout.

N. K. S.

REVISIONAL CRIMINAL

Before H. R. Sodhi, J.

HANS RAJ,—Petitioner

versus

THE STATE,—Respondent

Criminal Revision No. 838 of 1969.

October 29, 1969.

Prevention of Food Adulteration Act (XXXVII of 1964)—Section 13(3) and (5)—Report of the Director, Central Food Laboratory, Calcutta—Whether supersedes that of the Public Analyst—Such report not indicating the analysis to be done personally by the Director—Whether defective and not conclusive.

Held, that once a certificate is obtained from the Director under section 13 of Prevention of Food Adulteration Act, 1954, the same is final and conclusive evidence of the facts given therein and the report of the Public Analyst, stands automatically superseded. Anything said to the contrary by the Public Analyst, whether in his report or as a witness in Court, cannot be taken into consideration by the Court. It is the certificate of the Director alone that can form the basis on which the guilt or innocence of the accused hinges, subject of course to the existence of other necessary ingredients of the offence. (Para 4).

Held, that it is not necessary that the Director must himself personally do the analysis of the sample of food sent to him under sub-section (2) of Section 13 of the Act and that the form of certificate, as prescribed by the rules, must require it to be so stated before the certificate can be held to be final and conclusive. All that is intended is that the Director has to submit his report in the prescribed form within one month from the date of the receipt of the sample specifying the result of the analysis. It may be that the analysis is done by him personally or under his supervision and the report in either of the cases will be that of the Director. It cannot reasonably be possible for the Director to analyse every sample himself when he has to receive such samples from all over the country. Hence a certificate issued by the Director does not become defective or cease to be the final and conclusive evidence of its contents, simply because it is not indicated in the certificate that the analysis was done by the Director personally. (Para 4).

Petition under Section 439 of the Criminal Procedure Code for revision of the order of Shri J. S. Chatha, Additional Sessions Judge, Amritsar, dated 5th September, 1969, modifying that of Shri G. L. Chopra, Judicial Magistrate, 1st Class, Amritsar, dated 11th July, 1969, convicting the petitioner.

Y. P. GANDHI, ADVOCATE, for the petitioner.

M. P. SINGH GILL, ASSISTANT ADVOCATE-GENERAL (PUNJAB), for the respondent.

JUDGMENT

H. R. SODHI, J.—Hans Raj, petitioner, was convicted by the trial Magistrate under section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (hereinafter called the Act), for the alleged sale of adulterated milk and sentenced to fifteen months' rigorous imprisonment and a fine of Rs. 1,000, in default of payment of which he was to suffer further rigorous imprisonment for three months. On appeal the Additional Sessions Judge upheld his conviction, but reduced the sentence to six months' rigorous imprisonment, maintaining the fine. Hence the present revision petition.

(2) The prosecution story is that on 8th of March, 1968, at 10.00 a.m. Krishan Kumar, Food Inspector, P.W. 1, along with Dr. Joginder Singh, went to the shop of the petitioner, who is a *nalwai*, in Bazar Nawan Kot, Amritsar, and offered to purchase some quantity from out of 8 litres of cow's milk with him. He, it is said, disclosed his identity to the petitioner and told him that he was going to take sample of that milk for analysis. 60 Paise were paid to the accused,—*vide* receipt, Exhibit P. B. and the milk so purchased was divided into three equal parts in different bottles, in each of which were added 18 drops of 'formal in' preservative. These samples were then duly sealed. Necessary documents were prepared and thumb-marked or signed by the witnesses and the petitioner. One of the sealed bottles was sent by the Food Inspector to Public Analyst for analysis and the report, Exhibit P. F. was received from him on 11th of March, 1968. According to this report, the contents of milk were found to be as under:—

Milk Fat-3.6 per cent.

Milk Solid 8.7 per cent.

A complaint against the accused was then filed in Court. The evidence produced on behalf of the prosecution consisted of the Food Inspector Krishan Kumar, P. W. 1, Amar Nath, P. W. 2 and Dr. R. N. Beri, Public Analyst, P. W. 3. The petitioner, when examined under section 342 of the Code of Criminal Procedure, admitted that he received payment of 60 Paise and sold milk to the Food Inspector. He however, denied that 18 drops of 'formal in' were put in each bottle and claimed to have no knowledge about the report of the Public Analyst. He also made a request that the sample in his possession be sent to the Director, Central Food Laboratory, Calcutta. The trial Court sent the sample produced by the petitioner to the Director, as prayed for, and the report, Exhibit C. 1, received from him, showed that the milk analysed by him contained milk fat 2.5 per cent and milk solid 10.2 per cent. The opinion of the Director further was that the milk was adulterated. On receipt of the report of the Director, the petitioner was again examined. He pleaded not guilty and asked the Court to send the third sample also to the Director, but this request was rightly not allowed as it was wholly unnecessary. All the material circumstances relating to purchase of milk for the purpose of taking samples having been admitted by the petitioner, the sole question for determination

before the trial Court was whether the milk sold to Krishan Kumar, Food Inspector, was adulterated or not. It was held, on the basis of the evidence of the Public Analyst and the certificate, Exhibit C. 1, of the Director, Central Food Laboratory, Calcutta, that the petitioner had in his possession adulterated cow's milk for sale at his shop and that he was guilty under section 16(1) (a) (i) of the Act. On appeal, the Additional Sessions Judge upheld the conviction, but reduced the sentence of imprisonment.

(3) It has now been contended before me by Mr. Y .P. Gandhi, the learned counsel for the petitioner, that the certificate, Exhibit C. 1, as issued by the Director, is not in accordance with law and is, therefore, not final and conclusive evidence of the facts stated therein. The argument is that if this certificate is ruled out of consideration we are only left with the report, which is Exhibit P. F, as given by the Public Analyst, and his evidence as P. W. 3. It is stated by him that his opinion may involve an error of one per cent, even if the analysis is done very carefully. He found the milk fat to be less by 4 per cent only and milk solids by .3 per cent. If benefit is given to the accused petitioner of an error of 1 per cent as deposed to by the Public Analyst, P. W. 3, no offence can be said to have been committed by the petitioner. The relevant law relating to the reports of the Public Analyst and the Director, Central Food Laboratory, is contained in section 13 of the Act. The Public Analyst has to deliver his report about the result of the analysis of any article of food, as made by him, to the Food Inspector in the prescribed form. Sub-sections (3) and (5) of section 13 read as follows:—

- “(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).
- (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 (Act XLV of 1860):

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”.

(4) A bare reading of these two provisions leaves no manner of doubt that once a certificate is obtained from the Director the same is final and conclusive evidence of the facts given therein and the report of the Public Analyst stands automatically superseded. When the report is not of any consequence after the receipt of the certificate of the Director, it follows as a necessary corollary that anything said to the contrary by the Public Analyst, whether in his report or as a witness in Court, cannot be taken into consideration by the Court. It is the certificate of the Director alone that can form the basis on which the guilt or innocence of the accused hinges, subject of course to the existence of other necessary ingredients of the offence. The only question that survives for consideration is whether in the instant case the certificate of the Director complied with the requirements of law and could be said to be a valid one. The argument raised on behalf of the petitioner is that the certificate, Exhibit C. 1, does not indicate that the Director personally did the analysis of the sample of milk, sent to him. It is submitted that the offence being highly anti-social and likely to raise an emotional prejudice in the mind of the Court, not only scrutiny of the oral evidence of the prosecution with caution is necessary, but it must also be seen that the certificate has been issued by the Director strictly in accordance with law. Mr. Gandhi has drawn my attention to the judgment of a learned Single Judge of the Madras High Court in *Public Prosecutor v. Meenakshi Achi and another* (1). It was a case of the use of a prohibitive dye in the preparation of ice-cream. The report of the Public Analyst was to the effect that the sample of ice-cream contained coal tar dye, which was not permitted and beyond this bald statement no particulars were given in the report which could enable the Court to decide how the dye was a prohibited one. The report did not even state the colour of the coal tar dye used in the ice-cream and it was the report of the Director of Central Food Laboratory which mentioned the shade of that dye. The accused was acquitted by the trial Court and on appeal by the State it was observed by the High Court that the report of the Public Analyst should have contained factual data of the analysis to enable the Court to decide whether the article of food was adulterated or not and that a vague opinion could give no assistance to the Court in deciding whether the dye used was really

(1) (1968) 2 M.L.J. 520.

a prohibited one. The certificate of the Director also did not show that the analysis had been done by him personally. The learned Judge relying on sub-section (2) of section 13 of the Act and the form prescribed under the rules held that it was necessary that the analysis be done personally by the Director of Central Food Laboratory. Sub-section (2) of section 13 is in the following terms:—

“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.”

With utmost respect to the learned Judge, I have not been able to appreciate how it is necessary that the Director must himself personally do the analysis of the sample of food sent to him under this sub-section and the form of certificate, as prescribed by the rules must require it to be so stated before the certificate can be held to be final and conclusive. All that is intended by sub-section (2) is that the Director has to submit his report in the prescribed form within one month from the date of the receipt of the sample specifying the result of the analysis. It may be that the analysis is done by him personally or under his supervision and the report in either of the cases will be that of the Director. It cannot reasonably be possible for the Director to analyse every sample himself when he has to receive such samples from all over the country. I must, therefore, repel the contention that a certificate issued by the Director becomes defective and thus not the final and conclusive evidence of its contents simply because it is not indicated in the certificate that the analysis was done by the Director personally. There is a well-known maxim of law recognised in our jurisprudence *‘Omnia praesumuntur rite et solesniter esse acta’*—all acts are presumed to

have been done rightly and regularly. When a certificate is received from the Director in the prescribed form, it must be presumed that it was issued after the Director had analysed the sample himself or the analysis was done under his supervision, so that it could be said that the report was his. All that the certificate, as prescribed by rule 4 of the Prevention of Food Adulteration Rules, 1955, requires to be stated is that the sample has been tested/analysed and that the result of such test/analysis is as given in the certificate. The learned counsel for the petitioner has not been able to show that the certificate issued by the Director in this case could, for any other reason, be said to be defective. The certificate, Exhibit C. 1, must, therefore, supersede the report given by the Public Analyst and regarded as the final and conclusive evidence of its contents. According to this certificate the fat contents were 2.5 per cent and solids 10.2 per cent. In the opinion of the Director the milk was adulterated. The Public Analyst, who appeared as P.W. 3, said that there could be margin of error to the extent of 1 per cent. There is no evidence of the Director on that point and, even if the statement of the Public Analyst is accepted, still the fat contents would be less than 4 per cent., which are required to be present in cow's milk. The conviction of the petitioner was rightly recorded and must be upheld.

(5) The only question that remains to be considered is of sentence. The petitioner's conviction has been recorded by the Courts below under section 16(1)(a)(i) of the Act. It is conceded before me by Mr. Gill, learned counsel for the State of Punjab, that it is not obligatory on a Court to award a certain minimum term of imprisonment for the offence as has been held to have been committed by the petitioner and that the sentence imposed upon him can be reduced below six months. The petitioner has been found guilty of selling adulterated milk and it was 'adulterated' within the meaning of sub-clause (1) of clause (1) of section 2 of the Act. Sub-clause (1) is in the following terms :—

"2. In this Act, unless the context otherwise requires,—

(1) 'adulterated' an article of food shall be deemed to be adulterated—

* * * * *

(1) If the quality or purity of the article falls below the prescribed standard or its constituents are

present in quantities which are in excess of the prescribed limits of variability”

The milk sold as cow's milk was found by the Director of the Central Food Laboratory, Calcutta, to contain 2.5 per cent of fat instead of 4 per cent. The solids are of course found to be more, i.e. 10.2 per cent making a total of fat and solid constituents to be 12.7 per cent. It may be that the solid contents are on the higher side, but the fact remains that fat contents are less than the prescribed standard. Whenever a standard is prescribed by the Act or the rules made thereunder, the milk must be held to be adulterated, no matter if the deficiency is found to exist only in regard to one of its constituents and whatever be the margin of that deficiency. These matters can, however, be taken into consideration in awarding sentence. Adulteration is an anti-social crime and a deterrent sentence is always called for. The sentence of six months' imprisonment and a fine of Rs. 1,000 cannot normally be said to be excessive. Mr. Gandhi, learned counsel for the petitioner, has invited my attention to *The Chairman, Jugsalai Notified Area Committee v. Mukhram Sharma* (2) where sentence of a fine of Rs. 5 only was imposed. It was a case where the offence was held to be technical in nature inasmuch as the milk kept by a tea vendor for use in the preparation of tea was taken for analysis by the Food Inspector and there was a delay of two months and a half in examination of the sample. The accused had been acquitted by the trial Court, but on appeal the High Court set aside his acquittal and in the peculiar circumstances of that case awarded a sentence of fine of Rs. 5 only. There are other cases as well: *Municipal Board, Faizabad v. Lal Chand Surajmal and another* (3), *Nagar Mahapalika, Agra v. Ant Ram* (4) and *The State v. Badri* (5) on which Mr. Gandhi relies in support of his contention that a sentence of fine would meet the ends of justice in the instant case. In *Lalchand Surajmal's case* (3) it was again a tea seller who had stored some milk which was intended to be used as a necessary ingredient in the preparation of tea. The Food Inspector took a sample from such milk, represented to be cow's milk, and the Public Analyst found that the sample contained 2.7 per cent fat and 4.6 per cent solids. It was in these circumstances that a sentence of fine only was imposed. In *Ant Ram's case* (4), there

(2) A.I.R. 1969 Patna 155.

(3) A.I.R. 1964 All. 199.

(4) A.I.R. 1966 All. 32.

(5) A.I.R. 1965 Raj. 152.

M/S. Aggarwal Sons v. Damodar Dass, Chief Administrator, etc.
(Gujral, J.)

was a lacuna in the report of the Public Analyst inasmuch as certain columns of the prescribed form had not been filled and it was a case of use of a prohibitive dye in the preparation of *jalebis*. The trial Magistrate had acquitted the accused, but conviction was recorded by the High Court on appeal. *Badri's* (5) is the only case where the accused was convicted for the sale of adulterated milk and his sentence was reduced to that already undergone and a fine of Rs. 500 was imposed. Enhanced punishment had originally been given to the accused for what was described as his third offence, but the High Court came to the conclusion that his conviction could not be treated as for the third offence and it was in these special circumstances that the sentence was reduced from one year's imprisonment to that already undergone and a fine of Rs. 500 was imposed. None of these cases can help Mr. Gandhi, who contends that the offence of the petitioner is only technical in nature. I also cannot agree that the offence can in any sense be said to be technical. In the peculiar circumstances of this case, I however, reduce the sentence to three months' rigorous imprisonment, but maintain the sentence of fine of Rs. 1,000 in default of payment whereof the petitioner would undergo further rigorous imprisonment for three months. The revision petition is partly allowed to the extent that the sentence of the petitioner is reduced as stated above.

R.N.M.

CRIMINAL ORIGINAL

Before Man Mohan Singh Gujral, J.

M/S. AGGARWAL SONS,—Petitioner.

versus

DAMODAR DASS, CHIEF ADMINISTRATOR AND OTHERS,—Respondents.

Criminal Original No. 209 of 1968.

October 29 1969

Contempt of Courts Act (XXXII of 1952)—Section 3—Stay order passed in open Court, not in the presence of the party but his counsel—Counsel not conveying the order to the party—Such party—Whether guilty of disobedience of the stay order.

Held, that before action under section 3 of the Contempt of Courts Act, 1952, for disobedience of the stay order passed by a Court can be taken it