

## REVISIONAL CRIMINAL

*Before Gopal Singh, J.*LACHHMAN DASS,—*Petitioner.**versus*THE STATE OF PUNJAB,—*Respondent.***Criminal Revision No. 1078 of 1969.**

May 13, 1970.

*Prevention of Food Adulteration Act (XXXVII of 1954)—Sections 7 and 16(1) (a) (i)—Prevention of Food Adulteration Rules, 1955—Rule 14—Use of dry and clean bottles or containers for taking samples—Whether imperative—Prosecution—Whether to lead evidence to prove the use of such bottles.*

*Held*, that the language of rule 14 of the Prevention of Food Adulteration Rules, 1955, admits of no ambiguity that it is imperative for the prosecution to use clean and dry bottles or any other suitable container depending upon the nature of article of food recovered at the time the sample of an article of food is taken. The underlying object is to eliminate the chances of the presence of moisture or any other kind of foreign substance present in the bottles prior to the addition of portion of the sample to the bottles. Thus a duty is cast upon the prosecution not only to comply with this mandatory provision of law by using clean and dry bottles for storing the sample but also leading evidence at the trial that the bottles used were clean and dry. (Para 11)

*Petition under section 435/439 of the Criminal Procedure Code, for revision of the order of Shri Harbans Singh Chowdhary, 2nd Additional Sessions Judge, Ferozepore, dated 27th November, 1969, affirming that of Shri R. C. Paul, Judicial Magistrate, 1st Class, Fazilka, dated the 5th day of April, 1969, convicting the petitioner.*

BALRAJ BEHL, ADVOCATE, for the petitioner.

K. S. KEER, ADVOCATE, FOR THE ADVOCATE-GENERAL (PUNJAB), for the respondent.

## JUDGMENT

GOPAL SINGH, J.—(1) This is revision petition by Lachhman Dass. He has been convicted under section 16(1)(a)(i) read with section 7 of the Prevention of Food Adulteration Act, 1954 and sentenced to rigorous imprisonment for nine months and to pay fine of Rs. 1,000 or in

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default of payment of fine to further undergo rigorous imprisonment for six months.

(2) The facts of the prosecution case are as under:—

On March 31, 1968, at 10.00 a.m., the petitioner carried 30 kilograms of cow's milk for sale. He was intercepted by Girdhari Lal, Food Inspector near Punjab Roadways Bus Stand, Fazilka. The Food Inspector associated with him Gurbux Lal and Hari Singh. Out of the milk carried sample of milk was purchased by the Food Inspector for 50 paise. He divided the sample into three equal lots and put those lots in three bottles, closed them with stoppers and sealed them. Notice was served upon the petitioner intimating to him that sample of milk had been taken from him and that the same was sought to be analysed by the Public Analyst. Copy of that notice is Exhibit P. A. It is signed by the petitioner in token of the petitioner having been served with the notice. The receipt signed by the petitioner testifying to the fact of his having sold 660 mili litres of milk to the Food Inspector in lieu of price of 50 paise is Exhibit P.B. The petitioner also executed receipt, Exhibit P.C. in token of his having received one bottle containing 1/3rd of the sample of milk purchased from him. Detailed report drawn up by the Food Inspector detailing the facts pertaining to the action taken by him to purchase the sample of milk from the petitioner is Exhibit P.D. That document is attested by Gurbux Lal and Hari Singh.

(3) One of the bottles was sent to the Public Analyst for examination. By certificate, Exhibit P.E., the Public Analyst gave the opinion that the sample of milk recovered contained 3.6 per cent of fat instead of the prescribed standard of 4 per cent of fat and 5.8 per cent of solids not fat instead of 8.5 per cent of solids not fat.

(4) The petitioner was proceeded against by a complaint filed by the Food Inspector under section 16(1)(a)(i) read with section 7 of the Prevention of Food Adulteration Act. At the trial, the case of the prosecution was supported by the testimony of Girdhari Lal, Food Inspector P.W. 1, Gurbux Lal P.W. 2 and Hari Singh P.W. 3.

(5) In his statement under section 342, Criminal Procedure Code, the petitioner admitted the recovery of sample of milk from him, but stated that no bottles had been filled in his presence and that Gurbux Lal and Hari Singh P.Ws. were not present at the time the sample was taken from him. He, however, admitted that he had signed various documents, which were drawn up by the Food Inspector at the time the recovery of sample was made, but added that he appended his signatures because of the threat held out by the Food Inspector to him. He further pleaded that milk recovered from him belonged to Gurbux Lal and Babu Lal and he had been deputed merely to carry that milk for them and that it was not meant for sale by the petitioner. He produced Chanan Singh D.W. 1 to prove that four kilograms of milk had been purchased by him from him.

(6) Shri Balraj Bahal appearing on behalf of the petitioner has contended that Gurbux Lal and Hari Singh P.Ws. were not associated by the Food Inspector with him and were not present at the time the sample of milk was purchased from him and that the prosecution have failed to prove that the three bottles, in which milk was poured, were dry and clean.

(7) Girdhari Lal, Food Inspector P.W. has unequivocally stated that Hari Singh P.W. who is peon of the Municipal Committee accompanied him at the time he intercepted the petitioner near the Punjab Roadways Bus Stand. Gurbux Lal P.W. is a tea-stall holder. His tea-stall is in the precincts of the Punjab Roadways Bus Stand, where the petitioner was intercepted by the Food Inspector and sample of milk was purchased from the petitioner. The tea-stall of Gurbux Lal P.W. being close to the place of recovery of sample of milk from the petitioner, Gurbux Lal is quite a natural witness. There is every likelihood of his being present at his tea-stall at the time the recovery was made from the petitioner.

(8) The petitioner himself has not denied the fact of recovery of sample of milk from him by the Food Inspector. He has, however, denied the presence of Hari Singh and Gurbux Lal P.Ws. at the time the recovery was made. Report pertaining to the action taken by the Food Inspector for recovery of sample of milk from the possession of the petitioner and other steps taken by him for sealing

the sample after dividing it into three lots and putting it into three bottles is attested by Gurbux Lal and Hari Singh P.Ws. Both these witnesses and Girdhari Lal, Food Inspector have duly proved the facts pertaining to the recovery of sample of milk from him and other facts relating thereto as incorporated in that report marked as Exhibit P.D. Thus, the plea raised on behalf of the petitioner that Gurbux Lal and Hari Singh P.Ws. were not present at the time the sample was taken by the Food Inspector has no force. The evidence of these two witnesses and at the top of it the statement of the petitioner admitting that sample of milk was recovered from him leave no doubt that the sample of milk was taken from the possession of the petitioner.

(9) The petitioner took up the stand in his defence that as Madan Lal, who was working with Gurbux Lal and Babu Ram for carrying milk to Fazilka had fallen ill, the petitioner was deputed to carry milk that day for its delivery, to Gurbux Lal and Babu Ram. Gurbux Lal P.W. denied that that milk was ever meant for him. He stated that he had never deputed the petitioner to purchase any milk from any place and to carry the same on his behalf for its being brought to him. The Food Inspector stated that for a period of 4 or 5 years, the petitioner had been issued licence for sale of milk. He, however, added that on March 31, 1968, when the sample of milk was taken from the petitioner, no license had been issued to him, but all the same the petitioner carried on the work of selling milk. The petitioner has been stated to be a milk seller. As large quantity of milk as 30 kilograms was found in his possession. He failed to substantiate the plea taken by him that he was carrying milk on the date, on which the sample of milk was purchased from him by the Food Inspector, on behalf of Gurbux Lal P.W. and Babu Ram and not for sale by himself. The petitioner having taken up that stand, burden lay upon him to prove that milk was not meant for sale by him, but he was merely a carrier of milk on behalf of Gurbux Lal P.W. and Babu Ram. The facts and circumstances of the case clearly indicate that 30 kilograms of milk being carried by the petitioner were meant for sale.

(10) It is obligatory upon the prosecution to show that clean and dry bottles were used for putting in sample after the sample has been purchased by a Food Inspector as laid down in Rule 14 of

the Prevention of Food Adulteration Rules, 1955. Rule 14 runs as under :—

“14. *Manner of sending samples for analysis.* Samples of food for the purpose of analysis shall be taken in *clean dry bottles* or jars or in other suitable containers, which shall be closed sufficiently tight to prevent leakage, evaporation, or in the case of dry substance, entrance of moisture and shall be carefully sealed.”

(11) The language of the above rule admits of no ambiguity that it is imperative for the prosecution to use clean and dry bottles or any other suitable container depending upon the nature of article of food recovered at the time the sample of an article of food is taken. The underlying object is not only to prevent leakage or evaporation of the contents of the bottles, but also to eliminate the chances of the presence of moisture or any other kind of foreign substance present in the bottles prior to the addition of portion of the sample to the bottles. A duty is cast upon the prosecution not only to comply with this mandatory provision of law by using clean and dry bottles for storing the sample, but also leading evidence at the trial that the bottles used were clean and dry.

(12) It has been contended by the learned Counsel for the petitioner that there is no evidence on behalf of the prosecution to show that the bottles used for storing therein the sample recovered from the petitioner were dry and clean. It is indispensably necessary for the prosecution to use clean and dry bottles at the time of recovery of sample and to prove at the trial that the bottles were dry and clean. The underlying object of the provision is to see that there is no moisture or any impurity or any matter different from the article of food sought to be added to the bottles. In the present case, the chance or possibility of the bottles being moistened and unclean and, therefore, there being present certain quantity of water in the form of moisture or otherwise cannot be eliminated. The evidence of the Food Inspector, Gurbux Lal and Hari Singh P.Ws. was read out. It is nowhere stated by any one of them that the bottles were clean and dry at the time the sample was added to them. The prosecution have thus failed to prove that the sample was added to dry and clean bottles.

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(13) As the report of the Public Analyst shows, the content of fat in the sample analysed by the Public Analyst was 3.6 per cent instead of its being the prescribed standard of 4 per cent. Similarly, the percentage of solids not fat was found by the Analyst to be 5.8 per cent instead of the prescribed percentage of 8.5 per cent of solids not fat. These variations in fat and in solids not fat could be the result of moisture or water contained in bottles and not as a result of the milk purchased being sub-standard. The petitioner is entitled to be given the benefit of doubt as the prosecution have failed to establish that the bottles used were dry and clean as enjoined by Rule 14 of the Rules.

(14) In the result, the revision petition is allowed. The conviction and sentence of the petitioner are set aside and he is acquitted.

N. K. S.

APPELLATE CRIMINAL

Before H. R. Sodhi and Man Mohan Singh Gujral, JJ.

THE STATE OF PUNJAB,—Appellant.

versus

BAKSHISH SINGH AND OTHERS,—Respondents.

Criminal Appeal No. 819 of 1967.

May 13, 1970.

*Rice (Northern Zone) Movement Control Order, 1958—Clause 3-A—Conviction for violation of—Proof of location of the border area—Whether essential.*

Held, that a bare reading of clause 3-A of the Rice (Northern Zone) Movement Control Order, 1958, shows that before a person can be convicted for violation of clause 3-A it has to be established whether the spot where the rice is found at any particular time was within the border area as defined in the explanation to clause 3-A or outside the border area. Unless the boundary of the border area is clearly located it will not be possible to ascertain whether the rice was being taken from any place outside the border area to a place within the border area or to any place outside the border area from any place in that area or from any place in the border area to any other place in that area. Mere movement of rice is not penal and it becomes penal only when an attempt is made to transport it to or