(1963) 10 P&H CK 0007

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Revision No. 97 D of 1963

R.C. Shaida		APPELLANT
	Vs	
The Municipal Corporation of Delhi and another		RESPONDENT

Date of Decision: Oct. 7, 1963

Acts Referred:

- Prevention of Food Adulteration Act, 1954 - Section 16, 7

Hon'ble Judges: P.D. Sharma, J

Bench: Single Bench

Advocate: S.L. Seth, for the Appellant; Sarvshri Bishamber Dayal and D.R. Seth, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

P.D. Sharma, J.
R.C. Shaida accused petitioner was convicted u/s 7 read with section 16 of the Prevention of Food Adulteration Act of 1954 (hereinafter referred to as the Act) and sentenced to pay a fine of Rs. 1,000/- or in default to undergo regorous imprisonment for three months. His appeal against the above was dismissed by the Learned Additional sessions Judge, Delhi and he has come up in revision to this Court.

2. The prosecution case is that on 25th July, 1961, about 10.00 A.M. K.D. Sachdev and M.L. Zutsh. P.W.s, Food Inspectors of the Delhi Municipal Corporation, went to the canteen being run in the premises of D.C.M. Chemical Works Najafgarh Road, Delhi, which was in the preparation of the curd dahi) sold in the canteen. They purchased 24 ounces of curd dahi'' on payment of Rs. -72 nP. and sent a sample thereof to the Public Analyst whose opinion indicated that it was adulterated to the extent of 35.5 per cent added water, which resulted in the present case The accused petitioner

pleaded that one S.N. Sharma, was in the charge and D.N. Sharma was functioning as a sale man in the canteen at the relevant time. He, however, admitted that the sample of buffalo milk curd was obtained by the Food Inspectors from the canteen.

3. K.D. Sachdev (P.W. 1. and M.L. Zutshi (P.W. 3) deposed to the effect the accused petitioner was working as a sale man in the canteen and that the former purchased 24 ounces of a buffalo milk curd on payment of Rs.-72nP. as price thereof by way of sample from him. Exhibit P.B. is the receipt granted by the accused petitioner to K.D. Sachdev on receiving Rs.-72nP. as price of the curd bom him. Exhibit P.A. is another document signed by the accused petitioner in taken of the Food Inspector having visited the canteen tun in the premises of D.C.M Chemical Works Najafgarh Road, Delhi, and purchased buffalo milk curd. There is still another document Exhibit P.C. which was also signed by the accused-petitioner suggesting that he had received one of three sealed bottles and a sum of Rs. -72nP As the cost of 24 ounces of pure buffalo curd from the Food Inspector. The oral testimony of the two Food Inspectors and these documents led the trial Court to believe that the accused-petitioner was working as the salesman in the canteen at the relevant time. The statements of the defence witnesses, namely S.K. Mathur (D.W. 1), D.N. Sharma (D.W. 2), S.N. Sharma (D.W. 3) and Diwan hand (D.W. 4) were ignored as of no consequence. The report of Dr. A. Khanna, Public Analyst for Delhi Municipal Corporation Area, Exhibit P. E. indicated that he received on the 5th July, 1961, from K.D Sachdev a sample of buffalo milk curd which he got analysed on 31st July, 1961, and the result thus obtained was as follows :
Fat : 4.6 percent.

Non Fatty solids 5.8 percent.

In his opinion the sample was adulterated to the extent of 35.5 per cent added water. The trial Court from the above inferred that there was no room for doubt that the accused petitioner had committed the offence punishable u/s 7 read with section 16 of the Act and proceeded to convict and punish him as already elucidated. The learned Additional Sessions Judge while dismissing the appeal confirmed the findings of the trial court.

4. The learned counsel for the accused-petitioner in this Court mainly contended that report of the Public Analyst Exhibit P.E. in the circumstances of the case was barely sufficient to show that the sample of the curd obtained by the Food Inspector on 25th July, 1961 was adulterated to the extent mentioned therein, in as muca as no preservative was added to it when the same was placed in the sealed bottle sent to the Public Analyst for analysis and that there was no evidence to show that the same had not undergone any change from the time it was obtained till 31st July, 1961, when it was anaylsed. There is no denying the fact that the Food Inspector failed to add any preservative to the sample of curd purchased by him from the canteen of the accused-petitioner, that he kept it for almost two hours with him

before despatching it to the Public Analyst. The learned Additional Sessions Judge, while dealing with the report of the Public Analyst Exhibit P. E. in paragraph No. 4 of his judgment observed :

In the present case the Analyst has not merely given the conclusion but also the date. The fat was found to be 4.6 per cent and non-fatty solids 5.8 per cent. According to the prescribed rules the non-fatty solids should have been 9 per cent. The mode for determining the addition of water, I am told, is to take the difference between the prescribed percentage of non fatty solids and that actually found. This difference represents the rate of water out of the prescribed limit. Then it is worked in terms of percentage. In the present case there was a deficiency of 3.2 percent of non-fatty solids as against the prescribed 9. This deficiency of 3.2 percent out of 9 in term of percentage would come to 35.5.

5. This simple arithmetic does not answer the question if reduction in the percentage of non-fatty solid contents in the sample of curd been solely due to the addition of water than the percentage of fat contents would have also diminished in the same preparation, the absence of which should have made the Courts below to Look for other explanations for the deficiency in the tat and non-fatty solids in the sample of curd. It would have been more advantageous if the learned Additional Sessions Judge had also quoted, the authority which formed the basis of his observations. Any how it leads to one firm conclusion that the Public Analyst found the sample of curd as adulterated to the extent of 35.5 percent added water because the presence of non fatty solids as found was 5.8 instead of 9 normal noticed in pure buffalo milk curd. The point for determination resolves into, whether the omission to add proper preservative to the sample of curd and the neglect to keep the same in proper conditions from the time it was obtained till it was analysed could result in the deterioration of non fatty solid contents therein. In this connection reference may be made to certain passages in the book, "Milk : Production and Control'' by Harvey & Hill the subject ''Bacteria found in Milk'' is dealt with at page 11 of this book, where the learned authors inter alia state "Despite their minute size bacteria can accomplish a great deal in various directions. It has been proved that lacticacid organsims which are present in milk in varying number even when produced under clean conditions, can concern their own weight of food each hour. They absorb food over their entire surface and emit waste products, generally acids, into the milk ''.

6. In view of the fact that milk is liable to change in composition resulting in the reduction of fat and non-fatty solid contents thereof, the learned authors insisted upon various precautions in the matter of collection of samples and their transmission to a laboratory at page 359 of the book in the following terms :

It is essential to the proper standardisation of samplying that all samples should be collected in accordance with principles laid down for designated Milk in Memo 139/Foods (January, 1937) issued by a Minister of Health....This sample should be

delivered intact to the bacteriologist....when the milk has been obtained, it should be packed in ice in a suitable carrying case, and should be kept under these conditions until it arrives at the laboratory. This precaution is particularly essential if the samples have to travel some distance....In any case, if milk cannot be delivered to the laboratory within fifteen minutes of samplying, ice should always be used except in the case of pasteruised or other heated milk.

The learned Author again reiterates at page 405 as below :

Because of changes which occur in lactose, even before souring takes place, the percentage of this substance can only be determined when milk is fresh. For this reason it is desirable that milk should reach the analyst at the earliest possible moment after samplying, maintained, if necessary, in a sweet condition, by means of ice.

According to them even delay of 15 minutes in sending the sample to the Public Anaylist should not be overlooked. Similarly J.N. Warner in his book on "Dairying in India" (1951) Edition at page 112 while describing the action of micro-organism in milk, observed.

The biological decomposition of milk involves principally the lactose, protein, fat, and ash. The more common changes which result from the action of Micro orgnasims, viz, bacteria, yeasts and solids, on these constituents of milk are : lactose breaks down to form laotic acid, gas/ or alcohol; proteins decompose to form amino acid and ultimataly ammonia; fat breaks down into free fatty acids and glycerol; the chanses in the salts of milk depend upon the salt or salts involved....

The learned author while describing dahi at page 116 of his book mentioned.

Dahi is product obtained by the coagulation of milk resulting from the production of acid by bacteria. The principal organisms involved, therefore, are those which ferment lactose, probably most commonly Str. lactisand L. evidophil us or L. Bulgarious. Other organisms are involved, but they are less important....

The curd thus is the result of certain changes brought about by micro-organisms, such as bacteria in the milk. The bacteria affects the percentage of fat and non-fatty solids in the milk when turned into curd. It cannot be said that as soon as the milk is converted into curd the changes which have started stop and for good. The curd should not be allowed to remain for a long period and without adding the required preservative since the percentage of fat and non-fatty solids present in the milk from which it is prepaid is likely to dwindle.

7. The learned counsel for the Municipal Corporation respondent No. 1, however, urged that in the present case, as it appears from the note of the Public Anaylst in Exhibit P. E. the sample was kept in the refrigerator before analysis and so it should be presumed that the change, in the contents of fat and non-fatty solids therein did not occur from the time'' the sample was obtained till the same was finally analysed.

Firstly, the form prescribed by the appropriate authority for a report of the Public Analyst to the food inspector of the result of the Analysis of any article of food submitted to him for analysis u/s 13 of the Act does not provide for the making of such a note by the Public Analyst and that being so, it can not be used as evidence in the case like other entries made in consonance with the prescribed form. The fact that the sample was kept in the refrigerator before analysis had to be proved like any other fact in the case, as held in re. In Re: P. Mohammud Sheriff Saheb, that when a belated analysis was made of gingelly oil and it was found to contain a slight excess of oleic acid, the burden of proving that delay had no relation to the excess is upon the prosecution. Similarly in the present case it should have been established and beyond doubt by evidence other than the note in Exhibit P. E. that the delay in analysing the sample of curd sent to the Public Analyst did not result in the deterioration of fat and non-fatty solid contents thereof, particularly when the sample remained with the Food Inspector for almost two hours in the hot month of July, before it was despatched to the Public Analyst. Secondly, the bleak and cryptic note of the Public Analyst Exbihit P. E. otherwise also could not have absolved the prosecution from showing that condition of the sample of curd obtained by the Food Inspector from the accused petitioner on 25th July, 1961 continued to remain like till it was finally analysed on 1st July, 1961. It fails to state the manner and the temperature in which the sample was kept in the refrigerator. This was indispensable in this case, particulary in view of the unqualified observations made by J.N. Warner in his aforesaid book at page 199:

The keeping quality Dahi like most milk products is limited. Although it may keep longer than unprocessed milk, it will not keep indefinitely. It is well to prepare it in quantities that can be disposed of within 24 hours, unless refrigeration is available. This would make it possible to keep the products a while longer, but only another day or two". The learned counsel for the accused petitioner was, therefore justified in maintaining that the report of the Public Analyst Exhibit P. E. here is not a good proof of the fact that the curd sold by the accused-petitioner to the Food Inspector was adulterated to the tune of 35.5 per cent, added water and that being so, this case should have ended in his acquittal.

8. The revision petition, is consequently, accepted and the orders of the Courts below convicting and sentencing the accused-petitioner u/s 7 read with section 16 of the Act are set aside. The amount of fine, if paid should be refunded to him.