

**(2008) 02 P&H CK 0345**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal Miscellaneous No. 8677 of 2008 with Criminal Revision No. 545 of 1995

Balkar Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

**Date of Decision:** Feb. 26, 2008

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313

**Citation:** (2008) 2 RCR(Criminal) 444

**Hon'ble Judges:** Kanwaljit Singh Ahluwalia, J

**Bench:** Single Bench

**Advocate:** Salil Bali, for the Appellant; Dinesh Arora, Assistant Advocate General Haryana, for the Respondent

**Final Decision:** Allowed

**Judgement**

Kanwaljit Singh Ahluwalia, J.

Criminal Misc. No. 8677 of 2008 is allowed. True translation of statement of accused Balkar Singh u/s 313 Cr.P.C. is taken on record.

2. Balkar Singh son of Makhan Singh was intercepted on 12th July, 1989 by Govt. Food Inspector, Teja Singh along with Dr. S.P. Mimani when he was carrying 30 kgs of milk. 750 ml milk was purchased. Samples were drawn and same were sent to the Public Analyst. As per the report of the Public Analyst, milk fat and milk solid not fat were found less than the minimum standards prescribed. Therefore, milk was found to be adulterated.

3. Teja Singh, Govt. Food Inspector appeared as PW-1. Dr. S.P. Mimani appeared as PW-2 and Dr. Mohar Singh as PW-3. Sub Divisional Judicial Magistrate, Fatehabad had framed the charge and in the charge also, extent of adulteration has not been mentioned. Public Analyst report has been exhibited as Ex. P-E. Milk fat had been found to be 3.3 per cent and milk solid not fat had been found to be 5.5 per cent. In the report of the Public analyst, it has also not been mentioned as to how much

deficiency was there. In the complaint also, extent of adulteration has not been mentioned and it has been nowhere mentioned whether the milk was of cow or of buffalo, or whether the standards followed were for the un-indicated milk or not.

4. Today, Mr. Salil Bali has placed on record as Annexure A-1, translation of statement u/s 313 Cr.P.C. recorded by Sub Divisional Judicial Magistrate, Fatehabad. The same is reproduced below:-

"Statement of accused Balkar Singh son of Makhan Singh aged 65 years occupation agriculturist resident of Hajrana Kalan u/s 313 Cr.P.C. Q. It has come in evidence against you that on 12.07.1999 at around 12 'O" clock in the morning Food Inspector Teja Singh and Dr. S.P. Bhimani were collecting samples at Ratia Road Fatehabad. At that time you were coming on a cycle with a drum containing 30 Kg. Milk in it. On the drum it was also written that the milk is of whom. F.I stopped you and after introducing himself to you desired to buy milk from you. You were served with notice Ex.PA. Then he made a desire to take samples from the drum containing milk. After stirring milk properly, 750 ml milk was taken from it by buying Rs. 2/- vide receipt Ex. PB. This purchased milk was put into clean and open bottles in equal quantity. In each bottle 20-20 drops fumilin was put in equal quantity as preservative and then it was covered with air tight lids and the bottle necks were tied with paper and the thread. On each bottle neck one seal of Dr. S.P. Bhimani was also put. Spot memo Ex.PC was prepared at the spot and labels were pasted on each bottle. Each bottle was wrapped into a khaki paper and the paper was pasted with gum from both the sides. On each bottle, a paper slip from top to bottom was pasted and the bottles were tied with the thread. On each bottle one seal of Dr. S.P. Bhimani was put and 4-4 seals of F.I were put on the bottles. On each bottle the signatures of the accused were taken in such a way that half comes on the Khaki paper and half on the paper slips. Ex. PA to PC were prepared on the spot and on this the signatures of accused were taken. These were attested by Dr. S.P. Bhimani. At the time of taking samples 5-7 people got collected at the spot but on asking to join as a witness no body got ready to become the witness. Five copies of Form-7 were prepared at the spot land symbols were affixed of the used articles. One sealed bottle of sample, copy of Form-7 was put into a sealed packet and was sent through a railway parcel to the Public Analyst, Haryana, Karnal for analysis. F.I sent the written information to the LHA Fatehabad regarding the sending of the sample to the Analyst. One copy of the Form-7 was given to Railway RR alongwith one registered post was sent to the Public Analyst, Haryana Karnal. The receipt of which is Ex.PD. The original receipt is tagged with the case file. Two bottles of the sealed samples along with two copies of Form-7 were submitted to the LHA in a sealed packet. A copy of the result PE was received by F.I from the LHA Fatehabad according to which your sample was found to be adulterated, therefore, F.I. filed a complaint Ex.PF and information regarding this was sent by F.I. to LHA so that action u/s 13(2) be taken against you. After that LHA Fatehabad sent copy of the result alongwith the forwarding letter Ex.PC through Registered Post. The Postal receipt is

Ex.PI. What you have to say regarding this ?

Ans: It is wrong.

Q. Why the case was made ?

Ans. A false case has been made.

Q. Why witnesses depose ?

Ans. Witnesses have deposed falsely.

Q. Do you have to say something else ?

Ans. I did not sell milk on that day. I collected the milk from my village and was going to the house of Kashmiri Lal son of Gaga Ram resident of Mohalla Guru Nanakpura Fatehabad for Akhandpath. On the way F.I stopped me and forcibly took my signatures and did not tell me anything. A false case has been made against me.

Q. Would you have given evidence in defence ?

Ans. Yes."

5. Mr. Bali has relied upon a decision of this Court rendered in Criminal Revision No. 701 of 1995 decided on 14.02.2008. That case also pertained to the statement recorded by Sub Divisional Judicial Magistrate, Fatehabad. This Court has observed as under.

Except for the last four questions, which are formal in nature, entire incriminating circumstances have been put to the accused in one para running into about two pages.

It has been held in various judicial pronouncements that the proper way of questioning the accused is to put before him one by one all the vital and salient points in the evidence that go against him in short sentences in easily understandable language.

I am in agreement with the arguments advanced by Mr. Gupta that grave prejudice has been caused to the accused. Recording of statement u/s 313 Cr.P.C. is not a mere formality. It is solemn function of the Court to put each and every incriminating circumstance to the accused so that he is able to understand what is against him and he can give his response to what has been gathered by the prosecution against him. Recording of statement u/s 313 Cr.P.C. in a mechanical manner is to negate the very spirit of the section. The legislature in its wisdom has stated that incriminating circumstance should be put to the accused in his own language. The spirit of the section is that no accused is deprived from understanding what is the case against him.

The system which we have inherited has a British legacy where the accused is represented by a counsel, the legislature could have dispensed recording of

statement u/s 313 Cr.P.C. but legislature in its wisdom has thought that accused should be made aware of the incriminating circumstance. The approach and the manner adopted by the trial Court cannot be accepted. Prejudice to the accused is writ large.

6. The extent of adulteration was also not put to the accused in his statement u/s 313 Cr.P.C. As noticed in present case, extent of adulteration was also not even recorded in the charge. The prejudice to the accused in this case is writ large. In the present case, the sample was taken on 12th July, 1989. 17 years have passed. Right of speedy trial also vests to the accused.

7. Taking totality of circumstances into consideration, present revision petition is accepted and the conviction and sentence awarded to the petitioner is set aside.