

Balak Ram Vs State of U.P. and Another

Court: Allahabad High Court

Date of Decision: Feb. 5, 1997

Acts Referred: Prevention of Food Adulteration Act, 1954 " Section 16, 7

Citation: (1997) 21 ACR 297

Hon'ble Judges: C.A. Rahim, J

Bench: Single Bench

Judgement

C.A. Rahim, J.

This revision has been directed against the judgment and order of the Sessions Judge, Jalaun at Orai, dated 14.12.1990 in

Criminal Appeal No. 42 of 1990, dismissing the appeal of the accused-revisionist who was convicted u/s 7/16 of the Prevention of Food

Adulteration Act and sentenced to suffer R.I. for six months" and a fine of Rs. 1,000 imposed on 27.6.1990 by the Judicial Magistrate, Jalaun at

Orai, in Criminal Case No. 890 of 1988.

2. In the instant case, the Food Inspector, Ramoura, purchased a sample of milk from the accused-revisionist at Kalpi Bus-stand on 17.6.1988 at

9 a.m. After observing the necessary formalities one phial of the sample was sent to the Public Analyst who reported that the milk was adulterated.

After holding the trial, the learned Magistrate convicted and sentenced the accused-revisionist in the aforesaid manner. An appeal was preferred by

the accused-revisionist which was dismissed by the Sessions Judge.

3. Sri Dharam Pal Singh, appearing for the revisionist has raised two points. Firstly, that in compliance of Section 17(a) of the Prevention of Food

Adulteration Act (hereinafter referred to as the "Act") the sample of the milk was not sent to the Public Analyst on the following day. Secondly, the

other two phials in compliance of Rule 17(b) should have been deposited with the local authority on the following day was not done by the Food

Inspector.

4. Sri Singh has contended that since Rule 17 is mandatory, non-observance of the said Rule vitiates the trial. He has referred the case of State of

Maharashtra v. Rajkaran 1988 EFR 550, but the said decision does not appear to be applicable in this case since the Supreme Court held:

It is mandatory to have the materials in Rules 17 and 18 separately sent to the Public Analyst.

5. The emphasis was on the point that it should be separately sent. If both the Rules are read together it will be seen from Rule 18 that a copy of

the memorandum and specimen impression of the seal used to seal the packet shall be sent, in a sealed packet separately to the Public Analyst. In

the instant case, the dispute is with regard to the observance of Rule 17. So I do not think that the Supreme Court case has any application in

deciding the points raised by the learned Counsel. Reliance also is placed on the single Bench decision in Phool Singh v. State of U.P. and Anr.

1991 (2) EFR 344, but in that case there was no evidence to show that the sample was sent by registered post. So it was held that the prosecution

has failed to establish the despatch of the materials referred to in Rules 17 and 18 to the Public Analyst by registered post, which are mandatory.

6. The learned Counsel has also relied on the case of State of Haryana Vs. Isher Dass, , wherein it has been held that:

When the old and the new rules are juxtaposed for study, it emerges that the new rule requires the Food Inspector to send the seized sample and

Form VII in sealed condition immediately to the Public Analyst but not later than the succeeding working day. The other amendment in this rule is

that even Form VII has to be sent in a sealed condition. Previously, it was only to be enclosed with the sample. The sample container and Form

VII sealed in the manner provided in Rule 17(a) has to be deposited with the local (health) authority immediately, but not later than the succeeding

working day. This amendment lays emphasis on steps to rule out any possibility of tampering with the sample. It is to be noted that at every stage in

this rule the word "shall" has been used which does not leave any doubt about the mandatory character of its language.

7. From this Full Bench decision of the Punjab and Haryana High Court it appears that both Rules 17(a) and 17 (b) are mandatory and non-

observance of the same will vitiate the trial. Accordingly, I find that there is merit in this revision and the judgments delivered by both the courts

suffer from legal infirmity.

8. The revision is, therefore, allowed. The conviction and sentence passed by the learned Magistrate and affirmed by the Sessions Court in Appeal

are hereby set aside. The accused-revisionist is acquitted. He is on bail. His bail bonds are discharged.