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**(1981) 11 AHC CK 0093**

**Allahabad High Court**

**Case No:** Criminal Appeal No. 2901 of 1977

Lallan Prasad

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision:** Nov. 16, 1981

**Acts Referred:**

- Prevention of Food Adulteration Act, 1954 - Section 16, 7, 9

**Citation:** (1982) 6 ACR 294

**Hon'ble Judges:** R.B. Lal, J

**Bench:** Single Bench

**Final Decision:** Allowed

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### **Judgement**

R.B. Lal, J.

1. Lallan Prasad, who has been convicted for an offence u/s 7/16 of Prevention of Food Adulteration Act (briefly the Act) and sentenced to undergo RI for three months and pay a fine of Rs. 500/- and in default to further undergo RI for three months by Shri J.S. Singhal, Addl. Sessions Judge, Azamgarh, has filed this appeal.

2. A special drive for checking the food stuffs in the district of Azamgarh was under-taken from 2nd to 12th of December, 1975 by Dr. P.B. Ghosh, DMOH. In that connection Food Inspector Surendra Singh visited the shop of the Appellant on 10-12-75 at about 12.30 P.M. (noon) and took a sample of "KHOBE MEN BANI GAJAR KI BARFI" on payment of requisite price and after observing requirements of all the relevant rules. A phial of sample Barfi was handed over to the Appellant. Another phial was sent to the Public Analyst, who found that the sample contained an unpermitted coaltar dye colouring, namely Metanil Yellow Cl. Dr. Ghosh sanctioned prosecution of the Appellant and Food Inspector Surendra Singh filed complaint against Lallan Prasad.

3. Lallan Prasad admitted that sample was taken from his shop, but denied that notice was given to him. He added that one sample phial was handed-over to him by the Food Inspector about half an hour after the taking of the sample. He examined one witness in defence to show that Head-constable Badri Singh of the police out-post (PW 2) had gone to the police out-post at 11.55 A.M. and he was not present at the time of the taking of the sample.

4. The learned Addl. Sessions Judge, who held the trial, accepted the prosecution case and convicted and sentenced the Appellant as mentioned earlier. Hence this appeal.

5. The learned Counsel for the Appellant has contended that Food Inspector Surendra Singh was not competent to take the sample of Barfi of the Appellant. Surendra Singh was Food Inspector of Pardah Block in the District of Azamgarh. He was not a Food Inspector of Qasba Mahmoodabad. This contention of the learned Counsel appears to be well founded. A perusal of the statement of Surendra Singh PW 1 shows that he was Food Inspector for Pardah Block. He did not say that he was Food Inspector for the entire district or was also Food Inspector for Qasba Mahmoodabad. From his statement it is also clear that his services were requisitioned by Dr. Ghosh, DMOH to assist in the special drive, which was launched. It has not been disputed before me that Dr. Ghosh did not have the requisite power and authority under the law to appoint a person as Food Inspector for any area or to extend that area of a Food Inspector even within the district in which he (Dr. Ghosh) was exercising powers as DMOH. u/s 9 of the Act only the Central Government or the State Government by notification in the official gazette, may appoint such persons as it thought fit, having the prescribed qualifications, to be Food Inspectors for any local areas. It was the duty of the prosecution to have led evidence to show that Surendra Singh had been appointed as Food Inspector for the town of Mahmoodabad. No evidence was led on this point. Hence it must be held that Surendra Singh (PW 1) had no authority to act as Food Inspector in the town of Mahmoodabad on 10-12-75 and to take the sample of Barfi of the Appellant.

6. Dr. Ghosh had no doubt gone to Mahmoodabad on 10-12-75, but it is not in the evidence of Surendra Singh that Dr. Ghosh was present at the time when the sample of Barfi was taken from the shop of the Appellant at 12.30 P.M. It cannot, therefore, be said that in fact the sample was taken by Dr. Ghosh and only the ministerial work of preparing the various papers and sealing the phials was done by Surendra Singh.

7. Since Surendra Singh was not competent to act as Food Inspector in the town of Mahmoodabad and take the sample of Barfi from the Appellant, the Appellant's conviction for selling adulterated Barfi cannot be up-held. His conviction is liable to be set aside on this ground.

8. The learned Counsel for the Appellant has made another submission. He has said that the sanction granted by Dr. Ghosh for prosecution of the Appellant and the

authorisation in favour of Surendra Singh to conduct the case was not valid, because there was no evidence to show that the sanction had been granted after due application of mind. I do not propose to go into this question, because the first point is sufficient to dispose of this appeal.

9. In the result this appeal succeeds and is allowed. Conviction and sentence of the Appellant Lallan Prasad are hereby set aside and he is acquitted. The Appellant is on bail. He need not surrender to his bail bonds, which are discharged. The fine, if already paid, shall be refunded to the Appellant.