

**(1995) 03 AHC CK 0125**

**Allahabad High Court**

**Case No:** Criminal Revision No. 343 of 1983

Ram Lal

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

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**Date of Decision:** March 8, 1995

**Acts Referred:**

- Prevention of Food Adulteration Act, 1954 - Section 10(7), 16(1), 2, 7(1)

**Citation:** (1995) 19 ACR 412

**Hon'ble Judges:** O.P. Pradhan, J

**Bench:** Single Bench

**Advocate:** R.N. Gupta, for the Appellant; G.A., for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

O.P. Pradhan, J.

This revision by convict Ram Lal is directed against the judgment and order dated 8.6.1983 rendered by learned Sessions Judge. Hardoi in Criminal Appeal No. 20 of 1983 whereby the appeal was dismissed and the order of conviction and sentence awarded to the revisionist by the lower Court was maintained.

2. The facts are few and simple. It was on 9.5.1981 at about 11 a.m. that in village Khasraul within the circle of police station Atrauli, District Hardoi. the Food Inspector S.D. Gupta purchased mixed milk of cow and she-buffalo from the revisionist for the purpose of analysis. After observing the necessary formalities, one of the three bottles in which the sample had been filled up, was sent to the Public Analyst, who reported that there was deficiency of about 14% non-fatty solids in the sample. After obtaining the requisite sanction from the Chief Medical Officer. Complaint for the prosecution of the revisionist was lodged by the Food Inspector in the Court of Chief Judicial Magistrate. Hardoi. The trial took place in the Court of Judicial Magistrate, Sandila (Special Court of Economic Offences), Hardoi. The learned Magistrate after consideration of the evidence adduced before him found the revisionist guilty u/s

7(i) and sentenced him to undergo six months" R.I. and pay a fine of Rs. 1000. feeling aggrieved by this order of conviction and sentence. Ram Lal carried an appeal to the Court of sessions, Hardoi. This gave rise to Criminal Appeal No. 20 of 1983. It was heard and dismissed by the learned Sessions Judge himself by means of the Impugned judgment and order. Still dissatisfied, this revision has been preferred by the convict Ram Lal.

3. I have heard learned Counsel for the revisionist as also the learned Government Advocate and perused the lower Court record. It has been urged by the learned Counsel for the revisionist that there has been non-compliance of Section 10(7) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the Act). He further contended that the sample of milk which was collected by the Food Inspector did not constitute "food" and therefore too. the conviction and sentence recorded against the revisionist is not sustainable.

4. On the other hand, the learned Government Advocate submitted that there has been compliance of Section 10(7) of the Act and that the sample which was collected by the Food Inspector constitutes "Food" within the meaning of the word defined in Section 2(v) of the Act,

5. As to the first contention raised by the learned Counsel for the revisionist, it was urged by the learned Counsel that the infraction of Section 10(7) took place in this manner that even though two witnesses were called by the Food Inspector but they refused to put in their signatures/thumb-mark on these memo prepared by the Food Inspector. The argument further proceeded that if they had refused to put in their signature/thumb-mark, they could be examined in Court to affirm the same and their non-examination would go to indicate that in fact the Food Inspector had not called any person as required u/s 10(7). to be present at the time he had taken the sample from the revisionist.

6. So far as the above contention of the learned Counsel goes, it may be pointed out that there is an endorsement by the Food Inspector on the receipt Ext. Ka-1 that the public persons, namely, Jagannath and Chhota Singh refused to put their signatures. Apart from this, para 17 of the oral evidence of Food Inspector, S.D. Gupta P.W. 1. goes to indicate that the said endorsement was made by him. u/s 10(7), the only requirement of law is that the Food Inspector has to call one or more persons to be present at the time when action by the Food Inspector is taken for the collection of sample for the purpose of analysis. It nowhere requires that such persons be also examined in Court as witnesses. Moreover, the Food Inspector may not be said to be an accomplice. His evidence if believed can be relied on for proving that the sample was taken as required by law. (See [Babu Lal Hargovindas Vs. The State of Gujarat](#) . The testimony of Food Inspector S.D. Gupta P.W. 1 has been relied upon by both the lower Courts and I do not also find any compelling reason to take a different view of the appreciation of his evidence made by the lower Courts. Learned Counsel for the revisionist could not also point out any infirmity in the testimony of

Food Inspector. S.D. Gupta so as to persuade this Court to declare that the evidence of Food Inspector, Gupta is not reliable. In this view of the matter, the contention urged by the learned Counsel for the revisionist in relation to the non-compliance of Section 10(7) of the Act carries little substance and has to be rejected.

7. With regard to the second point urged by the learned Counsel, the definition given in Section 2(v) of the Act is to be noticed. According to this definition, "food" means any article used as food or drink for human consumption other than drugs and water and includes It is trite that milk which may be either of cow or she-buffalo or mixed milk of cow and she-buffalo is used as a drink for human consumption. In the premises, the sample of milk which constituted equal parts of the milk of cow and she-buffalo would fall within the definition of "Food" as given in Section 2(v) of the Act. Simply because, it was found adulterated would not take it away from the definition of the word "Food". It is clear from the material on record that revisionist was carrying the mixed milk of cow and she-buffalo for the purpose of sale, obviously it was for sale and for the purposes of consumption by human beings. In the premises, the contention urged on this second point is also not tenable and is hereby rejected.

8. No other point has been urged on behalf of the revisionist so far as conviction of the revisionist u/s 7(i) of the Act is concerned.

9. However, the learned Counsel for the revisionist made an appeal to this Court to reduce the sentence awarded to the revisionist. So far as this contention goes, it may be pointed out that the revisionist has already been awarded the minimum sentence provided under law for the offence u/s 7(i) punishable u/s 16(1)(a)(i) of the Act. No further reduction in sentence is, therefore permissible under law.

10. In the result, this revision being found devoid of merit is hereby dismissed. The revisionist is already on bail granted by this Court. He will surrender forthwith to serve out the sentence awarded to him. The interim stay order for realization of fine is also vacated. The lower Court records be sent back within fifteen days to ensure compliance of the order passed by this Court. The Chief Judicial Magistrate, Hardoi will submit compliance report within three months.