

Rajinder Pershad vs State Of Haryana on 11 July, 1983

Equivalent citations: 1983 AIR 878, 1983 SCR (3) 355, AIR 1983 SUPREME COURT 878, 1983 (3) SCC 452, 1983 CRI APP R (SC) 353, 1983 ALLCRIR 429, 1983 CRILR(SC MAH GUJ) 440, (1983) 2 APLJ 26.2, (1983) LS 39, 1983 2 SCR 276, 1983 SCC(CRI) 655, 1983 BBCJ 109, 1983 ALLCRIC 291, 1983 FAJ 329, (1983) ALL WC 789, (1983) 2 CRIMES 209, (1983) EFR 526

Author: A. Varadarajan

Bench: A. Varadarajan, Syed Murtaza Fazalali, M.P. Thakkar

PETITIONER:

RAJINDER PERSHAD

Vs.

RESPONDENT:

STATE OF HARYANA

DATE OF JUDGMENT 11/07/1983

BENCH:

VARADARAJAN, A. (J)

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VARADARAJAN, A. (J)

FAZALALI, SYED MURTAZA

THAKKAR, M.P. (J)

CITATION:

1983 AIR 878

1983 SCR (3) 355

1983 SCC (3) 452

1983 SCALE (1) 686

ACT:

Prevention of Food Adulteration Act, 1954-Section 16(1)
(c)-Food Inspector sought to take Sample of Foodstuff-
Disappearance of shopkeeper from Shop-Whether amounts to
prevention from taking sample.

HEADNOTE:

A Food Inspector visited the appellant's grocery shop and demanded a sample of dhania for analysis. Leaving the shop on a false pretext, the appellant did not return to the shop for quite a long time. Thereupon after following the requisite procedure the Food Inspector took a sample of dhania in the absence of the appellant.

On a charge under Section 16(1)(c) of the Prevention of Food Adulteration Act, 1954 that the appellant had prevented the Food Inspector from taking a sample of the article of food, the trial court convicted and sentenced him. The conviction and sentence were affirmed on appeal. The High Court dismissed his criminal revision petition.

In appeal to this Court it was contended that mere disappearance from the shop after the sample was demanded by the Food Inspector, without anything more, did not constitute an offence of prevention of the Food Inspector from taking a sample.

Dismissing the appeal.

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HELD: The appellant had been rightly convicted and sentenced under s. 16(1) (c) of the Act. The appellant's disappearance from the shop for a long time, amounted to prevention of the Food Inspector from taking a sample in accordance with the provisions of the Act and the Rules. No other overt act is necessary to constitute the offence. [361 F-H]

Municipal Board. Sambhal v. Jhaman Lal, AIR 1961 All. 103; Mam Chand v. State, 1971 CrL. L. J. 1772; Habib Khan v. State of Madhya Pradesh, 1971 M.P. L. J. 883, approved.

Jagannath v. State of Madhya Pradesh, 1977 CrL. L.J. 974; Narain Prasad v. State of Rajasthan, AIR 1978 Rajasthan 162 overruled.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 615 of 1981.

Appeal by Special leave from the Judgment and Order dated the 6th May, 1981 of the Punjab & Haryana High Court in Criminal Revision No. 562 of 1979.

Uma Datta, T.C. Sharma and A.D. Malhotra for the Appellant. R.N. Poddar for the Respondent.

The Judgment of the Court was delivered by VARADARAJAN. J. This appeal by special leave is directed against the judgment of the Punjab and Haryana High Court, dismissing Criminal Revision Case No. 562 of 1979 which was filed by the appellant against the judgment of the Additional Sessions Judge, Gurgaon who affirmed the judgment of the Chief Judicial Magistrate, Gurgaon sentencing the appellant to rigorous imprisonment for six months and a fine of Rs. 1,000 under s. 16 (1) (c) of the Prevention of Food Adulteration Act, 1954 as amended from time to time.

We dismissed the appeal and confirmed the conviction and sentence on 5.4. 1983 for reasons to be giving later. We hereby give the reasons.

The charge against the appellant was that when the Food Inspector, Gurgaon, Sant Lal Anand (P.W.2) went to the appellant's grocery shop at Farrukh Nagar at about 4 p.m. on 27.8.1976 he prevented P.W.2 from taking a sample of dhania from the stock kept for sale by slipping away from the shop under some pretext. The case of prosecution was that when the Food Inspector (P.W.2) visited the appellant's grocery shop accompanied by Dr. Aggarwal, Medical officer Incharge, Primary Health Centre, Farrukh Nagar (P.W.1) and Dr. Yadav, Chief Medical Officer (Health), Gurgaon (P.W.3). The appellant was found to have stored 6 kgs. of dhania for sale in his shop. P.W. 2 disclosed his identity to the appellant and demanded a sample of the dhania for analysis and sought to serve the notice Ex P/B and tendered Rs. 4.80 as the price of 600 gms. of dhania asked for. The appellant went away from the shop under the pretext of passing urine without accepting the notice Ex. P/B or the sum of Rs. 4.80 tendered by P.W.2 and he did not come back to the shop though P.Ws. 1 to 3 waited there for about 11/2 hours. There after P.W.2 took a sample from the shop in the absence of the appellant and prepared the spot memo Ex. P/A in the presence of P.Ws. 1 and 3 and subsequently filed the complaint Ex. P/C in the Court of the Chief Judicial Magistrate, Gurgaon against the appellant for contravention of s.16 (1) (c) of the Prevention of Food Adulteration Act, 1954 as amended, by preventing him from taking a sample of the article of food.

After the examination of P.Ws. 1 to 3 a charge was framed against the appellant for the offence punishable under s. 16 (1) (c) of the Act and he pleaded not guilty to the charge and claimed to be tried.

The prosecution relied on the evidence of P.Ws. 1 to 3 who deposed to the facts mentioned above. The appellant stated when examined under s. 313 Criminal Procedure Code, that he is running a cloth business at Delhi and had casually visited his father's grocery shop at Farrukh Nagar on 27.8.1976 when P.Ws. 1 to 3 came there and he went to call his father Uggar Sain (D.W. 1) and came back to the shop alongwith D.W. 1 after about 6 or 7 minutes and that P.Ws. 1 to 3 had gone from the shop by that time. The appellant examined his father as D.W. 1 in his defence.

The learned Chief Judicial Magistrate, Gurgaon who tried the case rejected the evidence of D.W. 1 as being interested and unreliable and accepted the evidence of P.Ws. 1 to 3 of whom P.W. 1, however, could not identify the appellant as the person who went away from the shop without accepting the notice and cash tendered by P.W 2 and found following judgment of the Punjab and Haryana High Court in *Krishna Lal & Ors. v. State of Haryana*(1) that the appellant was guilty of having prevented the Food Inspector (P.W. 2) from taking a sample of the article of food by going away from the shop without accepting the notice and cash tendered by P.W. 2. Accordingly, the learned Magistrate convicted the appellant and sentenced him to undergo rigorous imprisonment for six months and to pay a fine of Rs. 1,000 under s. 16 (1) (c) of the Act.

The conviction and sentence were confirmed on appeal by the learned Additional Sessions Judge, Gurgaon who found that the appellant was more than 18 years of age at the time of commission of the offence and was therefore not entitled to the benefit of s. 360 Cr. P.C. in view of s. 20 AA of the Act according to which s. 360 Cr. P.C. is not applicable to the case of the accused who was more than 18 years of age at the time of commission of the offence. The Criminal Revision Case filed by the appellant in the Punjab and Haryana High Court against the judgment of the learned Additional

Sessions Judge, Gurgaon was dismissed by S.S. Dewan, J. who confirmed the conviction and sentence. Hence, this appeal by special leave.

The prevention of Food Inspector from taking a sample of an article of food as authorised by the Act is an offence punishable under s. 16 (1) (c) with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than one thousand rupees. Mr. Uma Datta, appellant's learned counsel invited our attention to paragraph 10 of the judgment of the learned Additional Sessions Judge, Gurgaon where it has been found that the Food Inspector (P.W. 2) had in fact taken a sample in the presence of P.Ws. 1 and 3. But this must be noted that this was done after the appellant went away from the shop under the pretext of passing urine and did not return for about 1 1/2 hours, during which period P.Ws. 1 to 3 waited for him at the shop. The finding of fact that the appellant went away from the shop under the pretext of passing urine when the Food Inspector (P.W. 2) tendered the notice Ex. P/B and the cash of Rs. 4.80 for purchasing a sample of dhania and did not return for about 1 1/2 hours, during which period P.Ws. 1 to 3 waited at the shop for him cannot be canvassed in this appeal. The learned counsel for the appellant invited our attention to two decisions and submitted that the mere disappearance of the appellant from the shop after the sample was asked for by the Food Inspector without anything more did not amount to prevention of the Food Inspector from taking the sample. The first of those decisions is of C.P. Sen, J of the Madhya Pradesh High Court in *Jagannath v. State of Madhya Pradesh*(1) where the facts found were that when the accused was taking 5 litres of milk in his kothi for sale the Food Inspector stopped him as he suspected the milk to be adulterated and asked him to accompany him to the Municipal office for taking a sample and that on reaching the Municipal office the accused bolted away leaving the kothi of milk, and the learned Judge held that the accused did not prevent the Food Inspector from taking a sample simply because he bolted away from the spot and that the Food Inspector was free to take the sample from the kothi of milk left behind by the accused even in the absence of the accused. In holding so the learned Judge differed from the view taken in *Municipal Board, Sambhal v. Jhamman Lal*(2) where it has been held that the disappearance of the seller from the shop amounts to prevention of the Food Inspector from taking the sample and that over act on the part of the seller is not necessary to constitute an offence under s. 16 (1) (b) of the Act as it then stood which corresponds to the present s. 16 (1) (c). The second decision relied upon by the learned counsel of the appellant is of the Full Bench of the Rajasthan High Court in *Narain Prasad v. State of Rajasthan & Anr.*(1) where Shrimal, J., speaking for the bench has observed:

"Thus the consensus of the opinion of almost all the High Court barring a few on the point is that s. 16 (1) (b) of the Act makes a person liable to punishment, who prevents the Food Inspector from taking the sample as authorised by the Act. Section 10 (1) (a) (i) gives the Inspector power to take sample of article of food from any person selling such article. Sub-sec. (2) of Sec. 10 gives the Food Inspector power to enter any place where the article of food is exposed for sale.

Sub-sec. (4) of Sec. 10 provides for seizure of adulterated food. The Inspector has also power to break open the door or any package in which the article of food is kept. For all the purposes the Inspector has power to exercise the power of search and seizure of a police officer under the Crl. P.C.

The Food Inspector is also authorised to exercise powers of a police officer under Section 57 of the Code i.e. to arrest an offender, if he refuses to tell his name and residence. Section 11 prescribes the procedure to be followed by the Food Inspector while taking sample. Therefore, the Food Inspector can follow one of the two modes; one where the vendor co-operates, the other when he refuses to co-operate. To prevent the Food Inspector from taking a sample, the accused must do something which makes it impossible for him to take the sample." The learned Judges of the Full Bench appear to have held that some overt act on the part of the seller apart from mere refusal to sell the article of food to the Food Inspector is necessary to constitute an offence of prevention of the Food Inspector from taking the sample.

On the other hand, Mr. R. N. Poddar, learned counsel appearing for the State of Haryana, invited our attention to two decisions and submitted that the conduct of the appellant in slipping away from the shop when the Food Inspector disclosed his identity and asked for sale of a sample of dhanian from his grocery shop, amounts to prevention of the Food Inspector from taking the sample as per the provisions of the Act. The first of those decisions is to H.C.P. Tripathi, J. in *Mamchand v. State*(1) where the learned Judge has observed:

"The sample had to be taken in accordance with the provisions of the Act and Rules thereunder. As soon as the owner of the milk disappeared from the scene the Food Inspector could not have obtained the sample as required under law. By running away from the place the applicant did prevent the Food Inspector from taking sample as required under the Act though not from taking away the entire quantity of the milk which the Food Inspector could do in exercise of his powers under Section 10 (iv) of the Act. In the case of *Municipal Board, Sambhal v. Jhamman Lal* (AIR 1961 AII. 103), it was held by a Division Bench of this Court that if a person selling article leaves the shop he prevents Food Inspector from taking sample as authorised by the Act. In the instant case, the applicant left the milk, which he was exposing for sale, and thereby prevented the Food Inspector from taking its sample."

A learned single Judge of the Madhya Pradesh High Court has taken a similar view in *Habib Khan v. State of Madhya Pradesh*.(2) In that case a milk vendor on being accosted by the Food Inspector kept his milk can in the canteen and bolted away, and it has been held that the milk vendor prevented the Food Inspector from taking the sample and thus committed an offence under s. 16 (1) (b) of the Act as it stood then. The learned Judge has observed in his judgment thus:

"The power of taking the sample has been conferred on the Food Inspector so that he may prosecute the person found selling adulterated food stuff or found in possession thereof for the purposes of sale. Now, if a person bolts away and thus his identity remains undis-

closed, the whole purpose of the exercise of the power conferred under section 10 on the Food Inspector is defeated. In such a case, it will have to be held that in bolting away the person prevented the effective exercise of the power by the Food Inspector. If this is so, it is difficult to see how the same action on the part of a known person

would make any difference. If he bolts away, an additional burden will be cast on the Inspector if he decides to prosecute him for selling or keeping for sale adulterated food articles, to prove that the person who bolted away was the accused and that the article left by him was in his possession. Witnesses may not be available at the nick of the time and here, again, the result would be the same. This is why it is necessary to interpret the two expressions "prevents" and "in exercise of the powers under the Act" in the manner interpreted by the Allahabad High Court in *Municipal Board, Sambhal v. Jhamman Lal (supra)*", We are of the opinion that the view of the Allahabad High Court expressed in *Municipal Board, Sambhal v. Jhaman Lal (supra)* reiterated in *Mamchand v. State* referred to above and taken by the learned single Judge of Madhya Pradesh High Court in *Habib Khan v. State of Madhya Pradesh (supra)* and the Punjab and Haryana High Court in the judgment under appeal in this case is the correct view and that appellant in this case who bolted away from the shop under the pretext of passing urine when the Food Inspector (P.W. 2) went to his shop alongwith P.Ws. 1 and 3 and disclosed his identity and tendered the notice Ex. P/B and cash of Rs. 4.80 and asked for a sample of the dhania kept for sale in his grocery shop without accepting the notice and the cash prevented the Food Inspector (P.W. 2) from taking a sample in accordance with the provisions of the Act and the Rules made thereunder and that no other overt act is necessary on the facts of this case to constitute the offence for which the appellant has been convicted and sentenced and that he has been rightly convicted and sentenced by the Court below under s. 16 (1) (c) of the Act.

We accordingly, dismiss the appeal and confirm the conviction of the appellant and the sentence awarded to him.

P.B.R.

Appeal dismissed.