

Debi Dayal vs S.C. Roy on 16 August, 1955

Equivalent citations: AIR1955ALL670, AIR 1955 ALLAHABAD 670

JUDGMENT

V.D. Bhargava, J.

1. This is an application by one Debi Dayal who was being prosecuted under Section 4(1) read with Section 42, U. P. Pure Food Act for selling adulterated ghee in mohalla Katra Abdul Ghani in the city of Fatehpur on 2-8-1954, for taking proceedings under Contempt of Courts Act.

2. The application has been filed against Sri S.C. Roy, Public Analyst to the Government of the Uttar Pradesh, Lucknow.

3. The facts of the case are that the Food Inspector took samples of ghee and kept them in three phials one of which was given to the petitioner and the other two were taken by him. One of these two phials was sent to opposite party Sri S, C. Roy for analysis. A report was submitted by the opposite party that the sample of ghee sent to him was adulterated. Thereafter the petitioner applied for the analysis of the sample that had been left with him.

The remaining two bottles, i.e., one which was with the petitioner and the other which was with the Food Inspector, were sent to the opposite party with a forwarding letter from the District Magistrate in which he had mentioned that the prosecution suspected the genuineness of the seal on the phial of the accused and, therefore, the third phial retained by the Food Inspector was also sent for comparison.

A request was made to the opposite party to see the seals on both the phials and compare them with the specimen sent along with them.

4. The opposite party found that the seals on both the phials sent to him were intact but on analysis he found that the phial which has been with the petitioner contained pure ghee while the third which had been retained by the Food Inspector contained adulterated ghee. While submitting his report to the District Magistrate he mentioned:

"It is also very interesting to note that the analytical characteristics of the triplicate portion of the sample have been found to be exactly the same as that of the original portion of the sample, indicating that the original and triplicate are of the same specimen of Ghee."

Further he said:

"These relevant facts of this case are, therefore, brought to your notice for further necessary action as you may deem proper, because I strongly suspect that there has been a fraudulent substitution of the contents of the duplicate phial submitted by the accused' at some stage or the other."

5. Objection has been taken to the use of the expression "fraudulent substitution by the accused at some stage or the other", and it was argued that this was used in order to influence the Court and, therefore, a contempt has been committed.

6. This letter was addressed to the District Magistrate and was meant for his action that he might like to take in this matter. This letter should have been kept by the District Magistrate in his office and only the report should have been sent on to the trying Magistrate. But instead of that, this letter was also sent.

So far as the intention of the accused is concerned it appears that it was never to influence the trying Magistrate. No doubt, he had no business to suggest that the substitution had been made by the accused. For it was equally possible that the third phial may have been substituted with adulterated ghee.

However, as it was not his intention to influence the Court trying the case and the letter was written to the District Magistrate to take such action as he deemed proper it cannot be said that it would amount to contempt.

7. Apart from the fact that this does not amount to contempt, the opposite party has tendered an unqualified apology for the unhappy use of the words "fraudulent substitution" and we accept that apology.

8. The application is accordingly dismissed. We make no order as to costs.