

Himachal Pradesh High Court

State Of Himachal Pradesh vs Madan Lal on 25 June, 1999

Equivalent citations: 1999 CriLJ 4028

Author: M Verma

Bench: M Verma

JUDGMENT M.R. Verma, J.

1. This is an appeal against the judgment dated 13-12-1993 passed by the learned Additional Sessions Judge, Solan, whereby while setting aside the conviction of and sentence awarded to the accused-respondent (hereinafter referred to as 'the accused') under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'the Act') by the learned Sub-Divisional Judicial Magistrate, Arki, the accused has been acquitted of the accusations.

2. Case of the prosecution, in brief, is that PW 3 I. D. Verma, Food Inspector on 29-4-1988 inspected the shop of the accused at Jhar Majari when the accused was allegedly found in possession of 11 kgs. of milk meant for sale and after serving with him notice he purchased the milk from the accused for the purpose of analysis. So purchased sample milk was dealt with in accordance with the Rules and on analysis the sample was found deficient in milk solid not fat by 47% of the minimum prescribed standard. Hence, after obtaining the consent of the competent authority the prosecution was launched against the accused under Section 7 read with Section 16(1)(a)(i) of the Act. The learned trial Magistrate vide his judgment dated 24-3-1992 convicted the accused under Section 7 read with Section 16(1)(a)(i) of the Act and sentenced him to simple imprisonment for a period of six months and to pay fine in the sum of Rs. 1000/- and in case of default of payment of fine for further simple imprisonment of two months.

3. Feeling aggrieved the accused-appellant preferred an appeal which came to be heard and decided by the learned Addl. Sessions Judge, Solan and vide the impugned judgment the appeal was accepted and the conviction and sentence as awarded by the learned trial Magistrate were set-aside and the accused was acquitted of the accusations.

4. I have heard learned Assistant Advocate General and the learned counsel for the accused.

5. The learned Addl. Sessions Judge has acquitted the accused on the grounds :

(i) that it was not established that the milk sample whereof was taken was meant for sale; and

(ii) that there was no compliance of the provisions of Section 13(2) of the Act.

These conclusions arrived at by the learned first appellate Court are supportable on the basis of the material on record.

6. It has been the constant stand of the accused that he is running a tea stall and also deals in 'bidi', 'pan' and samosa and that the sample was taken by the Food Inspector forcibly by giving the threat whereas the milk was kept for preparing tea and not for sale. This defence has been put to the

material witnesses, namely, PW 3 I. D. Verma and PW 4 Sant Ram. Though they have denied the suggestion but it has to be borne in mind that PW 3 I. D. Verma is the complainant and PW 4 Sant Ram at the relevant time was admittedly a class IV employee attached with the said Inspector. Therefore, they cannot be said to be independent witnesses. The alleged sample was taken admittedly in the presence of an independent witness, namely, PW 2 Shiva Nand who has stated in the opening lines of his statement that the accused is running a tea stall at Jhar Majari and has not supported the case of the complainant on material particulars. He has unambiguously admitted in his cross-examination that accused does not sell the milk but he sells tea and some salty eatables. Thus, the independent witness has not supported the version regarding seizing of the sample by the Food Inspector. On the contrary he has fully supported the version of the accused regarding his not being a milk vendor but only a tea stall holder and other eatables in his shop. In view of this material on record the learned Addl. Sessions Judge has rightly concluded that the milk with the accused was not meant for sale but was meant for preparation of tea.

7. To come to the conclusion that where an article of food which may be found adulterated is stored for a purpose other than sale would not constitute an offence under the Act the learned Addl. Sessions Judge has relied on a ratio of three cases, namely, *Municipal Corporation of Delhi v. Laxmi Narain Tandon* AIR 1976 SC 621: (1976 Cri LJ 547); *State of Maharashtra v. Udayram Rupram Oza* 1977 Cri LJ 1807 and *State of Haryana v. Inder Singh* 1992 (1) FAC 55.

8. In case *Municipal Corporation of Delhi v. Laxmi Narain Tandon* it has been held in paragraph 14, as follows at page 549; of Cri LJ :

14...

That the broad scheme of the Act is to prohibit and penalise the sale or import, manufacture, storage or distribution for sale of any adulterated article of food. The terms "store" and "distribute" take their colour from the context and the collocation of words in which they occur in Sections 7 and 16. "Storage" or "distribution" of an adulterated article of food for a purpose other than for sale does not fall within the mischief of this Section That this is the right construction of the terms "store" and "distribute" in Section 16(1) will be further clear from a reference to Section 10. Under that section, the Food Inspector, whom the Act assigns a pivotal position for the enforcement of its provisions, is authorised to take samples of an article of food only from particular persons indulging in a specified course of business activity. The immediate or ultimate end of such activity is the sale of an article of food. The section does not give a blanket power to the Food Inspector to take samples of an article of food from a person who is not covered by any of the sub-clauses of Sub-section (1)(a) or Sub-section (2). The three sub-clauses of Sub-section (1)(a) apply only to a person who answers the description of a seller or conveyer, deliverer, actual or potential, of an article of food to a purchaser or consignee or his consignee after delivery of such an article to him. Sub-section (2) further makes it clear that sample can be taken only of that article of food which is "manufactured" "stored" or exposed for sale. It follows that if an article of food is not intended for sale and is in the possession of a person who does not fulfil the character of a seller, conveyer, deliverer, consignee, manufacturer or storer for sale such as is referred in Sub-sections (1)(a) and (2) of the section, the Food Inspector will not be competent under the law to take a sample and on such sample being found adulterated, to validly

launch prosecution thereon. In short, the expression "store" in Section 7 means "storing for sale" and consequently storing of an adulterated article of food for purposes other than for sale would not constitute an offence under Section 16(1)(a).

9. In case State of Maharashtra v. Udayaram Rupram Oza, relying on the aforesaid decision of the Hon'ble Supreme Court, it was held that at page 1809 :

It is clear that the sample which was taken by the Food Inspector from the shop of the accused wherein milk was not kept for sale but for being used as an ingredient in the preparation of tea, was not a sale within the meaning of Section 2(xiii) of the Act and, therefore, it does not amount to an offence under Section 16(1)(a) of the Act.

10. Similarly in case State of Haryana v. Inder Singh supra, reliance was laid on the above decision of the Hon'ble Supreme Court and it was held that:

4. The only contention considered by the learned Additional Sessions Judge was that the milk kept by the respondent in his premises was not meant for sale to the public and it was for preparation of tea. In support of these observations the learned lower Appellate Court placed reliance on the State of Maharashtra v. Udayaram Rupram Oza 1977 (2) FAC 213: 1977 Criminal Law Journal 1807, according to which milk kept in a tea shop which was not for sale but for being used as an ingredient in the preparation of tea was not a sale within the meaning of Section 2(xiii) of the Act and as such it did not amount to an offence. The observations made by the Hon'ble Supreme Court in Municipal Corporation of Delhi v. Laxmi Narain Tandon 1977 (1) FAC 73 : AIR 1976 SC 621, make it clear that the food stored for a purpose other than for sale does not fall within the mischief of this Section If an article of food is not intended for sale and is in possession of a person who does not fulfil the character of a seller or storer for sale, the Food Inspector will not be competent under the law to take a sample and on such sample being found adulterated, to validly launch prosecution thereon. In view of these authorities the contention of the learned counsel for the appellant that the respondent was liable for having been found in possession of adulterated milk does not hold good.

11. The law as laid down in the aforesaid decisions was, thus, correctly applied by the learned Addl. Sessions Judge to the facts of the present case.

12. Regarding non-compliance of the provisions of Section 13(2) of the Act, conclusion of the learned Addl. Sessions Judge that there had been no compliance of the provisions to Section 13(2) of the Act, no fault could be found. Admittedly there is presumption in law that a communication sent by post on the correct address of the addressee is presumed to have been received by him if it is not received back by the sender. However, such a presumption will not arise in case the address of the addressee in the envelope is not correctly given. The postal receipt about the posting of the information under Section 13(2) of the Act in this case is Ex. PW-1/C on the record. Entry against the column, 'addressed to', in this postal receipt is 'Barotiwalla'. Evidently, the accused was at the relevant time not residing in Barotiwalla but at Jhar Majari. The learned Addl. Sessions Judge, therefore, was right in concluding that the legitimate conclusion in such a situation will be that the communication was not correctly addressed and, therefore, there was no compliance of the provisions of Section 13(2) of

the Act.

13. In view of the above, the impugned judgment does not call for any interference by this Court. Resultantly, appeal fails and is accordingly dismissed.