IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 34 of 1995

Calcutta Municipal Corporation
-Vs-
Ram Krishna Mistanna Bhander & Ors.

For the Appellant	: Ms. Sreyashee Biswas Ms. Puja Goswami
For the Respondents (Amicus Curiae)	: Mr. Soham Banerjee
Heard on	: 02.02.2024, 28.03.2024, 27.08.2024
Judgment on	: 13.11.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated March 28, 1994 passed by the Learned Metropolitan and Municipal Magistrate, 2nd Metropolitan and Municipal Magistrate's Court, Calcutta in Case No.39D of 1988, acquitting the accused/opposite parties of a charge under Section 16(1)(a)(i) read with Section 7 of the Prevention of Food Adulteration Act, 1954.

2. The prosecution case precisely stated on 12.08.1988 at about 12:30 P.M., complainant/appellant Sri B. N. Paul, Food Inspector inspected the sweet meat shop under the name and style of Ram Krishna Mistanna Bhander

situated at 152, K.P. Roy Lane, Calcutta-31 and detected one Chitta Ranjan Maity was running the said business as a seller. The Food Inspector disclosed his identity and purpose of visit of the said shop. The Food Inspector then inspected the articles stored and exposed for sale for human consumption and suspected Dahi to be of sub-standard quality. He called a local witness and issued notice under the prescribed form. The Food Inspector purchased 600 grams of Dahi in earthen pot which was cut top to bottom vertically under his instruction. He divided the said sample in three equal parts and poured it into three empty clean glass bottles and corked them tightly. Thereafter the said sample was sent to the public analyst for his report. Upon receipt of the public analyst report the said sample of Dahi was found to be adulterated. Necessary sanction was obtained from the appropriate authority and a complaint was filed before the Learned Metropolitan Municipal Magistrate, Calcutta under Section 16(1)(a)(i) read with Section 7 of the Prevention of Food Adulteration Act and Case No.39D of 1988 was registered.

3. In course of trial, the complainant examined himself. Defence examined one witness.

4. The aforesaid complaint was filed by the complainant/appellant Sri B.N. Paul, a Food Inspector appointed by the State of West Bengal under Section 9 of the Prevention of Food Adulteration Act for the whole area of Calcutta. He was a public servant within the meaning of Section 21 of the Indian Penal Code and the said complaint was filed by him in his official capacity as a public servant in discharge of his official duties.

5. The complainant while deposing in the Court, inter alia, stated –

> "*On 12.08.1988 at about 12:30 P.M., he inspected the sweet met shop at 152, K.P. Roy Lane, Calcutta-31 and found accused Chiattaranjan Maity was acting as a seller. He disclosed his identity as also his purpose of visit. Then he inspected all the articles stored and exposed for sale in the said shop and found all suspected the Dahi which was stored there and exposed for sale to be sub-standard in quality. He called a local person as witness. He served notice upon the said accused person in the prescribed form where the said accused put his L.T.I. then he purchased 600 grams of Dahi in earthen pot. Dahi was cut vertically from top to bottom on his instruction. He took the Dahi in earthen pot and added prescribed quantity of formalin and stirred it to make the same homogenous and then divided the same in three equal parts and poured into three empty, clean, dry, glass bottled and corked tightly and pasted label. He then asked the accused Chitta Ranjan Maity the source of milk from which the said Dahi was prepared. He paid 9.60 paise towards the price of the said sample of Dahi. The sample coupon was filled up by him and signed by the local witness Exhibit-II. The said accused also took his L.T.I. marked Exhibit 2/1. Then he covered the bottle from top to bottom and took the signature on the covering slip. He also complied with all the procedure prescribed for taking something one part of the sample was sent to the public analyst. In due course he received the report of the public analyst according to which the said sample of Dahi was adulterated. Thereafter, he obtained sanction from the appropriate authority and filed complaint in the Court.*

When he poured the Dahi after stirring into the bottle there was no lump. There was no board in the shop nor there was any indication about the kind of milk from which Dahi was prepared. He did not found Narayan Chandra Mete in the shop but ascertained from the trade licence that he is the proprietor."

6. The accused Chitta Ranjan Maity was examined as a defence witness who inter alia stated-

"He was present in the shop at the time when the Food Inspector inspected the shop. The Food Inspector inspected all the foods. He took sample of Dahi. He did not churn Dahi before taking sample. Before pouring into bottle he churned the Dahi. Dahi was prepared from cow-milk and on being asked by Food Inspector he also told him that. He put his signature on different papers. The sample were corked, sealed and wrapped in his presence inside the shop. The price of Dahi was received by him. Accused Narayan Chandra Mete pays his salary and looks after the business."

7. Learned Advocate for the appellant submitted as follows:-

    i. The provisions of Sections 10(7) of the Prevention of Food Adulteration was sufficiently complied with when a Food Inspector, called a public witness to witness the taking of sample and the witness put his signature on the punchnama. It was not the rule of law that the evidence of Food Inspector could not be accepted particularly when the presence of public witness was admitted by the defence nor that the evidence of Food Inspector could not be accepted without corroboration. The evidence of Food Inspector, if believed, was sufficient for proving that the sample was taken in terms of the requirements of law.

ii. In any event the Rule 9(f) of the Prevention of Food Adulteration Rules nowhere laid down that while purchasing Dahi it was necessary for the Food Inspector to enquire about the variety of milk from which the article of food/Dahi was prepared.

iii. The appendix B-A 11.01.11 of the Prevention of Food Adulteration Rules 1955 the prescribed standard of milk fat and milk solid of buff milk being 6.0 and 9.0 respectively and in view of the fact as per the report of the C.F.L. the same being 4.7 and 19.08 respectively, the accuseds were guilty for an offence punishable under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act.

iv. In view of the fact the sample of food being analysed by C.F.L. the same found to be adulterated within the meaning of Section 2(ia)(m) of the Act, the same would be punishable under Section 16(1)(a)(i) of the Act.

v. While challenging the report of public analyst, the accused never challenged the same on the ground the Dahi in question was prepared from cow-milk as such result of analysis declaring the article of food/Dahi to be adulterated against the prescribed standard of buff milk was wrong.

vi. In view of the clear admission by DW-1 that Narayan Chandra Mete paid his salary and looked after the running of the said sweet meat shop and the trade licence was standing in his name it established that he was the owner of the said shop.

8. Considered the submissions of the Learned Amicus Curiae representing the respondents.

9. A circumspection of evidence of the prosecution witnesses revealed as follows:-

    i. PW-1 stated in his evidence that he was a Food Inspector appointed by the Government of West Bengal for the whole area of Calcutta Municipal Corporation. On 12.08.1988 at about 12:30 P.M. PW-1 inspected the sweet meat shop under the name and style Ram Krishna Mistanna Bhander at 150 K.P. Roy Lane, Calcutta-31 and found Shri Chitta Ranjan Maity who was acting as a seller and then PW-1 disclosed his identity and told the purpose of his visit. Then he inspected all the articles stored and exposed for sale for human consumption and suspected Dahi (sweet meat) to be substandard in quality. Intending to take sample of said 'Dahi'. He called Sisir Ghosal Chowdhury of 100/11. K.P. Roy Lane and in presence of him PW-1 served a notice in Form No.VI upon Chittaranjan Maity, Seller. The notice was duly filled in and signed by him and Chittaranjan Maity the seller put his L.T.I. on it and the notice in Form VI was marked Exbt.-1. Then he purchased 600 grams of said Dahi in earthen pot from another earthen pot containing one kg. of Dahi. Dahi was cut vertically from top to bottom under his instruction. He took Dahi in one earthen pot and added due quantity of formalin and stirred it to make it homogeneous and then he divided the said 'Dahi' into three equal parts and poured it into three empty, clean, dried glass bottles and corked them tightly. Then he wrote the sample coupon form in four parts and signed it and also signed by the local witness Sisir Ghoshal Chowdhury. PW-1 asked the accused Chitta Ranjan Maity as to the some of milk from which the Dahi was prepared but he could not enlist on this point. Then he labeled three sample coupon form with three sample bottles contained specimen impression of his seal. Fourth part of the sample coupon form was kept for further reference. He paid price of the said sample of Dahi. He identified the fourth part of the sample coupon form filled in and signed by him and also signed by the local witness Sisir Ghoshal Chowdhury which was marked as Exbt.-2. The local witness Sisir Ghoshal Chowdhury wrote the endorsement on reverse of Exbt.-2 and accused Chittaranjan Maity put his L.T.I. on that endorsement which was marked Exbt.-2/1. He wrapped up three sample bottles with thick strong brown paper and then he labeled the sample slips issued by L.H(A) bearing code and serial no. of L.H.A. with his signature with each of the sample both covering top to bottom. Then he obtained the L.T.I. of Chittaranjan Maity the seller and each of the sample bottle covering slip and the brown paper. Then he tied all the sample bottles separately with strong red tape cross wise and then he put specimen impression of the seal used on each of the sample bottle one at the top, one at the bottom and two on the body of the bottles covering the knots. Then he wrote six memorandum forms in Form No. VII, the form was duly filled in and signed by him and on each form he obtained the L.T.I. of the seller Chittaranjan Maity. One part on the sample along with one memorandum form were put in an envelope and sealed it. One copy of the another memorandum form bearing specimen impression of the seal was put in another envelop and sealed it. Two sealed envelopes were sent to the public analyst under entry into the laboratory peon book and it was received by Swadesh De. Assistant Analyst whose signature was known to PW-1. PW-1 identified the entry into the laboratory peon book which was marked as Exhibit-3. Other two parts of the sample along with two memorandum forms were put in another envelop and sealed it and another two copies of memorandum forms bearing the specimen impression of the seal were put in another envelope and sealed. Those two sealed envelopes were sent to L.H.(A) and was received by Harisankar Chatterjee whose signature was known to PW-1. PW-1 identified the entry into the L.H.(A) peon book which was marked Exbt.-4. In due course he got the report of the Public Analyst on the said sample through L.H.(A) and C.M.O.H. along with a forwarding note. PW-1 identified the public analyst’s report which was marked Exbt.-6. After obtaining the public analyst’s report, PW-1 placed all the relevant papers to L.H.(A) and C.M.O.H.

with a forwarding note for obtaining a written consent to prosecute the accuseds. The forwarding notes written and signed by PW-1 were identified and marked Exbt.-7. PW-1 identified the endorsement regarding consent of the L.H.(A) & C.M.H.O. which was marked Ext.7/1. After obtaining the written consent he placed the petition of complainant before the C.M.H.O. & L.H.(A) and after obtaining his signature he filed the instant case. The petition of complaint was marked Exbt.-3.

ii. PW-1 during cross-examination stated that when he poured the dahi after stirring into the bottles, there were no lump (chakka) in it. The vendor/accused did not know how to write. He could not remember whether there was any prices bound at the shop or not. There was no indication in the shop as to the nature of milk from which the said 'dahi' was prepared. Accused person could not state anything on this point. He did not mention this fact in Ext.-7 or in Ext.-8.

iii. PW-1 in his further cross-examination stated he did not find Narayan Chandra Meta in the shop but from the trade licence he ascertained that he was the owner of the shop. He had no paper to show at the relevant time Narayan Chandra Meta was the owner of the business. He had no discussion with the consenting authority about the case. He had submitted relevant documents before him.

iv. PW-2 in his evidence stated he was a Sarkar of Licence Department of C.M.C. He had brought the T.P. Demand Register for the year 1988-89. There was an entry to the effect that Ramkrishna Misthanna Bhandar was carrying a business of sweet meat at 150. K.P. Roy Lane, Cal. which was marked Ext.10.

v. During cross-examination PW-2 stated he had no personal knowledge regarding the said business. He could not state who wrote it in ink in Ext.-10.

vi. DW-1 in his evidence stated that he was one of the accused of the case. He was present at the shop when Food Inspector inspected the shop. Other accused was not present at the shop. The shop was a sweet meat shop. Food Inspector took sample of Dahi (sweetened). As per direction of Food Inspector his orderly took the Dahi by the help of spoon. He took the Dahi in a pot and weighed the same and poured the same into three bottles. He did not churn the Dahi before taking the sample, before pouring into the bottle it after weighment he churned the Dahi. The Dahi was prepared from cow milk. As per question of Food Inspector DW-1 told him that the Dahi was prepared from cow milk. DW-1 was an illiterate, he could not read and write. As per direction of Food Inspector babu, DW-1 put his L.T.I. on different papers. DW-1 could not say who wrote the documents.

vii. During cross-examination, DW-1 stated that he had no explanation about the report of the Central Food Laboratory (Exbt.-9). DW-1 knew Sisir Ghoshal Chowdhury. The samples were corked, sealed and wrapped in his presence inside the shop. No outsider entered inside the shop where the samples were wrapped. Food Inspector and his orderly did not go outside the shop for completion of their work. He did not enquire before the Food Inspector about the contents of the documents. The price of Dahi was received by him. He did not put by L.T.I. on received of the price of Dahi. Several persons were in front of his shop. He also looked after the business. He did not know who was the actual owner of the business.

10. The complainant failed to examine the sample witness. Although the complainant alleged that he asked the accused about the quality of milk from which Dahi was prepared but he did not give any answer to that but no such averments was made in the complaint. It was the duty of the Food Inspector to ascertain the nature of milk used in preparation of Dahi. The complainant did not take the sample of Dahi following all the procedure prescribed under the law. The accused challenged the report of public analyst before the C.F.L. But the C.F.L. report which superseded the report of public analyst had shown that the sample of Dahi contained 4.7 against 3.41 as milk fat and milk solid was 19.08 against 12.3 in P.S. Report. Therefore report of the public analyst was incorrect but in spite of that the complaint was filed relying on such incorrect report. The Exhibit-10 did not show that the accused Narayan Mete was the proprietor of the shop.

11. In view of the above discussions, the Learned Trial Court has rightly passed the impugned order and this Court is not inclined to interfere with the same.

12. In view of the above discussions, the instant criminal appeal being CRA 34 of 1995 is dismissed.
13. There is no order as to costs.
14. I record my appreciation for the able assistance rendered by Mr. Soham Banerjee, Learned Advocate as Amicus Curiae in disposing of the instant appeal.
15. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
16. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)