

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No. 1979/2000  
(From the judgement and order dated 29/02/2000 in CRLR 4/98  
of The HIGH COURT OF H.P AT SHIMLA)

RAJINDER KUMAR

Petitioner (s)

VERSUS

STATE OF HIMACHAL PRADESH & ANR. Respondent (s)  
( With Appln(s). for urging addl. grounds and exemption from filing  
O.T. and bail )

Date : 08/11/2000 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.T. THOMAS  
HON'BLE MR. JUSTICE R.P. SETHI

Mr. Rakesh Dwivedi, Sr.Adv. (A.C.)

For Petitioner (s) Mr. Pradeep Gupta,Adv.  
Mr. Dharam Bir Raj Vohra,Adv.

For Respondent (s) Mr. K.K. Tyagi,Adv.  
for Mr. Anil Nag,Adv.

UPON hearing counsel the Court made the following  
O R D E R

.....L.....I.....T.....T.....T.....T.....T.....T.....T.....J.

.SP2  
Leave granted.  
Appeal is dismissed in terms of the signed order.  
.SP1

(N.K. GOEL) (H.K. BHATIA) @@  
BB  
COURT MASTER COURT MASTER@@

(Signed order is placed on the file)

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.PL58  
L.....T.....T.....T.....T.....T.....T.....T.....T.....T.....R  
IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 958 of 2000@@  
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(Arising out of S.L.P. (Crl.) 1979 of 2000)

Rajinder Kumar

..Appellant

Vs.

State of Himchal Pradesh & Anr.

..Respondents

O R D E R@@  
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.SP2

Leave granted.

Appellant stands convicted under Section 16(1) of the Prevention of Food Adulteration Act, 1954 (for short 'the Act'). He is sentenced to undergo simple imprisonment for a period of six months and a fine of Rs. 1,000/-. He filed an appeal before the Sessions Court. The conviction and sentence were confirmed by the Sessions Judge against which he preferred a Revision before the High Court of Himachal Pradesh but he did not succeed in that endeavour also.

When the appellant approached this Court by special leave, learned counsel highlighted a point that as the food article alleged to have been sold to the Food Inspector was boiled milk the standard fixed for cow's milk or buffalo's milk or goat's milk could not have been adopted. We also felt a doubt initially whether boiled milk was included in the class of milks specified in the Rules under the Act? Hence,  
...2/-

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we appointed Mr. Rakesh Dwivedi, learned senior counsel as amicus curiae. We are much benefitted by the service rendered by the senior counsel and we express our gratitude to him.

The substance of the case against the appellant is that on 12.12.1991 PW-1 - Food Inspector visited the Canteen-cum-Tea Canteen run by the appellant and took sample from the mixed 'boiled milk' kept in one aluminium Can. One part of the sample was sent to the public analyst who after analysis sent his report dated 15.1.1992 opining that the sample was adulterated inasmuch as the 'milk fat' was only 2% and 'milk solids-not-fat' was 6.7%. A complaint was filed before the trial court and notice was sent to the appellant by registered post as required under Section 13(2) of the Act.

Regarding the first contention that boiled milk is not envisaged in the scheme of Prevention of Food Adulteration Law Mr. Rakesh Dwivedi, learned senior counsel invited our attention to Article A.11.01.11 under Appendix B of the Prevention of Food Adulteration Rules, 1955. Relevant part of this article is as under:

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Class of	Designations	Locality	Minimum per cent@@
Milk			EEEEEEEEEEEEEEEEEE
			Milk Milk
			fat solids-
			not-fat

XXXXXXXXXXXXX

MIXED MILK Raw,Pasteurised, All 4.5 8.5  
Boiled, Flavoured India  
and Sterilised

XXXXXXXXXXXXX

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.SP2

Mixed milk is defined in Article A.11.01.05.A. as follows:

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.SP1

"Mixed Milk means a combination of milk of cow, buffalo, sheep, goat or any other milch animal and may be a combination of any of these milk which has been made and conforms to the standards given in the table No. A.11.01.11"

.....L.....I.....T.....T.....T.....T.....T.....T.....T....J  
.SP2

Class of milk is distinguished from designation and the particular article in the Appendix shown as 'mixed milk' is described only as a class of milk. In this context, it is pertinent to point out that the sample itself was taken as though it was "mixed milk boiled".

In the light of the above legal position, it is idle to contend that no standard had been specified for mixed milk when it is boiled. It is also idle to contend that in view of the report of the public analyst there is no deficiency in the components of the food article.

Mr. Pradeep Gupta, learned counsel for the appellant adopted an alternative contention that there was non-compliance with Section 10(7) of the Act inasmuch as the Food Inspector failed to procure the signatures of independent persons when he took the sample. The said contention is not available to the defence as the Food Inspector has given evidence that he really called the persons who were present in the canteen to affix their signatures after witnessing the sample but none of them obliged. A three Judge Bench of this Court has laid down the legal position concerning Section

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10(7) of the Act in the case of Shri Ram Labhaya vs.@@  
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Municipal Corporation of Delhi and Another [ (1974) 4 Supreme@@  
EEEEEEEEEEEEEEEEEEEEEE  
Court Cases 491 ]. We may profitably extract the observations made by Hon'ble Y.V. Chandrachud, J. (as His Lordship then was) :

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.SP1

"The obligation which Section 10(7) casts on the Food Inspector is to 'call' one or more persons to be present when he takes action. The facts in the instant case show that the Food Inspector did call the neighbouring shopkeepers to witness the taking of the sample but none was willing to co-operate. He could not certainly compel their presence. In such circumstances, the prosecution was relieved of its obligation to cite independent witnesses."

.....L.....I.....T.....T.....T.....T.....T.....T.....T....J  
.SP2



.....J.@@  
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(R.P. SETHI)@@  
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NEW DELHI@@  
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NOVEMBER 8, 2000 @@  
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