

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

RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO.1009 OF 2000.

STATE OF U.P. AND ORS.

Appellant (s)

VERSUS

SHIVRAJ SINGH AND ORS.

Respondent(s)

[Office Report for direction];

WITH

Cr1.Appeal No.1010 of 2000

[Office Report for direction];

Cr1.Appeal No.1011 of 2000;

Cr1.Appeal No.1012 of 2000

[Office Report for direction];

Cr1.Appeal No.1013 of 2000

[Office Report for direction].

Date: 22/11/2006 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.G. BALAKRISHNAN

HON'BLE MR. JUSTICE LOKESHWAR SINGH PANTA

HON'BLE MR. JUSTICE D.K. JAIN

For Appellant(s)

Mr. Anis Ahmad Khan, Adv.

Mr. V.P. Singh, Adv.

Mr. Javed Mahmud Rao, Adv.

Mr. Shahid Ali Rao, Adv.

Ms. Musharraf Chaudhry, Adv.

Mr. Praveen Swarup, Adv.

For Respondent(s) Mr. Siddhartha Dave, Adv.

in Crl.A. 1009/2000 Mr. Vishwajit Singh, Adv.

in Crl.A. 1011/2000 Mr. Kamal S. Pundir, Adv.

Mr. Pramod Dayal, Adv.

Mr. Lakshmi Raman Singh, Adv. (N.P.)

Mr. Randhir Singh Jain, Adv. (N.P.)

Mr. V.K. Monga, Adv. (N.P.)

Crl.Appeal No.1009/2000 etc. .... (Contd.)

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UPON hearing counsel the Court made the following

O R D E R

Crl.Appeal No.1011/2000

The appeal is disposed of in terms of the signed order.

Crl. Appeal Nos.1009/2000; 1010/2000; 1012/2000 and 1013/2000

The appeals are dismissed in terms of the signed order.

(Subhash Chander)

Court Master

(Vijay Aggarwal)

Court Master

[Signed Order is placed on the file]

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1009 OF 2000

State of U.P. & Ors.

.....Appellants

Versus

Shivraj Singh & Ors.

.....Respondents

W I T H

Criminal Appeal Nos.1010/2000; 1011/2000;  
1012/2000 and 1013/2000.

O R D E R

Criminal Appeal No.1011/2000

The respondent herein was an accused in a complaint  
filed by a Milk Inspector. The allegation against the  
respondent was that he had committed offence punishable under

Sections 272/273 of Indian Penal Code (IPC). Based on the

complaint, a case was registered against the respondent. He

filed writ petition before the High Court wherein he contended

that even if there was extraneous substance in the milk, it

did not become noxious and, therefore, no offence was made out

under Sections 272/273, IPC. The High Court did not quash the

complaint. However, the respondent herein was granted bail

pending further investigation and trial. This part of the

order is challenged by the State in this appeal.

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We heard the counsel for the State and the respondent.

Counsel for the respondent submitted that after the passing of

the impugned order, the respondent herein has undergone the

trial in the case and he has been finally acquitted on 13th

October 2003 by A.C.J.M., Deoband, U.P. and to the knowledge

of the respondent, no appeal is pending against his acquittal

in the said case.

As no further proceedings are pending, no orders are required in this appeal. The appeal is disposed of accordingly.

Criminal Appeal No.1009/2000

This is an appeal against the judgment of the Allahabad High Court in Criminal Misc. Writ Petition No.4360 of 1999. Respondents herein are the accused in a criminal case registered by the Kotwali Police Station, Ghaziabad (place of incident being Lohia Nagar, Ghaziabad under the jurisdiction of the said Police Station). The Sr. Milk Inspector filed a complaint before Station House Officer concerned wherein he stated that he had taken sample of milk from the accused and as he suspected that it was adulterated, the same was sent for analysis and he received a report from the Food Research and Standardization Laboratory at Ghaziabad. The said complaint was filed based on the report of the said laboratory. In the complaint, it was alleged that the respondents committed

offences punishable under Sections 272/273, IPC. The

respondents were not prosecuted

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under the provisions of Prevention of Food Adulteration Act,

1954.

The respondents filed the aforementioned writ petition

alleging that no offence was made out against them under

Sections 272/273, IPC. They contended that there was no

extraneous substance in the milk so as to make it a noxious

substance. Under Section 272, IPC, whoever adulterates any

article of food or drink, so as to make such article noxious

as food or drink, intending to sell such article as food or

drink, or knowing it to be likely that the same will be sold

as food or drink, is liable for punishment prescribed under

the said Section. Though, under the Indian Penal Code, the

punishment prescribed is for a term of six months'

imprisonment, there is an amendment to this Section insofar as

the State of U.P. is concerned. As per the said amendment, the offence under the said Sections 272/273 is punishable with imprisonment for life and also liable for fine.

In the instant case, the report of the Analyst shows that the milk contained neutraliser. Counsel for the State contended that presence of neutraliser in the milk is harmful to health, thus it is a noxious substance coming within the ambit of Section 272, IPC. Counsel also drew our attention to the statement made by the Director of the Food Research and Standardization Laboratory wherein he stated that the presence of neutraliser may cause harm to health. In the report, it is not stated as to what type of neutraliser had

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been added in the milk. Therefore, it is difficult to hold that the sample collected from the respondents was harmful to health. In these circumstances, the High Court was justified in holding that no offence was made out under Sections 272/273, IPC. The High Court had also observed that if at all

a case was made out, the State would have taken steps to prosecute the respondents under the relevant provisions of the Prevention of Food Adulteration Act. We find no error in the judgment of the High Court. The appeal is, therefore, dismissed.

Criminal Appeal No.1010 of 2000

This is an appeal against the judgment of the Allahabad High Court in Criminal Misc. Writ Petition No.4436 of 1999. By the impugned judgment, the FIR registered against the respondent was quashed by holding that no offence was made out under Sections 272/273, IPC. The Food Inspector of Ghaziabad purchased milk from the respondent and as it was suspected to be adulterated, the sample thereof was sent for chemical analysis and the report dated 14th July 1999 of the Director of the Food Research and Standardization Laboratory, Ghaziabad, showed that the said sample was adulterated. On the basis of the said report, a complaint was filed against

the respondent alleging that he had committed offence under Sections 272/273, IPC. In the report, it was indicated that there was presence of neutraliser which amounted to adulteration of milk but it was not shown as to what type of

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neutraliser was added in the milk. The respondent filed the aforementioned writ petition before the High Court wherein it was contended that in order to attract Sections 272/273, IPC, it must be shown that by addition of the extraneous food substance in the milk, it must become noxious and only in such circumstances, prosecution would lie against the respondent.

In the present case, the High Court held that as there was no allegation in the complaint that by addition of the neutraliser, food item had become noxious substance, the prosecution under the aforementioned Sections was not sustainable.

We have heard counsel for the appellants. No one

appears for the respondent herein.

We have perused the report of the laboratory as well as the complaint. We find that the view taken by the High Court is correct. It may also be noticed that the appellant-State was permitted to proceed against the accused under the relevant provisions of the Prevention of Food Adulteration Act. We find no merit in the appeal. The appeal is accordingly dismissed.

Criminal Appeal Nos.1012/2000 and 1013/2000

The respondents in these appeals had preferred writ petitions before the High Court challenging the prosecution initiated against them under Sections 272/273, IPC. By the impugned order, the High Court held that prosecution may continue but the respondents herein shall not be arrested

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until the final report is filed under Section 173, Code of Criminal Procedure. Counsel for the State is not in a

position to say whether the prosecution is over by this time.

In the facts and circumstances of the case, we find no reason

to interfere in the impugned orders. The appeals are  
dismissed.

.....J.

[K.G. BALAKRISHNAN]

.....J.

[LOKESHWAR SINGH PANTA]

.....J.

[D.K. JAIN]

New Delhi.

November 22, 2006.