FOOD INSPECTOR, MUNICIPAL CORPORATION, BARODA

v.

MADANLAL RAMLAL SHARMA AND ANOTHER.

December 14, 1982

[D.A. DESAI AND R.B. MISRA, JJ.].

Prevention of Food Adulteration Act, 1954—Preparation of sample for analysis—Milk and Milk preparations including curd—Churning by hand makes sample homogeneous and representative—Law does not require churning by any instrument.

The respondent was convicted and sentenced for an offence under the Prevention of Food Adulteration Act, 1954 on a complaint that a sample of curd purchased from his shop had been found not to conform to the standard prescribed. He preferred an appeal and the Sessions Judge acquitted him on the short ground that the sample was not homogeneous and representative of the curd purchased as the curd had not been churned properly before it was sent for analysis. The High Court affirmed this conclusion and dismissed the appeals filed against the order of acquittal.

The High Court, in preference to the evidence of the complainant that the churning of the sample had been done with a spoon, placed reliance on the evidence led by the defence that the churning had not been done by any instrument but it had been done by the complainant with his hand. The High Court stated that since the prosecution had not challenged the defence version that the churning of the sample had been done by means of hand alone, it had failed to prove that the churning had been done in a proper manner.

Declining to interfere with the acquittal of the respondent by the two lower courts after a lapse of six years and dismissing the appeal,

HELD : In milk and milk preparations including curd, it is distinctly possible that the fat settles on the top and in order to find out whether the milk or its preparation such as curd has prescribed content, the sample must be homogeneous and representative so that the analysis can furnish reliable proof of nature and content of the article of food under analysis. For this purpose churning is one of the methods of making the sample homogeneous and representative. But, there is nothing in the Act or the Rules which prescribes that churning must be done by some instrument and that churning done by hand would not provide a homogeneous and representatives sample. Commonsense dictates that articles of food like milk and curd when churned with hand would

properly mix-up from top to bottom. More so when the quantity is either 600 grams which was the quantity purchased or 2-1/2 kg. which was the quantity in the container. [14 C-E]

In the instant case, there was evidence that the churning was done by spoon. But even if the High Court found that evidence unreliable and the evidence of defence witness so much reliable that it was prepared to act upon it disagreeing with the other evidence, the evidence of defence witness was that churning was done with hand, and he did not say that the churning was not effective. It is therefore difficult to subscribe to the view of the High Court that the churning done by hand would not meet with the requirements of making a sample homogeneous and representative. There has to be a finding that the churning done with hand was not adequate. There is no such finding. The High Court was, therefore, not justified in confirming the acquittal on this ground. [14 F-H; 15 A]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 605 of 1981.

Appeal by special leave from the Judgment and Order dated the 8th April, 1980 of the Ahmedabad High Court in Criminal Appeal No. 218 of 1978 with Crl. Appeal No. 603 of 1978.

M.C. Bhandare, T. Sridharan, Mrs. S. Bhandare and *Miss C.K. Sauhantia* for the Appellant.

Miss Maya Rao for Respondent No. 1.

J.L. Jain and *R.N. Poddar* for Respondent No. 2.

The Judgment of the Court was delivered by

MISRA, J. In this appeal by special leave the narrow question that this Court proposes to examine is whether the High Court was right in holding that churning of the curd of which a sample was taken, if done with hand, was done in a proper manner so as to make the sample homogeneous and representative.

The few relevant facts are that Shri G. A. Parikh Food Inspector attached to Baroda Municipal Corporation visited the shop of the respondent No. 1 accused Madanlal Ramlal Sharma on September 4, 1976 around 7.20 a.m. He purchased curd from a container having 2-1/2 Kg of curd for the purpose of analysis. There was a board hanging on the outer side of the container that

the curd is prepared from cow's milk. The Food Inspector purchased 600 grams of curd and after churning the curd, he divided it in three equal parts and prepared three separate samples, each kept in a separate bottle. After various formalities including obtaining the sanction for prosecuting the respondent-accused, a complaint was filed in the Court of the learned Judicial Magistrate, First Class (Municipality) at Baroda. In the course of trial at the request of the accused the third sample was sent to the Central Food Laboratory for analysis and report. It may also be mentioned that the Food Inspector himself had sent one sample to the public analyst attached to the laboratory set up by the Municipal Corporation, for analysis of article of food. The report of the public analyst shows that the sample of curd contained 3% milk fat and 11.7% milk solid non-fat. On the other hand, the report of the Central Food Laboratory, Calcutta (Ex. 15) shows that milk fat was 2.9% and milk solid non-fat 10.8%. It was opined that the sample of curd was adulterated. The learned Magistrate held that the curd in question was prepared out of cow's milk, that it did not conform to the prescribed standard and reached the conclusion that the prosecution case was established beyond a shadow of reasonable doubt. Consequently, the learned Magistrate convicted the first respondent-accused for an offence under section 7 (1) read with section 16 (1)(a)(1) of the Prevention of Food Adulteration Act, 1954 and sentenced him to suffer rigorous imprisonment for four months and to pay fine of Rs. 500 in default to suffer further rigorous imprisonment for two months.

The first respondent-accused preferred Criminal Appeal No. 46 of 1977 in the Court of Sessions at Baroda. The learned Additional Sessions Judge who heard the appeal, *inter alia*, held that proper churning of the sample having not been done, the sample cannot be said to be homogeneous and representative of the curd in question so as to arrive at a proper conclusion on analysis of the sample and on the short ground acquitted the accused.

Two appeals were preferred against the judgment of the learned Sessions Judge. Criminal Appeal No. 218 of 1978 was prefered by the State of Gujarat and Criminal Appeal No. 603 of 1978 was preferred by the complainant Food Inspector. A division Bench of the Gujarat High Court disposed of both the appeals by a common judgment. The High Court affirmed the

A acquittal observing that 'the conclusion is inescapable that the prosecution has failed to prove that the churning was done in a proper manner so as to make the entire curd one and all the samples would be identical in themselves.' Hence this appeal by special leave by the complainant Food Inspector.

B The sample of curd was taken on September 4, 1976. Six years have passed and two courts have concurred in acquitting the accused, namely, the Sessions Judge and the High Court. We are, therefore, reluctant to interfere with the order of acquittal. But the learned couusel Mr. M. C. Bhandare for the appellant, Food Inspector and the learned counsel Mr. Nain appearing for the State C of Gujarat second respondent supporting the appellant, urged that irregularity in churning the curd before sampling the same in bottles, as found by the High Court, if allowed to remain unquestioned, it would have an adverse effect on a large number of pending cases. We are, therefore, only inclined to examine the legal D submission and we may make it absolutely clear that we are disinclined to interfere after six years in what is found to be marginal adulteration by the learned Magistrate so as to send the respondent to jail, though we must make it abundantly clear that we do not look upon with equanimity on offences under the Prevention of Food Adulteration Act because these offences have the E deleterious effect playing havoc with the health and well-being of a large segment of the Society. But the acquittal by two courts and delay of six years and coupled with the finding that there was marginal adulteration would certainly be a disincentive to interfere with the Order.

F It is indisputable that curd is an article of food. Rule 22 of the Prevention of Food Adulteration Rules, 1955 (Rules for short) provides that in the case of curd, a quantity of 200 grams has to be sent to the public analyst/Director of Central Food Laboratory for analysis. The Standard for cow's milk for G Gujarat as prescribed under the Rules is that it must contain 3.5% milk fat and 8.5% milk solids non-fat. Further provision is that the curd obtained from any kind of milk shall have the same content as the milk fat and milk solids non-fat as the milk from which it is prepared. Section 13 (3) of the Act, provides that the certificate H issued by the Director of Central Food Laboratory under section 2-B shall supersede the report given by the public analyst under

sub-section (1). The report of Central Food Laboratory shows that the sample contained 2.9% of milk fat. Therefore, the conclusion that the sample of curd was adulterated is unquestionable.

The learned Sessions Judge found that after purchasing the curd in order to make the sample homogeneous and representative; churning was not done as required and therefore the sample was not both homogeneous and representative and therefore the accused could not be said to have sold or stored for sale adulterated curd. While affirming this conclusion the High Court has observed that the evidence of Ex. 49 Devsibhai Ramjibhai, a defence witness and the statement of the accused recorded under section 248 (2) Cr.P.C. would show that the churning was not done by an instrument but the complainant had done it with his hand and thereafter curd was divided into three parts, and three sample bottles were filled. The High Court then observed that on this point Devsibhai Ramjibhai had not been cross examined. The High Court while proceeding to appreciate the evidence of Devsibhai Ramjibhai accepted it in preference to the other evidence of the complainant who had stated that the churning was done with a spoon. Then comes the observation of the High Court which clinches the matter. It reads as under :

> "But fortunately for the prosecution when the spoon aspect becomes doubtful, and when the defence version clearly found by us on record is that the allegation is that the churning was done by means of hand alone, it was quite necessary for the prosecution to challenge this version of the defence which has been given by the defence witness on oath. In the absence of that, unfortunately, we have come to the conclusion that the prosecution has failed to prove that the churning was done in a proper manner so as to make the entire curd one and all the samples would be identical in themselves."

The High Court held that on this short ground alone the acquittal must be affirmed. With respect, we find it very difficult to subscribe to the view taken by the High Court. Rule 14 provides that sample of food for the purpose of analysis shall be taken in clean dry bottles or jars or in other suitable containers which shall

be closed sufficiently, tight to prevent leakage, evaporation, or in the case of dry substance, entrance of moisture and shall be carefully sealed. Rule 15 provides for labelling and addressing the bottles. Rule 16 provides for packing and sealing the samples. Rule 20 enables the Food Inspector to add prescribed preservative to the sample. Rule 22 prescribes quantity necessary for analysis. It may be recalled that section 11 prescribes procedure to be followed by Food Inspector,

Our attention was not drawn to any provision in the Act or the Rules making it obligatory that churning should be done with some machine so as to make a sample homogeneous and representative sample. We are conscious of the fact that in milk and milk preparations including curd, it is distinctly possible that the fat settles on the top and in order to find out whether the milk or its preparation such as curd has prescribed content, the sample must be homogeneous and representative so that the analysis can furnish reliable proof of nature and content of the article of food under analysis. For this purpose churning is one of the methods of making the sample homogeneous and representative. But having said this, there is nothing in the Act or the Rules which prescribes that churning must be done by some instrument, and that churning done by hand would not provide a homogeneous and representative sample. Commonsense dictates that articles of food like milk and curd when churned with hand would properly mix-up from top to bottom. More so when the quantity is either 600 grams which was the quantity purchased or 2-1/2 kgs. which was the quantity in the container. There was evidence that the churning was done by spoon. But even if the High Court found that evidence unreliable and evidence of defence witness Devsibhai Ramjibhai so much reliable that it was prepared to act upon it disagreeing with the other evidence, the evidence of Devsibhai Ramjibhai was that churning was done with hand, and he did not say that the churning was not effective. We therefore find it difficult to subscribe to the view of the High Court that the churning is required to be done by some instrument or that the churning done by hand would not meet with the requirements of making a sample homogeneous and representative. There has to be a finding that the churning done with hand was not adequate. There is no such finding. We are, therefore, of the

opinion that the High Court was not justified in confirming the acquittal on this ground. A

Having made the position in law clear, as we understand it, we decline to set aside the acquittal. Subject to above observation the appeal is dismissed.

B

H.L.C. *Appeal dismissed.*