

STATE OF U. P.

A

v.

HANIF

MARCH 31, 1992

[KULDIP SINGH AND K. RAMASWAMY, JJ.]

B

*Prevention of Food Adulteration Act, 1954—Section 8—Appointments of Public Analysts by notifications dated 23.6.1972 and 15.2.1975—Legality of—Report of the Public Analyst appointed for the State under earlier notification—Validity of—Whether the Public Analyst appointed for the State has jurisdiction over a local area.*

C

*Evidence Act, 1872—Section 3—Appreciation of evidence—Evidence of Food Inspector—Legality of—Whether needs corroboration.*

*Constitution of India, 1950—Article 136—Appeal by special leave—Contention not raised before the lower courts whether can be raised before the Supreme Court—Sentence imposed minimum—Whether the Supreme Court can interfere.*

D

The trial Court convicted the respondent for an offence under s.7 read with s.16 of the Prevention of Food Adulteration Act, 1954 and sentenced him to undergo 6 months R.I. and to pay a fine of Rs. 1000 with usual default clause.

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On appeal, the Sessions Court confirmed the conviction and sentence.

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On revision, the High Court set aside the conviction on the ground that Public Analyst had no jurisdiction to analyse the food article.

This appeal by special leave was filed against the Judgment of the High Court.

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The respondent-accused contended that by the notification dated February 15, 1975, the State Govt. assigned the local area to one B.S. Garg, Public Analyst; that by necessary implication one Dr. S.B. Singh ceased to have jurisdiction over that local area and thereby his report of analyst was without jurisdiction; that the prosecution based thereon and the conviction

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**A** resulted pursuant thereto was without jurisdiction and a nullity; that except the Food Inspector no one was examined to corroborate his evidence; that the Food Inspector, being interested party, his evidence needed corroboration for acceptance; and that it was not safe to act upon the interested evidence of the Food Inspector.

**B** Allowing the appeal filed by the State, this Court,

**C** **HELD : 1.01.** The notification dated Feb. 15, 1975 is only in continuation of the notification dated June 23, 1972, not in supersession thereof. When Shri B.S. Garg, Asstt. Public Analyst was appointed as a Public Analyst to Varanasi and Allahabad Region under notification dated Feb. 15, 1975, it was not in supersession of the notification dated June 23, 1972, appointing Dr. S.B. Singh as Public Analyst for the whole of Uttar Pradesh State. The later notification was in addition to the earlier notification. [375G]

**D** **1.02.** S. 8 postulates appointment of more than one Public Analyst for such local areas as may be assigned to them by the Central or State Govt., as the case may be. Thereby it is open to the State Govt. to appoint more than one Public Analyst to any local area or areas and both would co-exist to have power and jurisdiction to analyse an article or articles of food covered under the Act to find whether the same is adulterated. [376A-B]

**E** **1.03.** In addition to Dr. S.B. Singh, who was appointed as Public Analyst for the whole of the State of Uttar Pradesh as one Single local area for the purpose of the Act, Shri B.S. Garg, Asstt., Public Analyst, was appointed as Public Analyst for Varanasi and Allahabad region, comprising of certain districts which shall be deemed to be one single local area for the purpose of the Act. Thereby both the officers have power and jurisdiction to analyse articles of food covered under the Act and submit a report in that behalf to the local authorities or the Inspector of Food, as the case may be, to take appropriate action under the Act, based on the result of the report. [376B-D]

**F** **1.04.** The report sent by Dr. S.B. Singh is perfectly within his jurisdiction and the trial based on the report and conviction recorded by the trial court and affirmed by the Sessions Court is not vitiated by any error of law or jurisdiction. [376D-E]

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2. It is not the law that the evidence of Food Inspector must necessarily need corroboration from independent witnesses. The evidence of the Food Inspector is not inherently suspected, nor be rejected on that ground. He discharges the public function in purchasing an article of food for analysis and if the article of food so purchased in the manner prescribed under the Act is found adulterated, he is required to take action as per law. He discharges public duty. His evidence is to be tested on its own merits and if found acceptable the court would be entitled to accept and rely on to prove prosecution case. If in a given case where the factum of the very purchase is put in question and any personal allegations are made against the Food Inspector perhaps it may be necessary for the prosecution to dispel the doubt and to examine the Panch witnesses seeking corroboration to the evidence of the Food Inspector. [376G-377B]

3.01. The contention that the evidence of Food Inspector must be corroborated by independent evidence, was not raised, nor canvassed either before the Sessions Court or in the High Court. In this case the factum of purchase by the Food Inspector was not disputed. Even in the appellate court, the contention raised was regarding the delay in sending the public analyst report to the authority and laying the prosecution but no other controversy was raised. Under these circumstances, there is no substance in the contention. [377B-C]

3.02. After Amending Act 34 of 1976, the sentence imposed by the courts below is minimum and that, therefore, there is no scope warranting interference. [377F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 206 of 1983.

From the Judgment and Order dated 2.2.1981 of the Allahabad High Court in Criminal Revision No. 1504 of 1980.

Vikrant Yadav, R.C. Verma and A.S. Pundir for the Appellant.

Nadir Ali Khan, Arvind Kumar and Mrs. Laxmi Arvind for the Respondent.

The Judgment of the Court was delivered by

K. RAMASWAMY, J. The respondent was convicted for an offence

- A under s.7 read with s.16 of the Prevention of Food Adulteration Act, 37 of 1954, for short 'the Act', and was sentenced to undergo 6 months R.I. and to pay a fine of Rs. 1000 with usual default clause. On appeal the Sessions Court confirmed the conviction and sentence. But on revision the High Court set aside the conviction solely on the ground that Dr. B. S. Singh, Public Analyst, had no jurisdiction to analyse the food article. It was B.S. Garg, Public Analyst, Varanasi and Allahabad region, alone had the power. Consequently the conviction on the basis of the report of Dr. S.B. Singh that the milk was adulterated was held without jurisdiction and authority of law. Accordingly the High Court acquitted the respondent by judgment dated February 2, 1981. This appeal by special leave arises against this judgment.

The main question is whether Dr. S.B. Singh had jurisdiction over the Allahabad area to analyse the articles of food. Section 8 of the Act reads thus :

- D "8. Public Analysts — The Central Government or the State Govt. may by notification in the Official Gazette, appoint such persons as it thinks fit, having the prescribed qualifications to be public analysts for such local areas as may be assigned to them by the Central Government or the State Government, as the case may be :

E Provided that no person who has any financial interest in the manufacture, import or sale of any article of food shall be appointed to be a public analyst under this section."

- F In exercise of power under s.8, the Governor of U.P. by notification published in the State Gazette dated June 23, 1972 appointed Dr. S.B. Singh as a Public Analyst to Govt. for whole of Uttar Pradesh, thus :

"No. 2415(4)/CVI-X-112/71, Dated; Lucknow 23 June, 1972.

- G In supersession of Govt. notification No. 2424(III) XVI-I-59/79, dated August 7, 1970 and in exercise of the powers under Section 8 of the prevention of Food Adulteration Act, 1954 (Act No. 37 of 1954), the Governor is pleased to appoint Dr. S.B. Singh, M.Sc., Ph.d. as Public Analyst to Government for the whole of Uttar Pradesh, which shall be regarded as one
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single local area for the purpose of the said Act, with effect from the afternoon of March 31, 1972." A

Subsequently another notification dated February 15, 1975 was published appointing Shri B.S. Garg as Public Analyst for Varanasi and Allahabad Region, which reads thus :

"No. 570(1)XVI-X-1314/72 B

Lucknow dated : 15 February, 1975.

In continuation of Government Notification No.2415(4)/XVI-X- 112/71 dated June 23, 1972 and in exercise of powers under Section 8 of the Prevention of Food Adulteration Act, 1954 (Act No. 37 of 1954), the Governor is pleased to appoint for the purposes of the said Act Sri B.S. Garg, Assistant Public Analyst as Public Analyst to Government, Varanasi Region (comprising Districts of Varanasi, Gazipur, Mirzapur, Jaunpur and Ballia) and Allahabad Region (comprising Districts of Allahabad, Fatehpur, Kanpur, Farrukhabad and Etawah) which shall be deemed as one single local area for the purpose of the said Act with effect from the date of Publication of this Notification in the Official Gazette." C D E

The contention of the learned counsel for respondent which also found favour with the High Court is that by the notification dated February 15, 1975, Varanasi and Allahabad region is 'a local area' assigned by the State Govt. in the Official Gazette to Shri B.S. Garg, Asstt. public Analyst who was appointed as a Public Analyst to the State Govt. for that local area. By necessary implication Dr. S.B. Singh ceased to have jurisdiction over that local area and thereby his report of analysis is without jurisdiction. The prosecution based thereon and the conviction resulted pursuant thereto is without jurisdiction and a nullity. We find no substance in the contention. The notification dated Feb. 15, 1975 is only in continuation of the notification dated June 23, 1972, not in supersession thereof. As a fact, the notification dated June 23, 1972 is in supersession of earlier notification dated August 7, 1970. Therefore, when Shri B.S. Garg, Asstt. Public Analyst was appointed as a Public Analyst to Varanasi and Allahabad Region under notification dated Feb. 15, 1975, it was not in supersession of the notification dated June 23, 1972, appointing Dr. S.B. Singh as Public F G H

- A Analyst for the whole of Uttar Pradesh State. The later notification was in addition to the earlier notification. On principle also, it is difficult to give acceptance to the contention of the respondent for the reason that s.8 postulates appointment of more than one Public Analyst for such local areas as may be assigned to them by the Central or State Govt. as the case may be. Thereby it is open to the State Govt. to appoint more than one
- B Public Analyst to any local area or areas and both would co-exist to have power and jurisdiction to analyse an article or articles of food covered under the Act to find whether the same is adulterated. Accordingly, we hold that in addition to Dr. S. P. Singh, who was appointed as Public Analyst for the whole of the State of Uttar Pradesh as one single local area
- C for the purpose of the Act, Shri B.S. Garg, Asstt. Public Analyst, was appointed as Public Analyst for Varanasi and Allahabad region comprising of District of Varanasi, Gazipur, Mirzapur, Jaunpur and Ballia and Allahabad region comprising of districts of Allahabad, Fatehpur, Kanpur, Farrukhabad and Etawah, which shall be deemed to be one single local
- D area for the purpose of the Act. Thereby both the officers have power and jurisdiction to analyse articles of food covered under the Act and submit a report in that behalf to the local authorities or the Inspector of Food, as the case may be, to take appropriate action under the Act, based on the result of the report so submitted. Therefore, the report sent by Dr. S.B. Singh is perfectly within his jurisdiction and the trial based on the report
- E and conviction recorded by the trial court and affirmed by the Sessions court is not vitiated by any error of law or jurisdiction. This was the only point on which the High Court allowed the revision case and set aside the conviction and sentence.
- F The learned counsel for the respondent further contended that except the Food Inspector no-one was examined to corroborate his evidence. The Food Inspector, being interested party, his evidence needs corroboration for acceptance and that, therefore, it is not safe to act upon the interested testimony of the Food Inspector. Apart from the fact that this
- G contention was not raised, nor canvassed either before the Sessions Court nor in the High Court, we find no substance in the contention. It is not the law that the evidence of Food Inspector must necessarily need corroboration from independent witnesses. The evidence of the Food Inspector is not inherently suspected, nor be rejected on that ground. He discharges the public function in purchasing an article of food for analysis and if the
- H article of food so purchased in the manner prescribed under the Act is

found adulterated, he is required to take action as per law. He discharges public duty. His evidence is to be tested on its own merits and if found acceptable the court would be entitled to accept and rely on to prove prosecution case. If in a given case where the factum of the very purchase is put in question and any personal allegations are made against the Food Inspector, perhaps it may be necessary for the prosecution to dispel the doubt and to examine the Panch witnesses seeking corroboration to the evidence of the Food Inspector. In this case the factum of purchase by the Food Inspector was not disputed. Even in the appellate court, the contention raised was regarding the delay in sending the public analyst report to the authority and laying the prosecution, but no other controversy was raised. Under these circumstances, we find no substance in the contention that the evidence of Food Inspector must be corroborated by independent evidence.

It is next contended that what was purchased from the respondent was a milk of the cow, but not the buffalo milk. Therefore, the sample containing 5.8% fat, 7.3% non-fat solid is not an adulteration as prescribed under the rules. Thereby, it is not in adulterated article of food. This question of fact was dealt with the Courts of fact. The trial court and the Sessions Court found as a fact that what was purchased from the respondent was she buffalo milk and not cow milk. This is a concurrent finding of fact of both the courts below and this contention was not raised in the High Court. Being a factual finding, we do not propose to go into and consider this contention.

It is next contended that the sale of adulterated milk was on December 3, 1978 and that the long lapse of time is a cause to take a lenient view in the matter. In view of the fact that after Amending Act 34 of 1976, the sentence imposed by the courts below is minimum and that, therefore, there is no scope warranting interference.

The appeal is accordingly allowed. The judgment of the High Court is set aside and that of the trial court as affirmed by the Sessions Court is restored.

V.P.R.

Appeal allowed.