CASE NO.:
Appeal (crl.) 940 of 2004

PETITIONER:
State of Haryana

RESPONDENT:
Daya Nand

DATE OF JUDGMENT: 25/08/2004

BENCH:
N.Santosh Hegde, S.B.Sinha & A.K.Mathur

JUDGMENT:
J U D G M E N T

(Arising out of SLP(Crl.)No.5135 of 2003)

SANTOSH HEGDE,J.

Heard learned counsel for the parties.

Leave granted.

This appeal has been filed against the order of Punjab and Haryana High Court at Chandigarh dated 22nd of January, 2003, whereby the High Court set aside the judgments of the two courts below in a revision petition filed by the respondent herein. Brief facts necessary for the disposal of this appeal are as follows:

On 6th of July, 1988 when respondent was carrying 20 liters of cow's milk in a bicycle he was intercepted by the Deputy Chief Medical Officer, Narnaul and a sample of 750 ml. of milk was collected from the container in which the respondent was carrying the milk and the same was sent to Public Analyst who in his report found the sample to be deficient in milk solid to the extent of 5% of the prescribed minimum standard. He also found solid fat as required under the law deficient.

On receipt of the said report, a copy of the same was sent to the respondent by registered post but the same was returned by the postal endorsement "refused to accept". On the basis of the investigation made on 25th of August, 1988 a complaint under section 16(i)(a)(i) of the Prevention of Food Adulteration Act was filed against the respondent.

In the trial, the prosecution examined PW-1 Dr.S.P.Singh and PW-2 Megh Nath, the Food Inspector, in support of its case. The respondent did not lead any evidence in defence except contending in his statement under Section 313 Cr.P.C. that he was innocent. The trial court as per its order dated 18th February, 1989 found the appellant guilty of an offence punishable under Section 16(i)(a)(i) of the Prevention of Food Adulteration Act and after hearing the respondent on the quantum of sentence taking into consideration he had no previous conviction and had three small kids to support, awarded the minimum prescribed sentence under the Act that is to undergo RI for six months and to pay a fine of Rs.1000/- in default of payment of fine the accused was directed to further undergo simple imprisonment for three months.

Being aggrieved by the conviction and sentence, the respondent preferred an appeal before the Sessions Judge, Narnaul who by his order dated 28th of March, 1990 concurred with the finding of the trial court and confirmed the conviction and sentence.

The respondent, as stated above, preferred a revision against the said orders before the Punjab and Haryana High Court at Chandigarh and the High Court by the impugned cryptic order dated 22nd of January, 2003 held that in the sample milk, non solid fat was found to be 8.1 % instead of 8.5% while solid fat was found to be 4.5% as against the requirement of 4%. It also observed that in the circumstances of the case, possibility of improper stirring could not be ruled out. On that assumption it gave the benefit of doubt to the respondent and allowed the revision of the respondent setting aside the conviction and sentence imposed by the two courts below.

Mr.Manu Sharma learned counsel appearing for the appellant-State contended that first of all the High Court in a revision petition could not have gone into the questions of fact decided concurrently by the two courts below. He also contended the assumption of the learned Judge that there is improper stirring while taking the sample was contrary to the facts on record and findings recorded by the two courts below. He submitted that on the basis of the material on record such an assumption could not have been drawn by the High Court. Hence, he contended that the impugned order of the High Court is unsustainable in law.

Mrs.Laxmi Arvind, learned counsel appearing for the respondent, however, contended that the High Court was fully justified in coming to the conclusion that there could have been a possibility of improper stirring which, if true, would not give the proper result while analysing the sample product, hence, the order of the High Court is legally justifiable. She also placed strong reliance on the judgement of this Court in the case of Food Inspector, Municipal Corporation, Baroda vs. Madanlal Ramlal Sharma & Anr. (AIR 1983 SC 176).

We will first deal with the assumption of the High Court that there is a possibility of improper stirring while taking the sample. In the trial court, the learned counsel for the respondent had raised this contention and the same was negatived by the trial court on the following basis :

"Otherwise also the witnesses have categorically stated that the milk was properly stirred with measurement before taking the milk sample. Thus I hereby over rule this contention of learned defence counsel".

This finding was given by the learned Judge while considering various judgments cited in support of the contention raised on behalf of the accused as well as the evidence found in this case as to the proper stirring of milk.

Learned Sessions Judge while considering the similar arguments raised before him after considering the judgments cited before him held thus at para 11 of the judgement:

"Regarding last contention, learned counsel seems to have been impressed by the word 'churning' mentioning in the complaint. A look at the complaint would show that both the words 'stirring' as well as 'churning' are mentioned. It appears that word 'churning' was not deleted in the complaint because that method is necessary in case of 'curd'. In any case it was stated by the witnesses that the sample was made representative and homogeneous by stirring and thus, no fault can be found on this account as well."

Thus it is noticed that both the courts below have considered this question and on the material available on record have come to the conclusion that the sample milk in question was properly stirred as required by law and the sample was made representative and homogeneous. This finding is based on the evidence found on the record. In this background, in our opinion, the High Court

rather casually has come to an erroneous assumption that there was improper stirring for which there is no foundation at all, as could be seen from the finding noticed by us herein above of the two courts below. We do not think the High Court could have substituted a factual foundation available on record, by an assumption, to give benefit of doubt to the respondent. As stated above, the learned counsel appearing for the respondent relied on a judgment of this court in the case of Food Inspector, Municipal Corporation, Baroda (supra), we do not think the above judgment will be of much assistance to the respondent because that was a case in which primary question was what should be the method by which "churning" of "curd" should be done. In that context, this Court held that the law does not provide for any specific method and the finding in this regard would depend upon the evidence on record. That apart in that case the court was considering the effect of "churning" of "curd", while in the present case, we are concerned with "stirring" of "milk" which on facts has been found to be properly done.

For the reasons stated above, we allow this appeal setting aside the order of the High Court acquitting the respondent and restore the conviction and sentence imposed on the respondent by the trial court as confirmed by the Sessions court and direct the respondent to serve out the sentence awarded by the trial court. The appeal is allowed.

JUDIS