

## SAMBHU DAYAL

v.

STATE OF U.P.

November 21, 1978

[P. S. KAILASAM AND A. D. KOSMAL, JJ.]

*Prevention of Food Adulteration Act, 1950 Sections 8 and 9 as amended by the Amending Act 49 of 1964—Construction of—Presumption of adulteration of milk in respect of samples analysed after a fixed period.*

The appellant was convicted under section 8 read with section 16 of the Prevention of Food Adulteration Act by the Sub-Divisional Magistrate, Jalaun and sentenced to six months rigorous imprisonment, the minimum sentence awardable under the P.O.F.A. 1950. In appeal the Sessions Court reversed it, but in further appeal by the State against his acquittal and reversal of the trial court decision, the High Court of Allahabad set aside the Session's orders and restored that of the trial court.

Dismissing the appeal by special leave the Court.

HELD : 1. Sections 8 and 9 of the Prevention of Food Adulteration Act, 1950 as amended by section 5 of the Amending Act 49 of 1964 cannot be read as repealing the old sections and empowering the Central Government or the State Government to appoint the Public Analyst or the Food Inspector after the coming into force of the amending Act, implying that any prior appointment of a Public Analyst or Food Inspector stood repealed. [345A]

2. Whether the notifications of the Government in 1968 appointing the Public Analyst and the Food Inspector with retrospective effect from March 65 are valid or not need not be looked into because being an amendment Act, the appointment of the Public Analyst and the Food Inspector made by the State Government continued to be valid. [345B-C]

3. The amended sections 8 and 9 do not in any way repeal sections 8 and 9 as they originally stood. As to the effect of the amendment the language of the amending sections will have to be examined to find out whether the original conditions were intended to be repealed. The amending provisions should be held as part of the original statute. [345D-E]

4. Whenever the amended section has to be applied subsequent to the date of the amendment, the unamended provisions of the Act have to be read along with the amended provisions as though they are part of it. Reading the amended section, it is clear that there is no provision, express or implied, repealing the existing provisions or the rules made thereunder. The section will have to be construed as being in addition to what had already existed. The effect will be that the power of the State Government which already existed under the unamended section and the appointments made thereunder will be preserved and the action taken under the amended sections will be in addition to the powers of the State Government and the appointments which had already been made. [345F-G]

**A** *Nagar Mahapalika, Lucknow v. Ram Dhani*, A.I.R. 1971 All. 53 approved.

5. The contention that the analysis of the milk after 44 days must yield to an adverse inference against the State as to adulteration cannot be accepted. [346A]

**B** In the present case there is evidence of the Food Inspector that he added formalin as a preservative and the report of the Public Analyst that no change had taken place in the constituents of milk which would have interfered with the analysis. This statement of the analyst was not challenged in any of the courts below. Apart from the statement of the Analyst not having been questioned, in this case it is admitted that formalin was added to the milk by the Food Inspector. The Food Inspector added 16 drops of formalin in each of the bottles and had them sealed properly. Rule 20 of the Prevention of Food Adulteration Rules requires that in the case of milk, cream, Dahi, Khoa and Gur a preservative known as "formalin", that is to say, a liquid containing about 40 per cent of 'formaldehyde' in aqueous solution in the proportion of 0.1 ml. (two drops) for 25 ml. or 25 grams shall be added. There is also the clear evidence of Public Analyst that no change had taken place in the constituents of milk which would interfere with the analysis. [346D-G, 347A]

**D** *Baboo v. State*, A.I.R. 1970 All 122; approved.

*Dattappa Mahadappa v. Secy., Municipal Committee, Baldara*, A.I.R. 1951 Nag. 191 referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 137 of 1972.

**E** Appeal by Special Leave from the Judgment and Order dated 27-4-72 of the Allahabad High Court in Govt. Appeal No. 128/69.

*Yogeshwar Prasad, S. K. Bagga and Miss Meera Bali* for the appellant.

*O. P. Rana* for the Respondent.

**F** The Judgment of the Court was delivered by

**G** KAILASAM, J. This appeal is by special leave by Sambhu Dayal against the judgment of the High Court of Allahabad allowing an appeal by the Government of U.P. and setting aside the order of acquittal and restoring the conviction under sections 8 and 16 of the Prevention of Food Adulteration Act and the sentence of six months rigorous imprisonment passed by the Sub-Divisional Magistrate, Jalaun.

**H** On 1st November, 1966, Shri Raja Ram Bhatt, the Food Inspector, went to the village and found the appellant Shambhu Dayal bringing cow's milk to Orai for sale. The Food Inspector served a notice on the petitioners and took sample of the milk weighing 660 grams against cash payment of 0.60 P. He divided it in three equal parts and kept each part in a different bottle. He added 16 drops of formalin in each bottle and then sealed the same. One of the sealed bottles was

given to the petitioner. Another bottle was sent to the Public Analyst, Lucknow, for analysis. The Public Analyst submitted his report dated 14th December, 1966 giving his opinion that the sample was deficient in non-fatty solid contents by about 15 per cent. The charge-sheet was filed on 5th February, 1967 by the Food Inspector after obtaining the sanction of the District Medical Officer of Health, Jalaun at Orai. The appellant pleaded not guilty and denied that he had sold the milk. According to him he was taking the milk to one Pandey of village Kharra when the Food Inspector took some of it without making any payment to him. The trial court accepted the case of the prosecution and on 10th November, 1967 convicted the appellant under section 8 read with section 16 of the Prevention of Food Adulteration Act and sentenced him to six months rigorous imprisonment. The appellant preferred a Criminal Appeal to the Court of Sessions. By its judgment dated 12th October, 1968 the Sessions Judge allowed the appeal and set aside the conviction and sentence imposed upon the appellant. The State of U.P. preferred an appeal to the High Court of Allahabad. A Division Bench of the High Court allowed the appeal and restored the conviction and sentence imposed upon the appellant by the trial court.

Miss Meera Bali, the learned advocate appearing for the appellant raised three contentions. She submitted that the Prevention of Food Adulteration Act came into force in 1954 and before the amending Act 49 of 1964 came into force the power to appoint the Public Analyst and Food Inspector rested with the State Government only. After the amending Act, Act 49 of 1964, sections 8 and 9 were substituted by new sections 8 and 9 which provided that the Central Government or the State Government may by notification in the Official Gazette appoint a Public Analyst and a Food Inspector. The amending Act came into force in 1964. The State Government by notification dated 15th April, 1968, appointed Food Inspectors with effect from 1st March, 1965 and by notification dated 23rd March, 1968 appointed Dr. R. S. Srivastava as the Public Analyst with effect from 1st March, 1965. The submission of the learned counsel is that when the offence took place on 1st November, 1966 neither the Food Inspector nor the Public Analyst was empowered to function as Food Inspector or Public Analyst as the notification was made very much later on 15th April, 1968 and 23rd March, 1968 respectively. It was submitted that the notification cannot give retrospective effect to the appointment from 1st March, 1965.

The plea was accepted by the learned Sessions Judge but the High Court held following the decision of the Allahabad High Court in *Nagar*

**A** - *Mahapalika v. Ram Dhani*<sup>(1)</sup> that the notification relating to the appointment of the Food Inspector and the Public Analyst issued under the unamended Act was valid even after the amendment. Sections 8 and 9 of the Food Adulteration Act, 1950 before the amending Act 49 of 1964 stood thus :

**B** "8. Public Analysts.—The State Government may, by notification in the Official Gazette, appoint such persons as it thinks fit, and, possessing such qualifications as may be prescribed to be Public Analyst and define local areas over which they shall exercise jurisdiction.

**C** "9. (1) Subject to the provisions of Section 14, the State Government, may by notification in the Official Gazette, appoint persons in such number as it thinks fit, having the prescribed qualifications to be Food Inspectors for the purpose of this Act, and they shall exercise their power within such local areas as that Government may assign to them;"

**D** The relevant amendment to sections 8 and 9 is contained in section 5 of the amending Act which reads as follows :—

"5. Substitution of new Sections for Sections 8 and 9.—

For sections 8 and 9 of the Principal Act, the following sections shall be substituted, namely :—

**E** 8. Public Analysts : The Central Government or the State Government may, by notifications in the Official Gazette appoint such persons as it thinks fit, having the prescribed qualifications to be Public Analyst for such local areas as may be assigned to them by the Central Government, as the same may be :

**F** \* \* \* \*

**G** 9. Food Inspectors.—(1) The Central Government or the State Government may, by notification in the Official Gazette, appoint such persons as it thinks fit, having the prescribed qualifications to be Food Inspectors for such local areas as may be assigned to them by the Central Government or the State Government as the case may be :

\* \* \* \*

**H** On the facts it is not disputed that on the date of the offence neither a Public Analyst nor a Food Inspector was appointed after the amending Act 49 of 1964. The learned counsel would like us to read:

(1) A.I.R. 1971 All. 53.

sections 8 and 9 of the Act as repealing the old sections and empowering the Central Government or the State Government to appoint the Public Analyst or the Food Inspector after the coming into force of the amending Act implying that any prior appointment of a Public Analyst or Food Inspector stood repealed. We are unable to accept this contention. It is not necessary for us to go into the question whether the notifications of the Government in 1968 appointing the Public Analyst and the Food Inspector with retrospective effect from March, 1965 are valid or not for we can rest our decision on the ground that being an amending Act the appointment of the Public Analyst and the Food Inspector made by the State Government before the amendment continued to be valid. In *Nagar Mahapalika, Lucknow v. Ram Dhani*, (supra) it was held that when the Food Inspector and the Public Analyst were appointed under notifications dated 27th July, 1959 issued under the provisions of Prevention of Food Adulteration Act, 1954, the effect of the amending Act, Act of 49 of 1964, was only to the extent that the Central Government was given concurrent powers with the State Government in the matter of appointment of Public Analyst through notification and that Act 49 of 1964 did not repeal any part of the Food Adulteration Act which then existed and any amendments in the specific provisions of the said Act which were affected by Act 49 of 1964 will not have the effect of repeal of any part of the said Act. We agree with the view taken by the Bench of the Allahabad High Court. The amended sections 8 and 9 do not in any way repeal sections 8 and 9 as they originally stood. As to the effect of the amendment the language of the amending sections will have to be examined to find out whether the original sections were intended to be repealed. The amending provisions should be held as part of the original statute. Whenever the amended section has to be applied subsequent to the date of the amendment the unamended provisions of the Act have to be read along with the amended provisions as though they are part of it. Reading the amended section we find that there is no provision, express or implied, repealing the existing provisions or the rules made thereunder. The section will have to be construed as being in addition to what had already existed. The effect will be that the power of the State Government which already existed under the unamended section and the appointments made thereunder will be preserved and the action taken under the amended sections will be in addition to the powers of the State Government and the appointments which had already been made.

The second point that was raised by the learned counsel was that the sample was sent to the Public Analyst on 5th November, 1966

**A** but was analysed only on 14th December, 1966. As the analysis was after 44 days it was submitted that the milk would not have been in a fit condition for analysis. This contention was not accepted by the learned Sessions Judge who found that there was no evidence about the sample of milk being pasteurised or its despatch under refrigeration. But the report of the Public Analyst clearly showed that no change had taken place in the constituents of milk which would have interfered with the analysis. Though this point was not pressed before the High Court the learned counsel relying on a decision of the Nagpur High Court in *Dattappa Mahadappa v. Secretary, Municipal Committee, Baldana*,<sup>(1)</sup> submitted that where milk is analysed by the Analysts a week after the samples were taken no presumption of adulteration can be drawn in the absence of proof of the manner in which the samples were sent and the condition in which the milk was when the samples were received by him. The learned Judge after referring to the various passages in the text book "Milk : Production and Control" by Harvey and Hill observed that taking into account that the milk was analysed by the Analyst almost a week after the samples were taken, the absence of proof of the manner in which the samples were sent and the condition in which the milk was when the samples were received by him detracts from the value of analyst's certificate. In the present case there is evidence of the Food Inspector that he added formalin as a preservative and the report of the Public Analyst that no change had taken place in the constituents of milk which would have interfered with the analysis. This statement of the analyst was not challenged in any of the courts below. Apart from the statement of the Analyst not having been questioned, in this case it is admitted that formalin was added to the milk by the Food Inspector. The Food Inspector added 16 drops of formalin in each of the bottles and had them sealed properly. Rule 20 of the Prevention of Food Adulteration Rules requires that in the case of milk, Cream, Dahi, Khoa and Gur a preservative known as 'formalin', that is to say, a liquid containing about 40 per cent of formaldehyde in aqueous solution in the proportion of 0.1 ml (two drops) for 25 ml or 25 grams shall be added. The High Court of Allahabad in *Babboo v. State*<sup>(2)</sup> held that in the case of cow's milk to which necessary quantity of formalin has been added according to Rules and which has been kept in normal circumstances, it retains its character and is capable of being usefully analysed for a period of about ten months. It is unnecessary for us to specify the period for which the sample will remain unaffected but so far as this case is concerned there is the clear evidence of Public Analyst that no

(1) A.I.R. 1951 Nag. 191.

(2) A.I.R. 1970 All. 122.

change had taken place in the constituents of milk which would interfere with the analysis. As this statement has not been challenged, we see no reason for accepting the contention of the learned counsel that the analysis of the milk after 44 days cannot be accepted. This contention has also to be rejected.

Lastly, the learned counsel submitted that the prosecution has not established that the appellant was taking the milk for the purpose of sale. This plea was rejected by the High Court, accepting the evidence of P.W. 2 that he knew the appellant personally and that the appellant carried on the business of selling milk in Orai and possessed a licence in selling milk in the preceding years and also in the current year. According to the witness the appellant brought milk from the rural areas and sold it in Orai in the current year and the milk was sold by him to hotel keepers. The evidence of this witness was accepted by the High Court and we see no reason to reject the testimony of P.W. 2. The plea of the appellant that he was taking the milk for supplying it to one Triyugi Narain Pandey was rightly rejected by the High Court.

In the result we are unable to accept any of the submissions made by the learned counsel for the appellant. We confirm the conviction under section 8(1) read with section 16 of the Prevention of Food Adulteration Act. The sentence being the minimum prescribed under the Act it cannot be interfered with. In the result the appeal is dismissed.

S.R.

*Appeal dismissed.*