

PETITIONER:
RAM LAL

Vs.

RESPONDENT:
STATE OF RAJASTHAN

DATE OF JUDGMENT: 01/11/2000

BENCH:
K.T. Thomas, & R.P. Sethi.

JUDGMENT:

THOMAS, J.

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Appellant claimed that since the milk he sold was that of a she-camel he cannot be prosecuted and convicted under the provisions of the Prevention of Food Adulteration Act, 1954, (for short the Act). The trial court accepted his claim and acquitted him on the premise that no standard has been fixed under the Act for such milk. But the High Court, after holding that camels milk could not be sold for human consumption, further held that the milk sold was not shown to be camels milk at all. Nonetheless, learned single judge of the High Court, on the appeal preferred by the State, convicted the appellant under Section 16(1) of the Act and sentenced him to rigorous imprisonment for 6 months and to pay a fine of Rs.1,000/-.

Shri Doongar Singh, learned counsel for the appellant seemed to be more concerned with that part of the judgment by which the High Court declared that camels milk cannot be sold for human consumption. Learned counsel expressed the apprehension that the above view of the High Court would affect the people of the State of Rajasthan by and large as many of them habitually consume camels milk.

Now it is a 22-year old story as the Food Inspector had purchased milk from the appellant on 9.10.1978. He took sample therewith on the spot. One part of the sample was sent to the Public Analyst for examination. The report of the Public Analyst showed that the sample was examined and found to contain 25% of added water and that the milk fat was 4.1% and the milk solid non-fat was 6.74%. After the prosecution evidence was completed in the trial court appellant offered himself to be examined as a witness. In his evidence he did not dispute the fact that Food Inspector purchased milk from him nor the stand of the Food Inspector that sampling was done in his presence. However, appellant took the stand that it was milk of camel which was edible and that he did not add water to it. His defence was that no standard was fixed for camels milk and hence he is not liable to be convicted on the strength of the report of the Public Analyst.

It is an unnecessary exercise to discuss whether the milk sold by the appellant was camels milk or any other

class of milk. In this case the prosecution did not suggest what class of milk had been sold to the Food Inspector. Hence we have to proceed on the assumption that the milk sold by the appellant was camels milk. Appellant opted to give defence evidence on the impression that the charge which he was called upon to face was that he sold milk which was not usable for human consumption.

Part III of the Prevention of Food Adulteration Rules
(for short the Rules) contains Definitions and Standards@@
JJJ
of Quality of various articles of food. Rule 5 which falls@@
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within the said Part says that the standards of quality of various articles of food specified in Appendix B to these Rules are as defined in that appendix. Milk is defined in Item A.11.01.01 of Appendix B as the normal mammary secretion derived from complete milking of healthy milch animal without either addition thereto or extraction therefrom. But it shall be free from colostrum. The above definition does not differentiate between milk of different animals. Hence it is clear that camels milk also would fall within the amplitude of the said definition. The question whether the camel milk can be consumed by human beings as a food article need not vex us much, for, the Food Inspector in this case took the sample on the assumption that it was a food article. If it was not a food article the Food Inspector had no power to take sample therefrom. Section 10 of the Act confers power on the Food Inspector to take sample of any article of food. Food is defined in Section 2(v) as any article used as food or drink for human consumption, other than drugs and water and includes . (As the items included thereby are not very relevant for the purpose of this case the remaining part of the definition is omitted). We may observe that an article which is food does not lose its character as food by the fact that it was also used or sold for other purposes.

After observing that camels milk could not have been sold for human consumption learned single judge of the High Court proceeded to consider the evidence in the case to ascertain whether the sample was really that of camels milk. The evidence tendered by the accused to the effect that the milk sold by him was camels milk was simply sidelined by the learned single judge, but he did not reach any specific finding as to what class of milk had been sold to the Food Inspector. In our view, there is no room for dissenting from the defence version that it was camels milk that was sold to the Food Inspector. We would therefore proceed on that premise.

In Encyclopaedia Americana (volume 5, page 263) it is mentioned that the milk of camel is nutritious. In the World Book Encyclopedia it is said that millions of people who live in Africa and Asia depend on camels to supply most of their needs. For people who live deep in the deserts, camels are almost the only source of transportation, food, clothing, and shelter. They drink camels milk and also make cheese from it. The milk is so rich and thick that it forms hard lumps in tea or coffee.

In the book authored by Mr. G.S.Rathore, Former Director Animal Husbandary Department, Government of Rajasthan, which was published by Indian Council of Agricultural Research (ICAR is its acronym) under the title

Camels and their Management the following passage appears in Chapter 17:

Composition of Milk Milk does not occupy the same position in commerce as that of cows and buffaloes chiefly because of its limited availability. Besides, camels are not bred and reared as milch animals. However, camels milk is sold in some parts of the world and forms an important article of food for camel-rearers. She-camels are generally milked twice a day. They yield 2.5 to 5 kg a day, and some 15 kg a day. The location yield is reported to vary from 1300 to 3600 kg, depending on the extent of feeding and care. But a low yield is the rule.

Like the milk from other milch animals, she-camels milk is likely to vary in its gross composition with breed, individual animals, plan of nutrition, season and atmospheric temperature, age, stage of lactation, and the analytical techniques used. Most camel-rearers find the milk of camel sharp and saline in taste and hard to curdle or to prepare ghee from it by the usual methods. Much of the she-camels milk is consumed as liquid milk though some of it is used in preparing delicacies.

The study made with camels milk by various countries reveals that it contains fatty acid and the total protein is of the same order as in cows milk. In the same publication it is mentioned that Russian workers have made extensive studies on the vitamin contents of camels milk.

A French Scientific Organisation called CIRAD has been specialising in agricultural research for the tropics and subtropics of the world. Recently the said organisation came out with a paper which is available in internet (Website: <http://www.cirad.fr/publications/ouvrages/608/opening.html>). The following passage in it under the caption The camels milk commodity systems, how to lay a bet on modernity, and traditional techniques, can profitably be used for our purpose.

Some countries have already taken up the challenge of giving camels full productive animal status, an important factor in animal production economics. In most cases, the move was initiated by farsighted individuals who were ahead of their time and deserve recognition. The dairies set up here and there are an excellent, albeit isolated example, and the Laitiere de Mauritanie is a case in point. The private initiatives launched by farmers to sell milk in production zones or urban consumption areas is another striding example of the economic dynamism of these operations who have far too often been overlooked. This is currently the case in many animal production zones such as southern Morocco, more historically in Somalia, and on the ranches of northern areas where camels have been introduced alongside bovines and zebus, to quote just a few examples. In other areas, the move reflected a strong political commitment on the part of those in charge of the agricultural economy and their operational structures. This was the case in central Asia, where the camels milk commodity channels have entirely fulfilled the role assigned to them: feeding specific target populations in certain cities (for dietetic or therapeutic dietetic or therapeutic diets in hospitals), but also healthy populations for whom

camels milk products have a high symbolic value rather than being seen as mere foods. This is still the case in Africa, particularly Mauritania, where the authorities appreciate the manifold and productive role the species can play in providing milk to urban areas.

Even if the people outside camel rearing regions did not think of using milk of that mammal for human consumption, that is no reason to derecognise the practice of the people in those regions consuming milk of camel in the same manner as other classes of edible milk are consumed by people elsewhere.

For all the above reasons we are unable to agree with the finding of the High Court that camel milk is not fit for human consumption. We do recognise the fact that in some States in India, particularly in Rajasthan, camel milk is extensively used as edible article.

True, no standard has been specifically fixed for camels milk in the Rules. However, different standards have been fixed for different classes and designations of milk. In the table provided below the Rules, under Item A.11.01.11 of Appendix-B, only three classes of milk are mentioned i.e. buffalo milk, cow milk and goat or sheep milk. But clause (i) of the Note added to the table states thus:

When milk is offered for sale without any distinction of class, the standards prescribed for buffalo milk shall apply.

For buffalo milk different standards are fixed as for different States. For the State of Rajasthan the minimum milk fat fixed for buffalo milk is 5% and the milk-solids-non-fat should be 9%. In the present case the Public Analyst found (as pointed out earlier) that the sample of milk contains only 4.1% of milk fat and 6.74% of milk-solids-non-fat. In spite of the Note added to the table provided under the aforesaid items we have difficulty to treat the two constituents of camels milk on a par with buffalo milk for more than one reason. In the Encyclopedia Americana (International Edn.) a table is given for Average Composition of milk from different mammals. For buffalo milk the fat percentage is 7.73, and non-solids-fat percentage is 9.93 whereas for camel milk the average percentage of fat is 4.15 and solids-non-fat is only 8. Even in the publication made by the ICAR composition of camels milk is shown as fat 7.8 per cent and solids-non-fat 9.59 per cent.

If the above is the study report of even the ICAR it is for the prosecution to show how the minimum requirements fixed for buffalo milk would become scientifically relevant as for the camels milk. This is an area where the attention of the Central Government must be focussed for considering whether there should be re-fixation of the components as for the standard in respect of camels milk.

Be that as it may, the offence committed by the appellant is not merely that he sold sub-standard camels milk but he sold the milk by adding water thereto. Rule 44 of the Rules prohibits the sale of milk which contains any added water. The Public Analyst who tested the sample in the laboratory has reported that it contained 25% of added

water. Hence the offence to be found against appellant is Section 16(1)(a)(I) of the Act.

We, therefore, uphold the conviction of the appellant though for different reasons which we have adverted to above. Now we have to decide the question of sentence.

A plea was made before us to reduce the sentence to the minimum permitted under the first proviso to Section 16(1) of the Act. It is not disputed that if there are adequate and special reasons the sentence could be brought down to imprisonment for a term of 3 months and a fine of Rs.500/-, as this case falls within the ambit of clause (i) of the Proviso to Section 16(1).

Appellant was only 19 years old when he sold the milk to the Food Inspector. We have no doubt that it can be regarded as a special reason. Yet another reason is that appellant was put to notice by the prosecution in the High Court that the offence committed was that he sold an article which was not edible. We also take into account the fact that the appellant was not given any opportunity to say anything regarding the sentence. Of course, there was no need for the trial court to do so since appellant was acquitted by that court. But when the High Court had chosen to reverse the acquittal and convicted him he should have been heard on the sentence. Now it is too late in the day for us to send the case back to the High Court for that purpose alone. Any further delay in disposing of this matter would cause irreparable damage to him.

For all the above reasons we reduce the sentence to imprisonment for 3 months and a fine of Rs.500/-, default in payment of which the appellant will undergo imprisonment for a further period of 15 days.

The appeal is disposed of accordingly.