

PETITIONER:
MUNICIPAL COMMITTEE, AMRITSAR

Vs.

RESPONDENT:
HAZARA SINGH

DATE OF JUDGMENT 12/03/1975

BENCH:
GUPTA, A.C.
BENCH:
GUPTA, A.C.
BEG, M. HAMEEDULLAH
CHANDRACHUD, Y.V.

CITATION:
1975 AIR 1083

ACT:
Practice--Criminal appeal under Art. 136 of
Constitution--Improper invocation.

HEADNOTE:

A milk vendor was prosecuted for alleged adulteration, on the ground that there was a minimal shortfall in the percentage of "milk solids not fat" prescribed by the Prevention of Food Adulteration Rules. The trial court convicted but on appeal, the Sessions Judge made a passing reference to an obiter observation of this Court in the Malwa Cooperative-Milk Union Ltd., Indore v. Biharilal, (Criminal Appeal No. 235 dated 14-8-1967) ignored the minor deficiency observing that it was in the nature of permissible error and acquitted the accused. An appeal against acquittal was dismissed by the High Court.

Dismissing the appeal to, this Court,

HELD : In the Malwa Cooperative Milk Union Ltd. v. Biharilal this Court while holding that the revisional power of the High Court is reserved for setting right miscarriage of justice and not for being invoked by private prosecutors, made an obiter observation, to drive home the point, that the case itself was so marginal that the difference from the set standard was microscopic. The Sessions Judge was perhaps wrong in tearing that passage out of context and devising a new defence out of it in respect of food adulteration cases. But an appeal with special leave under Art. 136 should not have been filed merely to get a declaration that a casual statement in a judgment of the Court is not its ratio. [915 E-G, 916 E]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 228 of 1972.

Appeal by special leave from the judgment and order dated the 12th June, 1972 of the Punjab & Haryana High Court in Criminal Appeal No. 883 of 1972.

Naunit Lal, for the appellant.

The Judgment of the Court was delivered by

KRISHNA IYER, J. We regret to begin this judgment with the

observation that the high purpose of reserving the Supreme Court's jurisdiction for substantial legal issues affecting the nation, should not be taken by cases of lesser consequence. The present criminal appeal is a signal instance of litigation of little public interest being brought up here, holding up other momentous causes.

The facts

A petty milk vendor was prosecuted for alleged adulteration, proof of which rested on a minimal shortfall in the percentage of 'milk solids not fat' going by the prescribed standard (Rule 5 of the Prevention of Food Adulteration Rules). The plea of the accused that, if at all, there might have been a marginal error, while the analysis was conducted was rightly rejected and the Magistrate sentenced him to imprisonment and fine as laid down in s-7 and s.16(1) of the Prevention of Food

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Adulteration Act (hereinafter called the Act). The milk vendor hopefully appealed and impressed by the fact that the milk solids were of the required standard and the 'milk solids not fat' were slightly sub-standard, the Sessions Judge ignored the minor deficiency which is in the nature of permissible error' and acquitted the accused.

The Municipal Committee pursued the matter to the High Court in appeal. But a Division Bench of that Court dismissed it in limine, presumably as too trivial for an appeal against acquittal. However, the appellant has arrived in this Court claiming that this is a test case and making it appear that some important question of law hangs on the decision, although it was represented, at the time special leave was sought by the counsel, 'that his clients will not press for the conviction of the respondent'. This latter representation itself is suggestive of the absence of seriousness surrounding this particular case. Apart from this tell-tale circumstance, the facts we have set out above show that nothing grave or great in law, by way of miscarriage of justice or general public importance is involved. This is one of those routine cases, comparatively insignificant, where one court has acquitted and the High Court has felt it unjustified for appellate reversal. It is of paramount importance that this Court's time should not be consumed by questions which are trifles.

It is plain from submission of counsel that the appellant's grievance is not so much against the acquittal as against a passing reference by the Sessions Court to an obiter observation of this Court in *The Malwa Cooperative Milk Union Ltd., Indore v. Biharilal*(1). Obviously, the Sessions Judge had concluded that a minor error in the chemical analysis might have occurred: He was perhaps not right in saying so. Anyway, a reading of his judgment-shows that the mention of this Court's unreported ruling (supra) was meant to fortify himself and not to apply the ratio of that case. Indeed, this Court's decision cited above discloses that Hidayatullah, J. (as he then was) was not laying down the law that minimal deficiencies in the milk components justified acquittal in food adulteration cases. The point that arose in that case was whether the High Court was justified in upsetting an acquittal in revision, when the jurisdiction was invoked by a rival trader, the alleged adulteration having been so negligible that the State had withdrawn the prosecution resulting in the acquittal. Certainly, the revisional power of the High Court is reserved for setting right miscarriage of justice, not for being invoked by private persecutors. Such was the ratio but, in the course of the judgment, Hidayatullah J, to drive home the point

that the case itself was so marginal, referred to the microscopic difference, from the set standard. To distort that passage, tear it out of context and devise a new defence out of it in respect of food adulteration cases, is to be grossly unjust to the judgment. Indeed, the Kerala case cited before us by counsel viz., State of Kerala v. Vasudevan Nair(2) itself shows that such distortion of the passage in the judgment did not and could not pass muster. When

(1) CrL. As Nos. 235 & 236 of 1964, decided on 14-8-1967.

(2) CrL. A. 89 of 1973 decided by the Kerala High Court on 18-7-1974-All India Prevention of Food Adulteration Cases Reporter, 1975 Part 1, p. 8.

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pressed with such misuse of this ruling, the High Court repelled it. 'The law of food adulterations as also the right approach to decisions of this Court, have been set out correctly there,

"Judicial propriety, dignity and decorum demand that being the highest judicial tribunal in the country even obiter dictum of the Supreme Court should be accepted as binding. Declaration of law by that Court even if it be only by the way has to be respected. But all that does not mean that every statement contained in a judgment of that Court would be attracted by Art. 141. Statements on matters other than law have no binding force. Several decisions of the Supreme Court are on facts and that Court itself has pointed out in Gurcharan Singh and Anr. v. State of Punjab (1972 FAC 549) and Prakash Chandra Pathak v. State of Uttar Pradesh (AIR 1960 SC 195) that as on facts no two cases could be similar, its own decisions which were essentially on questions of fact could not be relied upon as precedents for decision of other cases."

* * * * *

"The standard fixed under the Act is one that is certain. If it is varied to any extent, the certainty of a general standard would be replaced by the vagaries of a fluctuating standard. The disadvantages of the resulting unpredictability, uncertainty and impossibility of arriving at fair and consistent decisions are great."

It is extraordinary that an appeal with special leave under Art. 136 should have been filed, to get a declaration that a casual statement in a judgment of this Court which ex facie had no kinship with the question under decision, was not the ratio in the case.

This. appeal was ill-advised, misconceived and unnecessary and merits dismissal.

V.P.S.

Appeal dismissed.

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