

1949

*Present : Gratiaen J.*

JAYASENA, Appellant, and DABERA (Sanitary  
Inspector), Respondent

*S. C. 274—M. M. C. Colombo, 42,238*

*Milk—Adulterated—Found in possession of servant—Liability of dairyman—  
Colombo Municipal Council—By-laws—Rules 8 and 5.*

A registered dairyman is guilty of an offence under rule 5 of Chapter 14 of the by-laws of the Colombo Municipal Council if adulterated milk is found in the possession of his authorized servant while engaged on his business.

**A**PPPEAL from a judgment of the Municipal Magistrate, Colombo.

*F. W. Obeyesekere*, for accused appellant.

*L. G. Weeramantry*, for complainant respondent.

*Cur. adv. vult.*

March 24, 1949. GRATIAEN J.—

The appellant was a dairyman duly registered under the provisions of the Municipal Councils Ordinance (Chapter 193). During the period relevant to these proceedings he employed a man named Velaythen among others to deliver milk to his regular customers and at the appellant's request a milk vendor's card had been issued to Velaythen by the Municipal authorities in Colombo.

On September 27, 1948, Sanitary Inspector Dabera of the Colombo Municipal Council met Velaythen who was returning from a bungalow in Karlshurue Place at which he had delivered milk to a customer of the appellant. Samples of the milk still in Velaythen's possession and intended, presumably, for delivery to other customers were taken by the Inspector and, on analysis by the City Analyst, the milk was found to be adulterated to a most scandalous degree. The appellant was charged with the commission of an offence punishable under the Council's by-laws relating to the adulteration of milk. He was found guilty and sentenced to pay a fine of Rs. 500.

No attempt was made on the appellant's behalf either in the Court below or at the hearing of this appeal to contest the position that on the day in question Velaythen was engaged on the appellant's business. It has nevertheless been strenuously argued that the evidence does not establish the commission of any offence. I am glad to find that this is not so.

The relevant by-laws are rules 5 and 8 of Chapter 14 of the by-laws of the Colombo Municipal Council. Rule 8 provides as follows:—

Should any sample of milk taken under the provisions of the preceding by-laws prove to be adulterated, the person in whose possession it is found shall be guilty of an offence. If such person be a vendor of, or a person in the employ of, or acting on behalf of, a dairyman, then both such person and the dairyman shall be guilty of an offence.

I agree with learned Counsel that no offence could be committed under rule 8 unless the offending sample of adulterated milk had been taken on an occasion authorized by the by-laws. It is therefore necessary to examine the scope of rule 5 in order to decide whether the sample taken from Velaythen had been lawfully obtained by Inspector Dabera.

Rule 5 empowers Municipal Inspectors and certain other officers to demand and to take for purposes of analysis samples of any milk "which is in possession of a registered dairyman or of any person who is found selling, hawking or exposing milk for sale". It is I think sufficiently clear that at the time of the incident Velaythen was not "a person

selling or hawking or exposing milk for sale". He was not soliciting custom or in any sense negotiating a sale of his master's milk but had merely delivered what was already the subject of a concluded contract of sale between the appellant and the customer concerned—*White v. Mayor of Yeovil*<sup>1</sup> and *Juan Appu v. Perera*<sup>2</sup>. The latter part of rule 5 is therefore inapplicable. This does not, however, conclude the matter, because I am satisfied that the adulterated milk of which a sample was taken by the Inspector must be regarded as having been "in the possession of" the appellant within the meaning of rule 5. The appellant was a registered dairyman and in my opinion it is not necessary for the purposes of rule 5 that the milk should actually have been found in his physical custody. The rule is satisfied if milk is found in the possession of a registered dairyman's authorized servant while engaged on his master's business—*Regina v. Williams*<sup>3</sup>. The by-laws prohibiting the adulteration of milk have been specially enacted in the interests of public health and would to a great extent be rendered nugatory and indeed absurd if—unless the prosecution could prove hawking or an actual sale—their scope were to be restricted to those rare cases where milk is traced to the physical custody of a dairyman himself. The language of rule 5 does not compel such an unreasonable interpretation of its true meaning. A dairyman's business requires that the milk which he proposes to deliver to his customers should be handled by one or more persons employed for the purpose, and it seems to me that the possession of milk by each and every servant acting within the scope of his employment should be regarded in law as his master's possession for which the master is responsible. Rule 5 does not require proof of sale, exposure for sale or of hawking in cases where adulterated milk is found in the possession of a registered dairyman or his servant. That requirement only arises in the case of milk found in the legal possession of some person other than a registered dairyman.

For the reasons which I have given I hold that the milk in Velaythen's possession on the day in question was milk "in the possession" of the appellant within the meaning of rule 5. The appeal is devoid of merit and must be dismissed. In my opinion this is a case where an order for costs against the appellant in terms of section 352 of the Criminal Procedure Code would be justified. The appellant has flagrantly abused the privilege of carrying on a profitable business as a dairyman in the city of Colombo. I order him to pay to the respondent a sum of Rs. 52.50 as costs of this appeal. Mr. Obeyesekera's enthusiastic advocacy was worthy of a better cause.

*Appeal dismissed.*

<sup>1</sup> (1892) 61 L. J. M. C. 213.

<sup>2</sup> (1944) 45 N. L. R. 216.

<sup>3</sup> 174 E. R. 207.