

M.Ismail vs S.K.Krishnakumar

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Court : Kerala

Decided On : Jul-30-2020

Judge : Honourable Mr.Justice N.Anil Kumar

Appeal No. : Crl.Rev.Pet/1298/2004

Appellant : M.Ismail

Respondent : S.K.Krishnakumar

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE N.ANIL KUMAR
THURSDAY, THE 30TH DAY OF JULY 2020 / 8TH SRAVANA, 1942
Crl.Rev.Pet.No.1298 OF 2004 AGAINST THE JUDGMENT
DTD.12.2.2004 IN Crl.Appeal No.114/2002 ON THE FILE OF THE
ADDITIONAL SESSIONS COURT, ALAPPUZHA ARISING FROM
JUDGMENT DTD.12.4.2002 IN C.C.No.192/1997 ON THE FILE OF THE
JUDICIAL FIRST CLASS MAGISTRATE COURT, AMBALAPUZHA
REVISION PETITIONER/APPELLANT/ACCUSED:- M.ISMAIL,
S/O.MOHAMMED KUNJU, GENERAL MERCHANT, DOOR No.XIII-780,
PUNNAPARA. BY ADV.SRI.K.S.HARIHARAPUTHRAN
SRI.M.D.SASIKUMAR SRI.P.J.JOSEPH SRI.GEORGE MATHEW

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE:-

1 S.K.KRISHNAKUMAR, FOOD INSPECTOR, ALAPPUZHA CIRCLE (FOOD INSPECTOR PUNNAPARA PANCHAYAT), PAZHAVEEDU.P.O., ALAPPUZHA. 2 STATE OF KERALA, REPRESENTED BY DISTRICT COLLECTOR, ALAPPUZHA, THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY SENIOR PUBLIC PROSECUTOR SRI.M.S.BREEZ THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 27-07-2020, THE COURT ON 30-07-2020 PASSED THE FOLLOWING: ..2..

ORDER

The revision petitioner is the accused in C.C.No.192/1997 on the file of the Judicial First Class Magistrate Court, Ambalapuzha for the offences under Sections 2(1a) c(m), 7(1) and Rule 5 Appendix B.A punishable under Section 16(1)(a) of the Prevention of Food Adulteration Act, 1954.

2. By judgment dated 12.4.2002 the learned

Magistrate convicted and sentenced the accused to undergo simple imprisonment for one year for the offences under Sections 2(1a) c(m), 7(1) and Rule 5 Appendix B.A punishable under Section 16(1)(a) of the Prevention of Food Adulteration Act, 1954. The accused challenged the conviction and sentence before the Additional Sessions Court, Alappuzha in CrI.Appeal No.114/2002. The learned Additional Sessions Judge while confirming the conviction, modified the sentence to simple imprisonment for six months for the offences under Sections 2(1a) c(m), 7(1) and Rule 5 Appendix B.A punishable under Section 16(1)(a) of the Prevention of Food Adulteration Act,

1954. Challenging the conviction and sentence, the revision petitioner is before this Court. ..3..

3. The prosecution case in brief is that, on 13.2.1996

at about 11 am, the complainant approached the grocery shop bearing registration No.13/780 of the Punnapara Panchayat and after disclosing his identity to the accused purchased 300 gms. of chilly powder from the accused. On analysis by the Public Analyst, the sample was not conforming to the standard prescribed for the chilly powder under the Prevention of Food Adulteration Act and the Rules and therefore adulterated.

4. During the trial, PWs.1 to 4 were examined and marked Exts.P1 to P21 on the prosecution side. DWs.1 and 2 were examined and Exts.D1 and D2 were marked on the defence side.

5. Relying on the decision in *Pepsico India Holdings*

Pvt.Ltd. v. Food Inspector and another [2011 (1) SCC 176] and *Rasheed.N.K. v. Food Inspector, Thalassery and another* [2016(2) KHC 679] the learned counsel for the revision petitioner contended that the analysis was done from a Laboratory not defined in terms of Section 23(1A)(ee) of the Prevention of Food Adulteration Act. In the case at hand, the basis of complaint was the report of the public analyst and the

..4.. materials on record would show that the public analyst had conducted analysis from a Laboratory not defined in terms of the provisions under Section 23(1A)(ee) of the PFA Act after following the prescribed method under Section 23(1A)(hh) of the PFA Act.

6. Sections 23(1), 23(1A)(ee) and 23(1A)(hh) read as follows:-

23. Power of the Central Government to make rules.- (1) The Central Government may, after consultation with the Committee and after previous publication by notification in the Official Gazette, make rules to carry out the provisions of this Act. Provided that consultation with the Committee may be dispensed with if the Central Government is of the opinion that circumstances have arisen which render it necessary to make rules without such consultation, but, in such a case, the Committee shall be consulted within six months of the making of the rules and the

Central Government shall take into consideration any suggestions which the Committee may make in relation to the amendment of the said rules.

(1A) In particular and without prejudice to the generality of the foregoing power, such rules ..5.. may provide for all or any of the following matters, namely:- xxx xxx xxx

(ee) defining the laboratories where samples of articles of food or adulterants may be analysed by public analysts under this Act. xxx xxx xxx

(hh) defining the methods of analysis.

7. In the above circumstances, in terms of the dictum laid down by the Apex Court in Pepsico's case (supra) the learned Magistrate should not have taken cognizance on the

complaint based on the report of the Public Analyst. Indisputably, no such Laboratories were defined in terms of the said provision till the repealing of the Prevention of Food Adulteration Act, 1954. Hence consequent trial, conviction and sentence imposed against the accused are illegal. In the result, this Criminal Revision Petition stands allowed. The judgment passed by the learned Judicial First Class Magistrate, Ambalapuzha in C.C.No.192/1997 and the

judgment passed in Crl.Appeal No.114/2002 by the Additional

Sessions Court, Alappuzha are set aside. The revision ..6.. petitioner/accused is found not guilty for the offences under Sections 2(1a) c(m), 7(1) and Rule 5 Appendix B.A punishable under Section 16(1)(a) of the Prevention of Food Adulteration Act, 1954 and he is acquitted thereunder. Cancelling his bail bond, this Court directs that he be set at liberty. Sd/- N.ANIL KUMAR, skj JUDGE

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