

Public Prosecutor Vs. Y. Pulla Reddy

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Court : Andhra Pradesh

Decided On : Jun-24-1965

Reported in : AIR1966AP302; 1966CriLJ1122

Judge : Anantanarayana Ayyar, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 2, 7, 10, 10(1) and 16(1); Prevention of Food Adulteration Rules - Rule 44

Appeal No. : Criminal Appeal No. 750 of 1963

Appellant : Public Prosecutor

Respondent : Y. Pulla Reddy

Advocate for Def. : K. Somakonda Reddy, Adv.

Advocate for Pet/Ap. : P.A. Inriah Reddy, Adv. for ;Public Prosecutor

Disposition : Appeal dismissed

Judgement :

Anantanarayana Ayyar, J.

1. In C.C. No. 115 of 1963 on the file of the learned Judicial First Class Magistrate, Kurnool the Food Inspector (Municipal Health Officer), Kurnool filed a complaint against the sole accused to the effect that the latter committed an offence under

Section 16(1) and Section 7 read with Section 2(vi) (a) and (b) and Rule 44 (b) of the Prevention of Food Adulteration Act and Rules, 1934. The accused denied the offence. The learned Magistrate, after full trial, acquitted the accused. The learned Public Prosecutor filed this appeal against the order of acquittal.

2. The complaint runs as follows: 'On 24-11-1962, the accused was found selling mixture of cow's and buffalo's milk to the Bus stand hotel. A sample of cow's and buffalo's milk was taken from him. It was divided into three parts as per rules, sealed and marked as Sample No. 248 and delivered one of the sealed bottle bearing No. 248 to the accused and sent another bottle to the Public Analyst who certified that the sample contains 8 per cent of added water and is, therefore, adulterated. Hence the accused is charged.'

3. The prosecution examined two witnesses. P. W. 2 is the Food Inspector, P. W. 1 is a servant in a hotel at the Kurnool Bus stand and he deposed to have been present when the accused brought a milk can to the hotel and when P. W. 2 seized a sample. Ex. P-3 is the panchanama prepared on the occasion. P. W. 1 says that he signed it. The signature is in Urdu in the name of Mohd. Sab. In Court, P. W. 1's deposition mentions him as Mohd. Sab in portions written by the Court clerk but the signature of P. W. 1 under the deposition in Urdu contains name 'Mohd. Moula'. Shri Somakonda Reddy, the learned Advocate for the respondent, points out this particular feature. The lower Court, in its judgment, did not refer to the difference in the names but observed and acted on the fact that the signature in the deposition was quite different from that in Ex. P-3.

4. The accused said that some ryots of Pudicherala arranged to sell milk to Dilip hotel and that he took the milk from Puduru to the Dilip hotel under certain arrangement. He examined one defence witness (D. W. 1) who is a producer of milk at Pndicherla. He deposed that he had agreed to sell 30 seers of milk at Rs. 0-10-0 per seer to Dilip hotel and that the accused was arranged to carry the milk from the hotel to the village. He also said as follows:

'We were paying Rs. 30 per month excluding the bus fares.'

The learned Magistrate understood this statement of D. W. 1 as meaning that the accused was a servant engaged by the vendors like D. W. 1 and also the vendee namely, Dilip Hotel for the mere purpose of carrying the milk. On that basis, he held that as the accused was an agent of the purchaser in addition to being an agent of the seller for the mere purpose of delivering the milk at the hotel, he (accused) could not be and was not aware of the contract between the parties and did not know whether the milk was for sale or otherwise. The learned Magistrate felt that the accused had to be given the benefit of doubt.

The learned Magistrate also relied on some other grounds for acquitting the accused i.e., that there was grave suspicion on the actual taking of the sample itself etc. These grounds, on which he relied to doubt whether the sample was taken, are not of any importance because the accused himself has admitted the fact that the sample was taken. But I do not see sufficient reason to disagree with the finding of the learned Magistrate that the accused acted as a carrier on behalf of not only the vendors but also the vendee namely, the hotel. If the accused was carrying on milk as an agent of the vendee, in effect delivery to vendee would have been complete before the sample was taken.

5. Shri Somakonda Reddy, the learned Advocate for the respondent, contends that the taking of the sample from the accused, which amounted to taking a sample from the agent of the purchaser, will not amount to a sale. The learned Magistrate obviously held the view that, as the accused was an agent of the vendee who had taken possession of the milk and was carrying it to the hotel, the accused was not in a position to sell the milk which was in his custody purely for the purpose of carrying and not for sale and that, therefore, the taking of sample by the Food Inspector from the accused did not amount to a sale as defined in Section 2(xiii), though the Food Inspector paid the value for that milk.

6. The learned Public Prosecutor relies on the decision of a Bench of this Court in Public Prosecutor v. Nagabhushanam, : AIR 1965 AP118 and contends that the transaction by which the Food Inspector (P. W. 2) came into possession of the milk amounted to sale by the accused irrespective of the question whether the accused was an agent of the consignee and was carrying the milk purely as a

carrier without any power to sell the milk. On the other hand, the learned Advocate for the accused, Shri Somakonda Reddy, relies on two other decisions and contends that the transaction did not amount to a sale.

7. 'Sale is defined in Section 2(xiii) as follows:

'Section 2(xiii). 'Sale' with its grammatical variations and cognate expressions, means the sale of any article of food, whether for cash or on credit or by way of exchange and whether by wholesale or retail, for human consumption or use, or for analysis, and includes an agreement for sale, an offer for sale, the exposing for sale or having in possession for sale of any such article, and includes also an attempt to sell any such article.'

8. In *Food Inspector v. Parameswaran*, 1962 (1) Cri LJ 152 (Ker), the prosecution case was that the accused was a milk vendor and was taking milk to a coffee hotel for the purpose of sale. The case of the accused, supported by one defence witness namely, hotel proprietor, was that he was only in the act of delivering to D. W. 1 the milk which he had got by milking e buffalo of D. W. 1, he being only a man engaged for the purpose of milking on a monthly wage of Rs. 10. The learned Judge P. T. Raman Nayar, J. held as follows: (at p. 153)

'Both the Magistrate and the Sessions Judge have proceeded on the footing that the gravamen of the charge was that the accused was in possession of milk for the purpose of sale, an act which amounts to a sale by reason of the definition in Section 2(xiii) of the Act. If that were so, there would be nothing more to be said in the case, but I find that the charge which the accused was actually called upon to answer was that he had sold one bottle of buffalo's milk which was adulterated with water. It is clear that the charge relates to the transaction by which P. W. 1 obtained one bottle of milk from the accused, that it regards this transaction as a sale and that it was this case namely, that he had sold one bottle of adulterated milk to P. W. 1 that the accused was called upon to meet. It, therefore, becomes necessary to consider whether the transaction is a sale within the meaning of the Act.'

The Learned Judge observed as follows: (at p. 153)

'.....In these circumstances, it is abundantly clear that the accused knew who P. W. 1 was, that he must have known that P. W. 1 wanted the milk for the purpose of being analysed so that the accused could be prosecuted if it was adulterated, and that the accused would not have given the milk to P.W. 1 if he could have helped it. It could only have been because of the power given to P.W. 1 by Section 10 of the Act, and the sanction provided by Section 16(1)(b), that the accused handed over the milk, and I have little doubt that this was a case of a seizure or a compulsory acquisition of the milk in exercise of the power conferred on P.W. 1 by Section 10 of the Act.'

The learned Judge also observed as follows:

'As sale is a voluntary transaction and a seizure or compulsory acquisition in exercise of statutory power is not a sale within the ordinary sense of that word. Nor does the definition of 'sale' in Section 2(xiii) as including a sale of food for analysis make it one, for, the first requisite even under the definition is that there must be a sale.' (at p. 1-54).

'..... Of course , it is possible for a Food Inspector just like any other human being to effect a purchase in the ordinary course, and the transaction would be a sale notwithstanding that the purchaser is a Food Inspector and that his purpose is to have the article analysed with a view to prosecution. But, if he obtains the article not by a voluntary exchange for price but in exercise of his statutory power under Section 10 of the Act the transaction is not a sale notwithstanding that in obedience to Sub-section (3) of Section 10 its cost--and I think the sub-section advisedly uses the long phrase, 'its cost calculated at the rate at which the article is usually sold to the public' instead of the word, 'price' --is paid to the person from whom the sample is taken.'

The learned Judge held on the facts of that case that the article had been seized by exercising his statutory power under Section 10 of the Act and was not a 'sale'. The learned Judge relied for this purpose on the observation of Horwill, J. in *In re Beliemkonda Kanakayya*, AIR 1942 Mad 609 as follows:

'In this case, the petitioner would presumably not have parted with the goods voluntarily when he knew that they would be used for the purpose of bringing a case against him and his master. The petitioner was not, therefore, guilty of selling ghee.'

9. This decision was followed by Anantanarayanan J. in *In re Rathamani*, (1964) 2 Mad LJ 543: (AIR 1965 Mad 146), wherein the learned Judge observed as follows:

'As the lower appellate Court itself remarks, the fact that a sample of adulterated milk was purchased by the Inspector (P. W. 1) is not in dispute . . . Hence as far as the scientific standard of purity prescribed in the Rules is concerned, this is an adulterated sample. If it was intended for sale or as being taken for sale, the revision petitioner would certainly be liable to be convicted as found by the Courts below It is quite possible, and even probable, that the accused was taking the milk for manufacture of curd, which was his business The accused was not prosecuted for any offence under Section 16(1)(d) of the Act, and the necessary facts were not established. Hence, on the facts of the present case, the accused would appear to be entitled to an acquittal, unless it can be construed that, when P. W. 1 purchased a sample of milk from this accused for purposes of analysis, that delivery of the sample itself amounted to a 'sale' within the meaning of the Act, and hence rendered the accused liable for prosecution for sale of an adulterated article.'

After referring to the decision in 1962 (1) Cri LJ 152 (Ker) the learned Judge observed as follows:

'He may sell the milk or the concerned foodstuff thinking that he is selling it to a member of the public, precisely like a sale to any other customer. But, if the vendor is aware that the sale is a forced one, in the sense that an official of the Department is compelling the vendor to part with the sample, because of the statutory obligation and further because prevention of the taking of such a sample by the Food Inspector is itself an offence under Section 16(1)(d) of the Act, then there is no 'sale', this is only a case of seizure or compulsory acquisition, though it may externally wear the form or semblance of a sale. Upon that interpretation,

even if the sample had been adulterated, this single act of delivery of the foodstuff to the Official will not render the person in possession of the foodstuff liable for the offence of a sale of adulterated food.'

The learned Judge referred to the observations in AIR 1942 Mad 609 as follows:

'A sale is a voluntary transaction even when it is preceded by an agreement to sell. When a person exhibits articles in his shop, he is making a general offer to sell them, and any person who comes into the shop and offers the price accepts his offer; but the intending purchaser cannot use physical force or threats to compel the owner to part with the goods. If he does, the transaction is not a sale. If the Sanitary Inspector had not exercised his powers under section 14 but had merely tendered the money and the petitioner had voluntarily handed over the goods, then there would have been a sale.'

10. In : AIR 1965 AP118 , the relevant facts were as follows. The accused was running a kirana shop at Nidadavole. The Food Inspector (P. W. 1) inspected the shop and found the accused present at the shop and tin (M. O. 1) containing about four visces of coconut oil kept there by the side of an iron balance. The tin had a label on it with the words 'Silver clean cocoanut oil'. P. W. 1 called two mediators and then, in their presence, seized a sample of the oil and paid As. 11 to the accused towards the cost and obtained a signed receipt (Ex. P-2). On analysis, the oil was found to be adulterated. The accused pleaded that the oil kept in the tin, from which the Food Inspector took a sample, was not meant for sale and contained discarded shift. He also pleaded that P. W. 1 took the sample by show of force. A Division Bench of this Court held that these pleas were not true. In effect, it was held on facts that there was no force used in getting the article from the accused and that the article was kept exposed for sale in the shop. It was also observed as follows:

'Furthermore, as the respondent had sold the oil to P. W. 1 for analysis, his act constituted a sale within the meaning of Section 2(xiii) of the Act. By its very definition, a sale is not any the less a sale because it is for analysis; it need not necessarily be for human consumption or for human use. The purchase of a sample by a Food Inspector is not for his personal consumption or use but is only

for the purpose of detecting if the article of food is adulterated. It is obviously for this reason that Section 19 of the Act which sets out the defences open to accused persons in prosecutions under the Act, expressly rules out a plea that the purchaser of an article of food for analysis, was not prejudiced by the transaction

As it was definitely found that the article was exposed for sale, the finding that the accused exposed the article for sale and had in possession for sale was by itself sufficient to bring it within the definition of 'sale' in Section 2(xiii) as observed in 1962 (1) Cri LJ 152 (Ker) and (1964) 2 Mad LJ 543: (AIR 1965 Mad 146). It was held on the facts of that case namely, that the accused was a regular shop-keeper and was sitting in his shop and had in his possession the cocoanut oil for sale and exposed it for sale and allowed the Food Inspector to take the sample and also received money without any compulsion, that there was a sale. In effect, it was held that there was no compulsion and that there was a sale in the sense of the accused giving the article willingly and voluntarily.

11. Section 10(1) of the Act runs as follows:

'Powers of Food Inspectors -- (1) A Food Inspector shall have power

(a) to take samples of any article of food from

(i) any person selling such article;

(ii) Any person who is in the course of conveying, delivering or preparing to deliver such article to purchaser or consignee;

(iii) a consignee after delivery of any such article to him;

In a case covered by item (iii) ordinarily a consignee, who had received the article, will not be keen on selling the article to the Food Inspector especially when the amount he receives under Sub-section (3) of Section 10 of the Act is not particularly attractive to him. On the other hand, a person coming under item (i) will ordinarily be willing to sell the article as he is a vendor who is out for effecting sales unlike a person under item (iii). If a person coming under item (ii) is a person

who is a mere carrier taking the article to a person who had already purchased and has no power to dispose of the goods or part with the goods he will not ordinarily allow the Food Inspector to take a sample except by the latter exercising his power under Section 10 of the Act to take sample against the will of the person. Section 2(xiii) expressly contemplates the sale for analysis. If there is such a sale to the Food Inspector, it will still fall under Section 2(xiii), unaffected by the fact that the sale is to a Food Inspector. In the case of such a sale also, the Food Inspector has to take suitable steps for analysis Just as in any case of seizing the articles from a person by compulsion instead of getting it under a sale.

12. Section 10 is the only provision in the Act regarding how the Food Inspector is to take possession of the articles. Similarly, Section 11 is the only provision in the Act as to the procedure to be followed by the Food Inspector to get the article analysed to ascertain whether it is adulterated or not, This Section 11 makes provision only about sample of food which he takes for analysis under Section 10. It cannot be said that when a Food Inspector takes sample from a person it must always be by compulsion and seizure. It can be either by way of voluntary sale by the person in possession or by way of compulsion. Whether the transaction is a sale that is, by the person concerned delivering to the Food Inspector voluntarily and willingly without force or show of force on the part of the Inspector or fear on the part of the person delivering the article, or whether it is a compulsory seizure by the Food Inspector against the will of the person who delivers the article is a question of fact which has got to be decided in each case.

It cannot be presumed in each and every case that the securing of the article by the Food Inspector is only by compulsion and not by sale. There may be many instances where a person, who has an article of food with him, may be perfectly willing to sell it to the Food Inspector for analysis. For example, it may not be adulterated or the person who is willing may sincerely believe that it is not adulterated or he may believe that if he readily offers to give a sample by way of sale for analysis he may thereby make the Food Inspector feel that the article must be unadulterated and, therefore, make him desist from taking delivery of the article. It is Just like there being possibility of an accused making voluntarily a statement to a Police Officer which comes under Section 27 of the Evidence Act or

to a Magistrate under Section 164 Cr. P. C. Each case will have to be judged on its own merits from the circumstances.

13. In 1962 (1) Cri LJ 162 (Ker) though it was found that the accused possessed the article for sale, it was held from the circumstances that it was a seizure or a compulsory acquisition by exercise of power conferred on the Food Inspector by Section 10 of the Act.

14. In (1964) 2 Mad LJ 543: (AIR 1965 Mad 146) the accused was taking milk for manufacture of curd which was his business and was not having possession of the milk for sale and did not expose it for sale. He delivered the sample to P. W. 1 for analysis and received money for the same. A person, who had possession of a thing and did not possess it for sale or expose it for sale, was made by the Food Inspector to deliver a portion and receive money for the same. In those circumstances, the learned Judge inferred that the delivery of the article and receipt of the money were purely by way of seizure or compulsory acquisition by P. W. 1 exercising his power under Section 10 of the Act because of the fact that the accused might have felt that there was a statutory obligation and that prevention of taking sample would amount to an offence under Section 16(1)(b) of the Act.

15. The decision of this Court in : AIR 1965 AP118 is not an authority for holding that, if an article is seized by a Food Inspector by using his powers under Section 10 of the Act and compelling a person in possession, of that article to deliver it to him (against his will) for analysis it will be sale for the purpose of Section 2(xiii) of the Act.

16. In this particular case, the learned Magistrate has held, on an appreciation of the evidence, that the accused was only an agent who had taken delivery of the article on behalf of the hotel keeper and apparently did not have authority to represent the hotel keeper for the purpose of selling it for analysis to the Food Inspector and so he would have effected a sale, voluntarily. I do not see sufficient reason to disagree with that finding and to hold that the accused committed an offence.

17. In the result, I confirm the order of acquittal and dismiss the appeal.

