

The Public Prosecutor Vs. Matha Satyam

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Court : Andhra Pradesh

Decided On : Jul-01-1969

Reported in : 1970CriLJ393

Judge : Ananthanarayana Ayyar, J.

Appellant : The Public Prosecutor

Respondent : Matha Satyam

Judgement :

Ananthanarayana Ayyar, J.

1. In C. C. 57 of 1967 on, the file of the Judicial First Class Magistrate Rajam, the Food Inspector, Rajam Panchayat Board filed a complaint against the accused alleging that on 24-6-1967 the accused had brought two seers of buffalo milk to Sankara Vilas for sale, that the Food Inspector took a sample of milk and gave Rs. 0.50 p. to the accused towards the price of the sample of milk after observing all the prescribed formalities that on analysis the milk was found to be adulterated and that therefore, the accused committed an offence punishable under Sections 16(1) and 7 and read with. Section 2(i)(a) and (1) and Rule 44(b) of the Prevention of Food Adulteration Act. The accused denied having committed the offence. The learned Magistrate, after full trial, acquitted the accused. The learned Public Prosecutor filed this appeal against the acquittal.

2. The prosecution examined two witnesses and their evidence is as follows:-P.W. 2 is the proprietor of Sankara Villas Coffee hotel. The accused is a milk-vendor. He was selling milk to the hotel daily and on 24-6-67 at about 7-00 -AM., the accused brought milk to P.W. 2 for sale. Then the Food Inspector P.W. 1 purchased half a litre of milk as sample from the accused for analysis and paid Rs. 0.50 p. to the accused. The latter received the amount and issued a receipt Ex. P-1 which states as follows:-

You have purchased from me half seer of buffaloe milk on 24-6-67 at 7-00 A.M. near Kalipu Guruvulu's hotel for sending the same to Hyderabad for purpose of analysis. As you have paid half rupee towards the (cost) therefor, I am in receipt of the same.

It bears the thumb impression of the accused. Ex. P. 2 is the notice. Ex. P-3 is another receipt signed by the accused in which he mentioned that P.W. 1 purchased half a seer milk and after paying the price, he filled it in three bottles corked and sealed them and gave one bottle to him. It is signed by P.W. 2 Ex. P. 4 Is the mediator's report which was prepared by P.W. 1, the Food Inspector. It purports to contain the signature of P.W. 2 and one T. Ramakrishna Rao (not examined) who is also said to be the scribe of it and the words 'mark of Yenduva Venkaya' who is the peon of P.W. 1. One of the samples bottles was duly analysed by the public analyst who sent a report, Ex. P. 6 to the effect that it contained only 11 per cent of added water. When questioned, the accused stated as follows:-

Q. You have heard the evidence of P. W. 2 by name Surya Rao, to the effect, that you would be selling milk every day to the Shankara Vilas Hotel. What do you Say?

Ans. I have got one buffalo. I will sell milk to whoever purchases (from me.).

When questioned about the actual occurrence, he stated as follows:-

I was taking milk to my nephew Chit-ti Appala Swamy on his requisition. On my way P. W. 1 caught hold of me and took me to the Office. He gave me Rs. 0.50 p.

and served a notice on me. I was made to affix thumb impressions.

One sample bottle was given to me, I was made to affix my thumb impressions. When questioned about the result of the analysis the accused stated as follows:

I did not mix water to it.

3. He pleaded 'Not guilty' to the charge framed against him under Sections 16(1)(a) and 7 read with Section 2(i)(a) and (b) of the Prevention of Food Adulteration Act and Rule 44 (b) and clause A-11 in Appendix B of P.F.A. rules. He examined one defence witness Chitti Appalaswamy whom the accused referred to above. He simply stated that he had asked the accused to supply him milk as he had relations, on some personal obligations. When cross-examined, he stated that he did not know that the accused was selling milk or even what the accused do with the milk of his she-buffaloe. The learned Magistrate, in his Judgment referred to the contention of the accused that he never intended to sell milk and he was taking it free of cost to his nephew, D.W. 1. But he did not discuss the evidence of D.W. 1 or express any opinion as to whether it was reliable or not or conclude that the statement of the accused was true, but he held that the prosecution failed to prove the charge beyond reasonable doubt for reasons mentioned by him in his judgment, as follows:-

(1) Purchase of milk by P.W. 1 for sampling in this case cannot be treated as a sale.

(2) The only mediator that was present at the time of seizure of sample of milk was under the influence of the Food Inspector P.W. 1 and therefore, he is not disinterested and not independent.

(3) The prosecution evidence is unreliable as there are corrections of date in Exs. P-2 and P-4.

4. Ground No. 1. The learned Public Prosecutor has relied on the decision of Chinnappa Reddy, J. in C. A. No. 301 of 1968, D/- 30-1-1968 (Andh. Pra.). In that case the relevant facts were as follows:-

The Food Inspector purchased a sample of milk for analysis from the accused and paid him the price for it and the milk on analysis was found to be adulterated. The accused pleaded that he was just conveying the milk to his landlord, D.W. 1. The learned Magistrate acquitted the accused holding that the milk belonged to his landlord and just when he was conveying the milk the Food Inspector came and took a sample from him. The learned Magistrate held that though a sale to a Food Inspector for analysis was a sale under Section 2(xiii) of the Act, such a sale was made under the compulsive authority of the Food Inspector and therefore, it was open to the accused to establish that he was not a milk-vendor and that the milk was not intended for sale and that the accused had proved such fact by showing that the milk belonged to his master, D.W. 1 and that the accused was merely a carrier of the milk.

In appeal the learned public prosecutor contended that once a sale for analysis was established and that the fact was established and the article of food was to be adulterated, an offence had been made out and that the question whether the article of food which was sold to the Food Inspector was intended for sale or not is entirely irrelevant and that it was not necessary for the prosecution to establish that the article of food was intended for sale nor it is permissible for the accused to attempt to prove that it was not intended for sale.

Chinnappa Reddy, J. after considering a large number of decisions, accepted this contention and concluded as follows:

In the light of the foregoing discussion, I am of the view that the question whether an article of food was intended for sale or not would be irrelevant in cases of actual sales whether such sales be for human consumption or use, or for analysis. The question would be relevant only in cases where the act of the accused is sought to be treated as 'sale' by reason of the other limbs of the definition of 'sale' in Section 2(xiii), that is, where what is alleged is 'an agreement of sale, an offer for sale, the exposing for sale or having in possession for sale of any such article' including, an attempt to sell any such article.

He disagreed with the decisions in *In Re Bellemkonda Kanakayya*, AIR 1942 Mad. 609 and in *Food Inspector, Calicut v. Parameswara Chettiar* 1962 (1) Cri. L. J.

1152 (Ker.) in view of the decision of the Supreme Court in Mangal Das v. Maharashtra State : 1966 CriLJ106 . He explained the observations of Obul Reddi J. in Public Prosecutor v. Pitchaiah (1967) 2 Andh. W. Rule 424. Chinnappa Reddy, J. approved of the decisions in Municipal Board, Faizabad v. Lal Chand : AIR1964 All199 and Nagar Swasth Adhikari, Municipal Corporation, Agra v. Raghunath Singh : AIR1966 All231 . In particular he approved of the passages in : AIR1964 All199 which are as follows:-

It was not obligatory upon the respondents to sell the milk to the Food Inspector. When the Food Inspector came to take the sample they could say that he could very well take the sample but they were not going to sell it. They did not do any such thing. The receipt Ex. Ka-3 indicates that they did sell it for sample. No doubt it was the duty of the Food Inspector as provided under Section 10(3) to pay the price but if the respondents had refused to take the money the Food Inspector could not have compelled them to take it. If they had done so, they would not have committed any offence under Section 16(1)(b) of the Act which provides that the preventing of a Food Inspector from exercising any power conferred on him by the Act is an offence. By not taking the price, they were not preventing the Food Inspector from exercising his power ... They could allow the sample to be taken away by the Food Inspector telling him that he could take it if he wanted to do so but as they were not selling the milk they would not accept its price for they were storing milk only for mixing it with tea which alone they were selling at their shop.

In the present case the accused has specifically admitted that while he was taking the milk, P.W. 1 caught him and took a sample of milk from him and gave him the price and also one sealed sample bottle. P.W. 1 says that he purchased the milk saying that he wanted it for analysis. The accused did not deny the fact of taking of milk by P.W. 1 from him on his saying that the sample of milk was required for analysis. There is no room to doubt the evidence of P.W. 1 that the accused sold the milk for analysis that he paid Rs. 0.50 p. as price for the milk to the accused and that the latter received the price. It has not been suggested to P.W. 1 or P.W. 2 that the accused refused to sell the milk to P.W. 1 for analysis. A suggestion was made to P.W. 1 in cross-examination as it would appear from the following answer.

It is not true to say that I did not heed the representation of the accused that the milk was not for sale.

It does not appear that any suggestion was specifically put to P.W. 1 or P.W. 2 that the accused refused to receive the price or otherwise indicate that he was not receiving any price for the milk he sold to P.W.1 or was not making a Bale for analysis.

5. The learned Magistrate has held that P.W. 2 is not an independent witness because he is a hotel proprietor and subjected to influence of P.W. 1. The presence of P.W. 2 at the scene of offence was natural and no suggestion has been put to him in cross-examination to show that his evidence was interested. When a question was put to the accused that he was selling milk to Sankara Vilas that is a hotel of P.W. 2 the accused denied that fact but only stated that he would sell milk to whomsoever purchased from him. There is no room to doubt the evidence of P. Ws. 1 and 2 that the accused brought milk for sale in the vicinity of P.W. 2's hotel.

6. Ex. P-2 contains a correction in the date. At one place in Ex. P-2 the date 26-6-1967 was corrected so as to appear as 24-6-1967. In that the figure '6' was over written so as to appear as '4'. But the date 24-6-1967 is without any correction under the signature of P.W. 1 in Ex. P-2. In Ex. P-4 the figure '4' in the date 24-6-1967 under the signature of P.W. 2 seems to be overwritten on another number which is not very clear. But there is no correction in the date under the signature of G. Rama Krishna Rao in Ex. P-4. The learned Magistrate concluded as follows:

It appears as if Ex. P-4 was prepared on 26-4-1967 and the signature of P.W. 2 was obtained on Ex. P-4 on some date other than 24-4-1967 and hence the correction of the date 24-6-1967.

But in Ex. P-4 the date 24-6-1967 is put without any correction under the signature of Ramakrishan Rao who is said to have written Ex. P-4. No suggestion was put to P.W. 1 or P.W. 2 about the correction in the date in Exs. P-2 and P-4. The version of the accused is that he was asked to come to the office in the evening and that there his thumb impressions were obtained on some papers. Ex. P-2 purports to

contain his thumb impression. It was not his case that his thumb impressions were obtained on any date other than the date viz. 24-6-1967, the date of purchase of milk for analysis. Ex. P-3 which contained the thumb impression of the accused and P.W. 2 contains the date 24-6-1967 without any correction. From the corrections it cannot be inferred that Exs. P-2 and P-4 must have been prepared on some date other than 24-6-1967 or that the evidence of P.Ws. 1 and 2 is not reliable.

7. The learned advocate for the accused contends that the provision under Section 10(3) is part of the transaction of a Food Inspector taking a sample and that therefore the person from whom the Food Inspector takes sample is under obligation to receive the cost which is tendered by the Food Inspector and that therefore receiving the price by the accused does not amount to a sale. I agree with the observations of the learned Judge in : AIR1964 All199 which I have already extracted, that the person in possession of a food article is not bound to receive the price and he has got a right to refuse or to receive it and to indicate that he is not making a sale of the article of food for analysis and that he is just allowing the officer to take a sample. Obul Reddi, J. has observed in (1967) 2 Andh. W. Rule 424 that where there was a sale for analysis in a particular case is a question of fact which has to be decided on the facts of that case with reference to the definitions as given in Section 2(xiii) of the Act. When the evidence in a case is that a sample was taken by the Food Inspector from a person who has an article of food in his possession, the question as to whether there resulted a sale for analysis has to be decided on the facts of that case. If the person in possession of an article of food refuses to receive the price tendered by the Food Inspector, it can be an indication of the fact that he has not selling the article of food but was only allowing a sample to be taken and not preventing the sample being taken by the Food Inspector, so that he may not commit an offence and become liable for punishment under Ss. 16(1) and 7 of the Prevention of Food Adulteration Act. But when a person allows or does not prevent sample of article of food in his possession being taken for analysis and receives the amount tendered to him as cost by the Food Inspector under Section 10(3) of the Act it will be presumed that he made a sale of the article for analysis as defined in Section 2(xiii). But this presumption is rebuttable. It has not been rebutted in the present case.

8. If it is proved that the accused made a sale for analysis to the Food Inspector the question whether the article of food was intended by the accused for sale apart from the Food Inspector taking a sample for analysis, would be irrelevant. I respectfully agree with the decision of Chinnappa Reddy, J.

9. The reason No. 1 given by the learned Magistrate for not treating the transaction as a sale is untenable. The reasons Nos. 2 and 3 given by the learned Magistrate for acquitting the accused are also untenable. I find that the prosecution has established that the accused has committed an offence and accordingly I find the accused guilty under Section 16(1)(a)(i) and 7 read with Section 2(i)(a)(1) and Rule 44 (b) of the Prevention of Food Adulteration Act.

10. The learned Advocate for the accused contends that the accused is a very poor man. He has got only one buffalo and the complaint itself shows that the accused is a petty milk-vendor and that he has no previous convictions. So I consider that a sentence of fine of Rs. 100/- would meet the ends of justice. Accordingly I set aside the acquittal and convict and sentence the accused to pay a fine of Rs. 100/-, in default to suffer rigorous imprisonment for two months. The accused is given three weeks' time to pay the fine from the date of receipt of records in the Court of Judicial First Class Magistrate, Rajam.