

**In Re: Gonugunta Narasimha Chetty**

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**SooperKanoon Citation :** [sooperkanoon.com/433129](http://sooperkanoon.com/433129)

**Court :** Andhra Pradesh

**Decided On :** Jul-07-1961

**Reported in :** 1963CriLJ109

**Judge :** Anantanarayana Ayyar, J.

**Appellant :** In Re: Gonugunta Narasimha Chetty

**Judgement :**

ORDER

**Anantanarayana Ayyar, J.**

1. In C. C. No. 91 of 1959, three accused were tried by the Additional Munsiff-Magistrate, Kavali for an offence under Sections 16(1) and 7(1) read with Section 2(i)(1) and Rule 44(e) of the Prevention of Food Adulteration Act (Act 37 of 1954) (hereinafter referred to for convenience as the Act) on a complaint filed by the Food Inspector, Kavali. The learned Additional Munsiff-Magistrate acquitted A-2 and A-3 but convicted A-1 of the offence and sentenced him to pay a fine of Rs. 15/-and in default to undergo simple imprisonment for 15 days. The first accused filed this revision against the conviction and sentence.

2. On 3-4-1961, when this petition originally came on for hearing, my learned brother Basi Reddy, J. issued notice to A-1 asking him to show cause why the sentence passed on him by the lower court should not be enhanced. The notice for enhancement of the sentence was duly served on A-1. Arguments were fully

heard on both sides.

3. The prosecution case supported by two witnesses (P.Ws. 1 and 2) is briefly to the following effect:

4. A-1 along with his two brothers and partners namely A-2 and A-3 has been keeping wholesale shop at Kavali, On 30-1-1959, the Food Inspector, Kavali came to that shop and purchased a sample of gingelly oil for cash from A-1. The latter issued a cash bill (Ex. P-1). The Food Inspector prepared on that occasion a Mediators' report (Ex. P-3) in the presence of mediators, P.W. 2 and D.W. 2 who signed it. The Food Inspector sent to the Public Analyst the sample which he took. The latter issued the report (Ex. P-4) in which he declared the result of his analysis to be as follows:

Tests done Values Values permitted in obtained Clause A-17.11 in AppendixB to the P.F.A. Rules 1955.1. Butyro-refracto meter reading at 40cc 59.3% 58.0% to 61.0% 2. Free fatty acidcalculated (as oleicacid) 4.7% Not more than 3.0%

The Public Analyst was of the opinion that the sample was adulterated because it contained 4.7% Free Fatty Acid as against the permitted limit of 3%. In his opinion, any oil containing over 3.0% Free Fatty Acid was unfit for human consumption.

5. When examined under Section 242, Cri.P.C. A-1 stated that he did not commit any offence. He said that what was sold was (Mudi nuvvula nune). He examined three defence witnesses. D.W. 1 is a Lecturer in a College at Kavali. He deposed that he is a native of East Godavari District and that he was accustomed to use only (pappu nune) as a food article and that he never used (mudi nuvvula nune) as a food article. D.W. 2 is a native of Bhimavaram in Kandulur Taluk. He deposed that when A-1 sold the article to P.W. 1, he (A-1) said that it was not useful as food article that it could be used only for external purposes and that the sale was not effected as food article. D.W. 3 is a merchant of Kavali who said that the price of (pappu nune) is Rs. 4-4-0 per viss and that the accused was dealing only in (nuvvula nune) which would not be used as a food article and that generally husked oil (pappu nune) would be used as a food article. His evidence was relied on to show that the price charged per viss in Ex. P-1, namely, Rs. 2-8-0 per viss, is

much lower than the price of Rs. 3-10-0 per viss charged in Ex. D. 1 and that, therefore, the oil sold by A-1 to P. W. 1 could not be (pappu nune) but would be only (nuvvul nune).

6. The learned Magistrate observed that A-1 has himself written in Ex. P-1 that the oil sold was 'gingelly oil' and after a careful consideration of the evidence, concluded that A-1 sold the oil stating that it was gingelly oil. He found A-1 guilty of the offence and sentenced him to a fine of Rs. 15/-.

7. The learned Advocate for the petitioner, Mr. R.V. Ramarao has raised the following contentions:

1. That there is no sufficient proof that the sample was adulterated and that an offence was committed.
2. That the sample sold was not 'gingelly oil'.
3. That the petitioner (A-1) is not liable to be punished unless he is shown to have guilty knowledge.

Contention No. 1:- It is contended by the learned Counsel for the petitioner that the report of the Public Analyst is not good evidence and does not prove that the article was adulterated. He relies on the decision in *Behram Sheriah Irani v. Emperor* AIR 1944 Bom 321 wherein it was held that the weight to be attached to a report of a Chemical Analyser depends to a considerable extent on the reasons which the Chemical Analyser gives for the conclusion which he has arrived at and that in some cases, where the matter to be reported on is the presence of certain substances in the article submitted for examination, much would turn on the quantity of the incriminating substance found in the article. In the present case, the Public Analyst has given precise figures regarding the quantity of the substance which he found. The exact quantity of the relevant substance (fatty acid) is known. I do not accept the contention of Shri R.V. Ramarao that the Public Analyst should have mentioned the exact method which he utilised to ascertain the results which he has given in his report especially in view of the fact that the correctness of the Public Analyst's report was not challenged in the lower court. It was pointed out by

Basi Reddy, J. in Veeranki Koteswara Rao In Re: 1961-1 Andh WR 28 (SN) that if the accused was dissatisfied with the report of the Public Analyst, the Act gives him a speedy and effective remedy that is contained in Section 13(2) which itself provides that the accused may make an application to the Court to send the sample to the Director of the Central Food Laboratory for a certificate and under Section 13(3) the certificate issued by the Director specifying the result of the analysis,' supersedes the report given by the Public Analyst under Section 13(1). Basi Reddy, J. further observed in that decision as follows:

Section 13 of the Act also makes it clear that whereas the report of a Public Analyst may be used as evidence of the facts stated therein, a certificate issued by the Director of the Central Food Laboratory shall be final and conclusive evidence of the facts stated therein.

The accused has not chosen to take any action under Section 13(2). I see no reason to doubt the correctness of the report of the Public Analyst.

(7a) Section 2(i)(1) runs as follows:

2. In this Act, unless the context otherwise requires:

(i) 'Adulterated':- An article of food shall be deemed to be adulterated:XX XX XX XX

If the Quality or Purity of the article Falls Below the prescribed standard or its Constituents are present in quantities which are In Excess of the Prescribed Limits of Variability.

The Central Government has framed Rules under Sections 4 and 23(1) of the Act after consultation with the Central Committee for food standards. Rule 5 is as follows:

5. Standards of quality of the various articles of food specified in Appendix B to these rules are as defined in that appendix.

Paragraph A. 17.11 in Appendix B runs thus:

Til Oil (Gingelly or sesame oil) means the oil extracted from clean and sound seeds of Til (*Sesamum indicum*) black, brown, white or mixed. It shall be clear, free from rancidity, suspended or other foreign matter, separated water, added colouring or flavouring substances or mineral oil. It shall conform to the following standards:

(a) Butyro-refractometer reading at 40 C. 58.0 to 61.0.

XX XX XX XX(c) Free Fatty Acid as Oleic acid. Not more than 3.0 per cent.

8. It will be observed that in this case the Butyro-refractometer reading of the oil sold is within the specified limits (59.3% as against 58% to 61.0%) but that free fatty acid is, a constituent of the oil (concerned here) is in excess of the prescribed limit of variability (4.7% as against 3.0%). Consequently, the sample did not conform to the standard of quality as required in Rule 5 and Clause (e) of Paragraph A.17.11 of Appendix B and the quality and purity of the Article fell below the prescribed standard as contemplated in Section 2(i)(1) of the Act.

9. Shri Ramarao also contends that the sample concerned in this case does not come under Rule 44(e) and that, therefore, no offence was committed. Rule 44(e) prohibits sale of 'a mixture of two or more edible oils as an edible oil'. But, this does not affect the fact that an act of adulteration proved under Section 2(i)(1) is committed by contravention of Rule 5 read with Paragraph A.17.11 of Appendix B. Rule. 44 comes in Part VIII of the Rules with the heading 'Prohibition and Regulating of Sales' and does not affect Rule 5 which comes in Part III with the heading 'Definitions and Standards of Quality'. Selling food which is of the category of 'adulterated food' under Section 2(i)(1) is prohibited by Section 7(1) and is, therefore, punishable under Section 16 independent of Rule 44(e) and even if there be no contravention of Rule 44(e). I find that the trial court was right in finding that an offence was committed under Sections 16(1) and 7(1) read with Section 2(i)(1). This contention is not tenable.

10. Contention No. 2: Learned Advocate for the petitioner contends that what was sold was only mudi nuvvula nune' and that it is not 'gingelly oil'. He contends that only (pappu nune) is 'gingelly oil' as defined in the Rules for the purpose of the

Act. It is beyond doubt or dispute that 'mudi nuvvula nune' is oil extracted by crushing the whole seeds of gingelly i.e., gingelly with its skin on, whereas 'puppu nune' is oil extracted from the kernels of gingelly after the removal of the skin or husk. 'Pappu nune' is of course gingelly oil. But, 'mudi nuvvula nune' is also 'gingelly oil'. For, whole gingelly seeds are what are contemplated by the words in 'sound seeds of Til (Sesamum indicum) black, brown, white or mixed' in Paragraph A.17.11: of Appendix B. The contention that whole seeds with husk on are not seeds is unacceptable. For, the skin or husk of a seed is an integral part of the seed and is not something extraneous to the seed, just as the skin of an animal is an integral part of the animal and its body. The mention in Paragraph A.17.11 about the seeds of being of various colours is also a clear indication that seed with husk on was meant in that paragraph by the word 'seed'. For, the skins of gingelly seeds have various colours mentioned in that paragraph whereas the kernel has not. I, therefore, hold that 'nuvvula nune' and 'mudi nuvvula nune' are also 'gingelly oil' as defined in paragraph A.17.11 in Appendix B. This fact is not affected by the evidence of D.W. 1 and other witnesses. This contention is also not tenable.

11. Contention No. 3: The learned Advocate for the petitioner contends that the accused could not have had knowledge at the time of sale of the sample or before its analysis as to what was its 'content of fatty acid and that, therefore, he cannot be convicted of that offence. This, in effect, amounts to a contention that the accused cannot be convicted because there is no proof of mens rea. This contention is untenable. For, the Supreme Court has held in *Sarjoo Prasad v. State of U.P.* : 1961 CriLJ747 that in a prosecution for an offence pertaining to the sale of any adulterated article of food, it is no defence to allege that the vendor was ignorant of the nature of the substance or quality of the food sold by him. Therein, it was also pointed out by the Supreme Court that the intention of the Legislature was plain that every person, whether he be the owner of a shop or an agent or a servant of the owner is prohibited from selling adulterated food and for a contravention of the prohibition all such persons are liable to be punished without proof of mens rea. Prohibition of sale of adulterated food is evidently imposed in the larger interest of maintenance of public health. This contention also fails.

12. In effect, all the contentions raised on behalf of the petitioner are untenable. The conviction is right. The fine imposed by the trial court is too low. 'Taking the circumstances of the case, I consider that a sentence of fine of Rs. 200/-in default to undergo rigorous imprisonment for one month would be sufficient to meet the ends of justice and that no imprisonment is necessary. The sentence is accordingly enhanced.

13. Order accordingly. Time for payment of fine one month.

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