

The State Vs. Madhusudhan Ram

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Court : Orissa

Decided On : Jun-21-1965

Reported in : AIR1966Ori188; 1966CriLJ1041

Judge : S. Barman, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 16; Prevention of Food Adulteration Rules, 1955 - Rule 18

Appeal No. : Govt. Appeal No. 25 of 1964 and Criminal Ref. No. 79 of 1964

Appellant : The State

Respondent : Madhusudhan Ram

Advocate for Def. : H. Kanungo, Adv.

Advocate for Pet/Ap. : Standing Counsel

Disposition : Reference accepted

Judgement :

ORDER

S. Barman, J.

1. The Government appeal is against an order of acquittal of the accused respondent who is a grocer shop-keeper and a businessman of Karanjia

on the charge of having exhibited adulterated 'Guntur' ghee for sale and for having sold the same to the Karanjia Food Inspector and thus having committed an offence under Section 16 of the [Prevention of Food Adulteration Act, 1954](#). The Criminal reference arises out of a recommendation by the learned Sessions Judge for retrial of the case in the circumstances thereinafter stated. The defence of the accused is complete denial.

2. The circumstances in which the accused was charged for alleged adulteration of the Gunthur Ghee are these : On January 20, 1963 the Food and Sanitary Inspector P.W. 1 inspected the accused's shop and collected three samples including one sample of Gunthur Ghee which he had exhibited for sale. All the samples were taken in three bottles and sealed in the accused's presence. One of the samples under seal was delivered to the accused. The second sample was sent to the Public Analyst, Govt. of Orissa for analysis. The third one kept by the Food Inspector. It is said that the Food Inspector fastened the bottles and properly sealed all the three bottles.

3. The rules under which they were sealed and sent to the Public Analyst are provided under the Prevention of Food Adulteration Rules made under the Act. The rules so far as relevant for the present purpose are Rules 7 and 18, namely :

'Rule 7. Duties of Public Analyst -

(1) On receipt of a package containing a sample for analysis from a Food Inspector or any other person Public Analyst or any officer authorised by him shall compare the seals on the container and the outer cover with specimen impression received separately and shall note the condition on the seals thereon.

(2) The Public Analyst shall cause to be analysed such samples of articles of food as may be sent to him by Inspector or by any other person under the Act.

(3) After the analysis has been completed he shall forthwith supply to the person concerned a report in Form III of the result of such analysis.'

'Rule 18 Memorandum and impression of seal to be sent separately by post : A copy of the memorandum and a specimen impression of the seal used to seal the

packet shall be sent to the Public Analyst separately by registered post or delivered to him or to any person authorised by him.'

4. The learned Magistrate found on evidence that the sample of Gunthur Ghee was taken from the shop of the accused from the stock open for sale in compliance with the rules stated above. One of the samples was also said to have been sent to the Public Analyst by post under special seals given by the Food Inspector. There is no evidence however as to whether the Food Inspector in compliance with Rule 18 had sent to the Public Analyst a specimen impression of the seal used by him. The object of this rule is to ensure the accuracy of the seal on the sample sent to the Public Analyst by comparison with the impression of the seal sent by the Food Inspector. Indeed there is nothing to show whether in fact the Food Inspector had really sent to the Public Analyst a specimen impression of the seal used by him.

5. In view of this apparent lacuna, in the evidence led by the prosecution, the learned Sessions Judge in his letter of reference requested the matter to be placed before this Court for quashing the order of acquittal and remanding the case to the trial Court for retrial.

6. After hearing the parties at length I am of opinion that this is a fit case where the records should be sent back to the trial court for rehearing of the case on the evidence on record and such other evidence as may be adduced by the parties according to law.

7. In the result therefore, the Government Appeal is allowed and the reference is accepted.