

State Vs. V. Satyanarayan Murty

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Court : Orissa

Decided On : Aug-23-1985

Reported in : 1985(II)OLR598

Judge : S.C. Mohapatra, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 16; Agricultural Produce (Grading and Marking) Act, 1937; The Vegetable Oil, Grading and Marking Rules, 1955

Appeal No. : Govn. Appeal No. 11 of 1981

Appellant : State

Respondent : V. Satyanarayan Murty

Advocate for Def. : B.R. Ratho, M. Misra, Saktidhar Das, M.K.C. Rao and A.K. Rao

Advocate for Pet/Ap. : M.R. Mohanty, Addl. Standing Counsel (Public Prosecutor)

Disposition : Appeal dismissed

Judgement :

S.C. Mohapatra, J.

1. Ground-nut oil in an Agmarked sealed container was found on analysis to be adulterated and the respondent who stored the container in his retail shop to sell for human consumption as prosecuted for having committed an offence under Section 16 of the Prevention of Food Adulteration Act, 1951 (hereinafter called 'the Act') Two others were also prosecuted on the allegation that they were the manufacturer and wholesaler of the said ground-nut oil. On trial of the accused persons, all of them were acquitted. The State selected the respondent only against whom this appeal has been preferred. Being of the prima facie view that all the accused persons should be heard simultaneously to arrive at the just decision in this appeal, notice was issued by this Court for revising the order of acquittal against them. Notice was also issued to P. W. 1, the Food Inspector to explain in this Court some of the infirmities found by the trial Court for acquitting the accused persons.

2. Prosecution case, in brief, is that on 2. 9. 1978, P. W. 1 collected the sample from a sealed Agmarked container of ground-nut oil as per the statutory provisions. He handed over the sample to the public analyst on 5. 9. 1978 as 3rd and 4th September, 1978 were holidays. The report of the Public analyst dated 6. 10. 1978 discloses that the sample was adulterated. The three accused were called upon to face their trial for having manufactured adulterated ground-nut oil, distributed as wholesaler and stored the same for retail sale.

3. The plea of the manufacturer was that the sample was not manufactured by him. The plea of the wholesaler was that he has not sold any ground-nut oil in sealed tin to the respondent. The respondent denied the charge and claimed that he has not committed any offence having stored the ground-nut oil in a sealed Agmarked tin for sale.

4. The Food Inspector did not seize either the sealed tin or the label indicating the product to be of the manufacturer on the finding that the manufacturer could not get any opportunity to know whether the oil was of his product.

5. Although, the receipt Ext. 3 was issued by the wholesaler, there was no detailed description of the brand of ground-nut oil sold by him thereunder to the respondent. The wholesaler took the plea that he never sold any Hira brand

ground-nut oil to the respondent. On account of lack of evidence, connecting the wholesaler with the sale of the sealed tin containing ground-nut oil to the respondent the wholesaler was also acquitted.

6. The respondent was acquitted on the ground that on account of delay in the analysis, the respondent is to be acquitted. Further, it was found by the trial Court that the acid content in the ground-nut oil being within the standard prescribed for Agmark was not adulterated even though the acid content is slightly more as prescribed under the Act.

7. Agmark is given under the Agricultural Produce (Grading and Marking) Act, 1937 (1 of 1937). Different sets of rules have been made under Section 3 of the Act. One such set is the Vegetable Oil, Grading and Marking Rules, 1955. Ground-nut oil is a vegetable oil. For the purpose of the rules there are various grades of ground-nut oil. They are (i) Refined (Edible), (ii) Grade I (Edible) and (iii) Grade 2 (Edible). Under Schedule V of the said rules, the Agmark Grade Designations and Definitions of quality for ground-nut oil have been provided for as required under Rules 3 and 4. Under this Schedule for ground-nut oil of Refined (Edible) variety, the acid value is not to be more than 0.5 and for Grade 1 (Edible) it would not be more than 2.0. The acid value of Grade 2 (Edible) is not to be more than 5. In Appendix B of the Rules under the Act in Item A. 17. 03 ground-nut oil is not to contain free, fatty acid as oleic acid more than 3 percent. Thus, ground-nut oil Grade 2 (Edible) having more than 3% and less than 5% acid value shall be held to be adulterated under the Act notwithstanding the Agmark given under the 1950 Rules made under the Agricultural Produce (Grading and Marking) Act. Merely because the acid value is less than the permissible percentage of acid content under one Act, the same would not help the accused if the acid content as provided under the Act exceeds the permissible limit. The trial Court is not correct in coming to the conclusion that the sample of ground-nut oil seized is not adulterated. However, this finding will not help the prosecution.

8. The analysis in this case was made on 6. 10. 1978, i. e., one month after the sample was collected on 2. 9. 1978. In a decision of this Court reported in 1985(1) OLR 313 (State of Orissa v. S. Dandasi Patro), accepting the submission on

behalf of the accused that the increase in the percentage of free fatty acid as oleic acid in the sample of til-oil might be due to natural cause, i. e., due to delay in analysing the sample, it was held :

'...the sample was analysed after more than one month. It cannot be said that the delay in analysing the sample had no relation to the excess percentage of fatty content in the oil, which was found to be 2.52...'

9. In view of the delay in analysis by the public analyst, the increase in the acid content for natural cause cannot be completely overruled and the accused has rightly been given the benefit.

10. In the result, the appeal has no merit and is accordingly dismissed.

11. Before parting with this case, I am constrained to observe that the prosecuting agency in this case were not vigilant and serious view should be taken in future by the authorities for the detection of delinquencies and fixing the responsibility as on account of their inaction the culprits escape even where the health of the citizens are directly affected by adulterated food.

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