

State Vs. Mohammed Ibrahim

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Court : Kerala

Decided On : Feb-13-1959

Reported in : AIR1959Ker351; 1959CriLJ1323

Judge : T.K. Joseph and; Vaidialingam, JJ.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 2(1), 7, 10(7), 16(1) and 23(1); Prevention of Food Adulteration Rules - Rule 14

Appeal No. : Criminal Appeal No. 260 of 1958

Appellant : State

Respondent : Mohammed Ibrahim

Advocate for Def. : T.K. Kurie, Adv.

Advocate for Pet/Ap. : Public Prosecutor

Disposition : Appeal dismissed

Judgement :

Joseph, J.

1. This is an appeal by the State from the judgment of the District Magistrate, Palghat acquitting the Respondent of an offence under Sections 16(1) and 7 read with Section 2(i) of the Prevention of Food Adulteration Act (No. 37 of 1954). The

Respondent was a vendor of non-alcoholic beverages and the Food Inspector, Palghat Municipality preferred a complaint against him stating that he was selling 'orange crush' adulterated with artificial sweetener, an offence punishable under the Act. The accused contended that he prepared the drink from orange oil sold by a reputed manufacturer, Parry and Co. Ltd. and that he had not committed any offence.

The learned District Magistrate found that the drink was adulterated inasmuch as it contained 'dulcin', an artificial sweetener but that a conviction could not be entered, as the Food Inspector had not complied with the provisions of Section 10(7) of the Act which requires that where the Food Inspector takes action in such matters, he should as far as possible, call not less than two persons to be present at the time when such action is taken and take their signatures. This was not done by the Food Inspector and the Respondent was therefore acquitted.

2. On behalf of the appellant it is contended that non-compliance with the provision of Section 10(7) is, if at all, only an irregularity and that in the absence of proof of any prejudice to the accused, a conviction should have been entered. Reliance was placed on the decision of the Supreme Court in *Sunder Singh v. State of Uttar Pradesh*, AIR 1956 'S.C. 411. in support of this position. In that case the search of a room by the Police was contended to be invalid on the ground that it was necessary to have at least two respectable search witnesses under Section 103 of the Code of Criminal Procedure. The Sub-Inspector of Police who conducted the search had called in two Rickshawallas to witness the search. What was held by the Supreme Court was that even if the witnesses were not respectable inhabitants of the locality, that fact would not affect the legality of the proceeding but would only affect the weight of the evidence. So far as this case is concerned the Food Inspector did not care to call two persons to be present at the time he took action under Section 10, although the Respondent's shop was situated in the bazaar where the presence of two or more persons could have been easily secured. Unlike the case before the Supreme Court where the search was witnessed by two witnesses whose respectability alone was challenged, this is a case where the Food Inspector acted in flagrant violation of the provisions of the Act. Even if this is to be treated as an irregularity we are not prepared to say that

the Respondent was not prejudiced by the omission of the Food Inspector to act in accordance with law. Rule 14 provides that samples for analysis should be taken in clean dry bottles or jars or other suitable containers. It was admitted by the Food Inspector that the bottles in which he took the samples were not clean. Action appears to have been taken by the Food Inspector in a very slipshod manner. His version that two persons could not be procured as witnesses was not accepted by the learned District Magistrate. We are therefore of opinion that no interference is called for, in the circumstances.

3. In the result we confirm the acquittal and dismiss the appeal.

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