

M.N. Rajan and anr. Vs. State of Kerala Represented by the State Prosecutor

M.N. Rajan and anr. Vs. State of Kerala Represented by the State Prosecutor

SooperKanoon Citation : sooperkanoon.com/722972

Court : Kerala

Decided On : Mar-30-1979

Reported in : 1980CriLJ177

Judge : Kumari P. Janaki Amma, J.

Appellant : M.N. Rajan and anr.

Respondent : State of Kerala Represented by the State Prosecutor

Judgement :

ORDER

Kumari P. Janaki Amma, J.

1. The two accused in C. C 76 of 1975 on the file of the Judicial First Class Magistrate, Ettumanoor are the re-vision petitioners.

2. At 11-30 A.M. on 17-12-1974, the Food Inspector, Kaduthuruthy Panchayat purchased 600 grams of cumin seeds from the first petitioner who was conducting sales in shop No. K.III-12 of the Kaduthuruthy Panchayat. The sample was divided into three parts and was packed and sealed in three glass bottles. One of the bottles was entrusted to the first petitioner, the second bottle was sent to the Public Analyst, Trivandrum and the third bottle was retained with the Food Inspector for production in Court. The Public Analyst reported that the sample consisted of-

Cumin seeds - 86.7 per cent byweight. Extraneous seeds - 9.0 per cent byweight.Extraneous matter including) | 4-3 per cent by dust, stones, lumps of earth | weightstem etc.|

As per the standard fixed for cumin seeds in Appendix B of the Prevention of Food Adulteration Rules, 1955 - A.05.09 - the proportion of extraneous matter including dust, stones, lumps of earth, chart, stem or straw shall not exceed 7.0 per cent by weight and the proportion of edible seeds other than cumin seeds shall not exceed 5.0 per cent by weight The Public Analyst, therefore, reported that the sample sent was adulterated. The report is Ext. P5. A complaint was, therefore, filed against the first petitioner. After the first petitioner entered appearance, a motion was made by the Food Inspector for impleading the second petitioner on the ground that the licence of the shop stood in his name. The second petitioner was thereafter made the 2nd accused in the case. After the trial began, the first petitioner filed an application under Section 13(2) of the Prevention of Food Adulteration Act as it stood on the relevant date for sending the sample entrusted to him to the Director of Central Food Laboratory. On 13-5-1975, the Magistrate sent a requisition to the Director with the concerned sample. On examining the package, the Director suspected foul play. He sent a confidential communication to the Magistrate on 12-6-1975 to the following effect:

On examination of the package it has been found that the seals and the fastening of the sample package are very fresh and appears to have been performed recently. Further the sample superficially looks very excellent and well cleaned. Such types of samples are usually not available in the market. Hence it is suspected that the contents may have been changed before sending the sample to the Laboratory. This is for your kind information. However, analysis is being done and the sample will be reported in due course.

The report of analysis was sent to the following effect on 1-7-1975:

Physical examination ... Excellent, unusuallywell-cleaned free from dust and dirt.Extraneous matter as ... 0.3%.defined-Seeds other than ... 0.3%.cumin seeds.Coaltar dye ... Absent.Microscopical exami ... Cuminum Cyminum nation. ... (L) presentForeign organic structure absent.

Opinion : The sample of Cumin whole is suspected to be tampered with before sending to this laboratory. This had been intimated before the analysis was undertaken.

The report also stated that the seals were intact. This report is marked Ext. DI.

3. On receipt of the above report, the Food Inspector made a motion for sending the third bottle containing the sample, which had been produced by him in Court to the Central Food Laboratory for a report of analysis. The Court allowed the petition overruling the objection of the petitioners. The report of analysis was as follows:

Physical examination ... Plenty of stalks and foreign matter found. Extraneous matter (as ... 4.0%. defined) Seeds other than ... 18.3% cumin seeds (Plan- ... tago Pumila Wild mainly). Coal tar dye ... Absent. Microscopical examination. (L) along with foreign organic structure present.

Opinion : The sample of Cumin whole is adulterated. The report is marked Ext. P8.

4. The trial court held on the basis of the above report that the petitioners were guilty of offences punishable under Section 16(1)(a)(1) read with Section 7(i) of the Prevention of Food Adulteration Act. The petitioners were accordingly convicted and sentenced to undergo simple imprisonment for one day and to pay a fine of Rs, 1,000 each and in default to undergo simple imprisonment for four months each. The conviction and sentence were confirmed in appeal by the Additional District and Sessions Judge, Kottayam. The revision petition is filed challenging the above conviction and sentence.

5. The contention put forward on behalf of the petitioners is three-fold. In the first place, it is argued that the trial court committed an illegality in sending the sample to the Director of Central Food Laboratory at the instance of the Food Inspector. There was non-compliance of Rule 9(j) of the Prevention of Food Adulteration Rules in that no copy of the report of the Public Analyst was delivered to the petitioners. The third ground of attack is that even assuming that the sample was adulterated as mentioned in Ext. P8 report, in the absence of evidence that the existence of extraneous matter was injurious to health, the conviction is not

sustainable in law. On behalf of the second petitioner, it was also argued that the conviction so far as he is concerned is unwarranted inasmuch as there is no evidence to show that he had anything to do with the sale.

6. On the first point, the language of Section 13(2) as it stood at the relevant time enabled not only the accused-vendor but also the complainant to move the court for sending part of the sample for examination by the Director of Central Food Laboratory. The fact that a report was obtained at the instance of the accused does not preclude the complainant to exercise the right, at any rate, in cases like the present one where the Director of Central Food Laboratory himself suspected tampering of the bottle sent at the instance of the accused. No illegality as such is made out in the action of the Magistrate. On the other hand, the intimation given by the Director that he suspected foul play, the conduct of the accused in opposing the motion and the subsequent report of the Director amply justify the procedure followed by the Court. There is no case for the accused that the sample produced in Court had been tampered with.

7. The contention put forward on behalf of the petitioners that the Act does not contemplate a second report by the Director of Central Food Laboratory and, therefore, the second report should have been rejected by the Court has no force in cases where the accused dishonestly tampers with the sample delivered to him with a view to circumvent the provisions of law to secure a report favourable to him.

8. The complaint of the petitioners that there has been no compliance of Rule 9(j) does not arise for consideration since no such objection was put forward when the case was pending before the trial court or in the appellate Court. The petitioners are precluded from raising the contention for the first time in revision before this Court.

9. It was then argued that no case of adulteration is sustainable since it is not proved that the extraneous matter found in the sample was injurious to health. Reliance was placed on the decision of this Court in *State of Kerala v. Subramonian* 1978 Ker LT 242. It was held in that case that for an article to be adulterated under Section 2(1)(f) it must be unfit for human consumption either

because it consists wholly or in part of any filthy, putrid, disgusting, rotten, decomposed or diseased animal or vegetable substance or is insect-infested or is otherwise unfit for human consumption. To put it differently, it was held that the phrase 'or is otherwise unfit for human consumption' has to be read conjunctively and on this construction of the sub-clause, proof of unfitness of the article for human consumption is an essential ingredient of the definition. The gist of the decision is that the fact that an article of food was insect-infested may not by itself be conclusive proof of adulteration within the meaning of Sub-clause (f). The contention put forward on behalf of the petitioners is that since the article of food in the above case was cumin seeds, the ratio thereof has to be applied, in the instant case.

10. The report of the Public Analyst in *State of Kerala v. Subramonian* 1978 Ker LT 242 was that the sample did not conform to the standard prescribed for cumin seeds under the Act and was, therefore, adulterated- In the course of the trial, the sample given to the Food Inspector was sent for analysis to the Director of Food Laboratory. From the judgment it would appear that the Director's report which superseded the report of the Public Analyst mentioned that the sample sent for analysis contained 12.4 per cent of insect-infested seeds. The accused was acquitted by the trial court on the ground that there was conflict between the report of the Public Analyst and the report of the Director. The State preferred an appeal against the acquittal. It was in the course of the discussion that this Court made the observation regarding the interpretation of Section 2(1)(f) The judgment in *State of Kerala v. Subramonian* 1978 Ker LT 242 deals only with the question as to whether there was adulteration under Section 2(1)(f) of the Act. It would appear from the judgment that the Director of the Central Food Laboratory certified that the sample sent conformed to the standard fixed for cumin seeds under the Prevention of Food Adulteration Rules. There was, therefore, no question of adulteration otherwise than under Section 2(1)(f) of the Act.

11. In the instant case, both the report of the Public Analyst and Ext. P-8, the report of the Director of the Central Food Laboratory mentioned that portions of the sample sent for analysis did not conform to the standard prescribed for cumin seeds under the Act, If that be so, there was adulteration falling under Section

2(1)(f) which states that an article shall be deemed to be adulterated if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability. It is thus clear both from Ext. P-5 and also from Ext. P-8 that the article was adulterated. In a case where the prosecution succeeds in showing that the accused sold adulterated article of food, it need not further establish that the article was harmful to the health of the person consuming it. See *Manibai v. State of Maharashtra* : 1974 CriLJ451 .

12. The further question is whether the second accused is guilty of the offence charged against him. Reliance was placed on the decision in *Manibai v. State of Maharashtra* : 1974 CriLJ451 , referred to above, in support of the position that a person may not be liable for an offence by the mere fact that the licence of the shop where the sale took place stands in his name. In that case, the Food Inspector purchased coconut oil from a shop where one Pranjivan was conducting trade. The article was adulterated. A complaint was filed not only against the above person but against one Mani Bai, a co-licensee of the shop. The evidence did not disclose that Mani Bai was in charge or that she was actually conducting the business carried on at the shop. It was held that the fact that Mani Bai was the licensee of the shop alone was not sufficient to warrant her conviction. Reference was made to Section 17(1) of the Act which deals with offences by companies which term includes a firm or association of individuals. If the offence is committed by a company, every person who at the-time the offence was committed was in charge of and was responsible to the company for the conduct of business of the company as well as the company would be liable to be proceeded against. It was held that even if the business was owned by a firm or an association of individuals and Mani Bai was a partner of that firm or member of that association of individuals, she would be liable under Section 17(1) of the Act for the sale by Pranjivan only if it was shown that she was in charge and was responsible for the conduct of the business which was carried on in the shop. The decision may not have application in the instant case inasmuch as it is nobody's case that accused 1 and 2 are co-licensees or partners of a firm which comes under Section 17(1). The evidence is only to the effect that the 2nd accused is the sole licensee of the shop and it was the first accused who sold the sample. In the absence of material

or even a case that the first accused is a co-licensee along with the 2nd accused, the first accused can be treated only as a salesman working under the second accused. Therefore, Section 17(1) has no application in the instant case. The sale by the first accused is admitted. The only case put forward by the 2nd accused was that he was not in the shop at the time of sale. He had no case that he was not the person who was in charge of the trade conducted in the shop. The conviction of the 2nd accused is, therefore, justified and it does not call for interference.

13. Before concluding, I may also state that the sentence passed by the trial court which has been confirmed in appeal does not conform to Section 16(1)(a)(i) of the Act which prescribes a minimum sentence of imprisonment for six months and a fine of Rs. 1,000. It is only on proof of adequate and special reasons that the Court is competent to reduce the sentence. The only ground mentioned by the Court is that the petitioners are conducting a petty shop without any investment and the total quantity of cumin seeds available in the shop is only one kilogram. The accused themselves : have not put forward a case that theirs is a petty trade. That at the time when the Food Inspector visited the shop the quantity of cumin seeds available for sale was only one kilogram is not necessarily an index for showing that the trade conducted in the shop is a petty one. The circumstances proved do not make out a case for a reduction of the sentence below the minimum prescribed. But since the State has not chosen to challenge the imposing of the reduced sentence and more than four years, have elapsed since the taking of the sample, during which period the law itself under-went some changes, I do not propose to 'interfere with the decision. I need only state that the accused has not made out a case for interference with the conviction and are not entitled to acquittal.

The revision petition, therefore, fails and is dismissed.