

Hamsa Vs. Food Inspector

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Court : Kerala

Decided On : Mar-23-2005

Reported in : 2005(2)KLT998

Judge : K. Thankappan, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 2, 7, 14, 16(1), 19 and 19(2); Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Crl.R.P. No. 130 of 1996

Appellant : Hamsa

Respondent : Food Inspector

Advocate for Def. : T.K. Latheef, Public Prosecutor

Advocate for Pet/Ap. : S. Vijayakumar, Adv.

Disposition : Revision allowed

Judgement :

ORDER

K. Thankappan, J.

1. The only question to be decided in this Criminal Revision Petition is whether or not the petitioner is entitled for the benefit guaranteed under Section 19(2) of the

Prevention of Adulteration Act.

2. The brief facts of the prosecution case are as follows:- On 10.11.1989 at about 12 noon P.W.2--Food Inspector inspected the shop of the petitioner and after giving Form VI notice, he purchased 12 packets of chilly powder each containing 50 grams. The articles purchased were sampled into three packets and after complying with the legal formalities one sample packet was sent to the Public Analyst, Calicut for analysis and two other sample packets were handed over to the Local Health Authority. In Ext.P13 report the Public Analyst reported that the article contained non-permitted coaltar dye orange II and was adulterated. Accordingly, P.W.2-the Food Inspector filed a complaint against the petitioner as well as the 2nd accused, the manufacturer of the chilly powder, before the Magistrate. Since the 2nd accused was absconding, the case against the 2nd accused was split up and numbered as S.T.No. 27/99. The case against the petitioner was tried and on the evidence adduced by the complainant the Trial Court found the petitioner guilty of the offences under Sections 16(1)(a)(i) read with Sections 2(ia)(a)(j) and 7(i) of the Prevention of Food Adulteration Act and convicted him thereunder and sentenced to undergo simple imprisonment for six months and to pay a fine of Rs. 1,000/- and in default of payment of fine to undergo further imprisonment of three months more. Against the conviction and sentence passed against the petitioner, he filed CrI.A.No. 139/90 before the Sessions Court, Manjeri Division. By judgment dated 22.11.1995 the Appellate Court confirmed the conviction and sentence passed by the Trial Court. Challenging the above conviction and sentence, the petitioner filed the present Criminal Revision Petition.

3. Prosecution examined P.Ws.1 to 6 and Exts.P1 to 19 were marked. On the side of the defence D.W.1 was examined and Ext.D1 was marked.

4. P.W.1 is the Executive Officer of the Panchayat who had proved the licence under which the petitioner was conducting his business. P.W.2 is the Food Inspector who detected the offence. He had given evidence before the Trial Court that he purchased the article and sampled the same and after complying all the formalities one of the samples was sent for chemical analysis and as per Ext.P17

report the sample had been adulterated. On the basis of the above report and on the basis of evidence, the petitioner was tried for the offences punishable under Sections 16(1)(a)(i) read with Sections 2(ia)(a)(j) and 7(i) of the Act. When the petitioner was questioned under Section 313 Cr.P.C. his case was that he had showed the sample as purchased from the 2nd accused-the manufacturer and he kept the sample as such he purchased from the manufacturer. Further it is contended by the petitioner that he is entitled for the benefit guaranteed under Section 19(2) of the Act.

5. The Trial Court found that the article was adulterated and the petitioner had not proved that he purchased the sample from the manufacturer who had valid licence as per the provisions of the Act and the petitioner had committed the offence alleged against him. The Appellate Court on re-appreciation of the evidence found that the case against the petitioner was proved and confirmed the conviction and sentence passed by the Trial Court.

6. Learned counsel for the petitioner submits that the petitioner is entitled to the benefit of Section 19 of the Food Adulteration Act. The learned counsel relies on a decision of the Supreme Court reported in P. Unnikrishnan v. Food Inspector, Palghat Municipality, AIR 1995 SC 1983 and also decisions of this Court reported in Koyakutty v. Food Inspector, 2000 (3) KLT 693 and Sainudheen v. Food Inspector, 2002 (1)KLT 703.

7. Section 19 of the Food Adulteration Act, 1954 reads as follows:--

'19. Defences which may or may not be allowed in prosecutions under this Act.--

(1) It shall be no defence in a prosecution for an offence pertaining to the sale of any adulterated or misbranded article of food to allege merely that the vendor was ignorant of the nature, substance or quality of the food sold by him or that the purchaser having purchased any article for analysis was not prejudiced by the sale.

(2) A vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves--

a) that he purchased the article of food--

i) in a case where a licence is prescribed for the sale thereof, from a duly licensed manufacturer, distributor or dealer,

ii) in any other case, from any manufacturer, distributor or dealer, with a written warranty in the prescribed form; and

b) that the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it.

(3) Any person by whom a warranty as is referred to (in Section 14) is alleged to have been given shall be entitled to appear at the hearing and give evidence.'

The above provision would clearly show that a vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article if he proves that he purchased the article from a duly licensed manufacturer or in any other case from any manufacturer, distributor or dealer.

8. P.W.2 had stated before the Court that the packets contained a label of the manufacturer. It is further stated by P.W.2 that while he conducted the purchase from the shop of the petitioner he had seen that 12 packets of chilly powder containing 50 gms. each having an identical label 'Vel Brand CK Mark', 50 grams chilly powder 'Vel Cottage Industries, Theni'. P.W.2 had given evidence that the sample purchased from the shop of the petitioner was not kept as such the petitioner purchased it from the manufacturer. Apart from that, P.W.2 had no case that the manufacturer from whom the petitioner purchased the articles had no licence. Hence, it is only proper for this Court to come to a conclusion that the petitioner purchased the sample from the licensed manufacturer. If it is found that the petitioner had purchased the article from a licensed manufacturer, he is entitled to the benefit of Section 19(2) of the Act. In this context the argument of the learned Public Prosecutor is that it is the duty of the petitioner to prove that the manufacturer had due licence to manufacture the products. In this context the decision of the Apex Court in AIR 1995 SC 1983 (supra) is relevant. In the above decision the Apex Court held that the duty cast on the vendor is only to show that

he had sold the article in the same manner and condition in which it was purchased by him from the manufacturer. The further proof that the manufacturer from whom the accused purchased the article has been duly licenced depends on the facts of each case. The case on hand it is proved that while P.W.2 purchased the sample, the packets contained the name and address of the manufacturer and P.W.2 had no case that the sample purchased was not kept in the same manner in which it was purchased by petitioner from the manufacturer. The decision reported in 2002 (1) KLT 703 (supra) this Court held that a valid defence available to an accused under the Prevention of Food Adulteration Act should not be denied to him simply because the Food Inspector does not perform his duties properly.

9. In the above circumstances, this Court finds that requirements of Section 19(2) of the Act are satisfied in the instant case. Hence, the conviction and sentence ordered against the petitioner are set aside and the petitioner is not found guilty of the offences alleged against him and he is acquitted.

10. The Criminal Revision Petition is allowed as above.