

George Vs. State of Kerala

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Court : Kerala

Decided On : Mar-15-2002

Reported in : 2003CriLJ1579

Judge : K. Padmanabhan Nair, J.

Acts : Prevention of Food Adulteration Act, 1955 - Sections 16(1)

Appeal No. : Crl. R.P. No. 901 of 1993

Appellant : George

Respondent : State of Kerala

Advocate for Def. : K.G. Bhaskaran, Public Prosecutor

Advocate for Pet/Ap. : K. Babu Thomas, Adv.

Disposition : Revision petition dismissed

Judgement :

ORDER

K. Padmanabhan Nair, J.

1. The challenge in this Criminal Revision Petition is against the conviction and sentence imposed on the revision petitioner under Section 16(1)(d) of the Prevention of Food Adulteration Act, ('Act' for short) and confirmed by the learned

Sessions Judge in Crl. Appeal No. 34 of 1992.

2. PW.1, the Food Inspector filed the complaint alleging that at or about 11 a.m. on 18.3.1985, he inspected the shop in which the revision petitioner was conducting a provision store. According to the complainant, he disclosed his identity to the accused and asked for sample of coriander powder kept in small packets, each containing 100 grams for the purpose of analysis. The revision petitioner refused to sell the sample to him. It is alleged that the accused told PW1 that if he wants to take any sample, the accused will decide from what food article sample should be taken. When the Food Inspector insisted that he wanted coriander powder itself as sample, the revision petitioner refused to acknowledge receipt of Form No. VI notice, went out of the shop and left the place in a scooter which was kept outside the shop. The complaint was filed on 9.4.1985. The learned Magistrate, after trial, convicted the revision petitioner for the offences charged under Section 16(1)(d) of the Act and imposed the minimum sentence prescribed under the statute. The revision petitioner filed Criminal Appeal No. 309 of 1986 before the Sessions Court. The learned Sessions Judge concurred with the finding of the learned Magistrate and dismissed the appeal. The revision petitioner filed Criminal Revision Petition No. 96 of 1987 before this Court. This Court set aside the conviction and sentence imposed on the revision petitioner and remanded the case for affording an opportunity to the revision petitioner to adduce further evidence. The Magistrate was directed to consider the matter afresh after receiving further evidence. After remand, PW4 was recalled and further examined. DWs. 2 to 7 were examined, and Exts. D5 to D8 were proved. The learned Magistrate, after considering the evidence, again found the revision petitioner guilty, convicted and sentenced Mm to undergo simple imprisonment for six months and to pay fine of Rs. 1000/- and in default to undergo simple imprisonment for two more months. The appeal filed by the revision petitioner as Crl. Appeal No. 34 of 1992 before the Sessions Court was dismissed. Those concurrent findings are under challenge in this Criminal Revision Petition.

3. The learned counsel appearing for the revision petitioner has argued that the finding of the courts below that the revision petitioner was the licensee and owner of the grocery shop in room No. IX/459 of Kothamangalam Municipality was not

based on any evidence. It is also contended that the revision petitioner had produced positive evidence to show that he was neither the licensee nor the proprietor of the business conducted in the shop. It is also argued that the accused had adduced evidence to show that the business was conducted by another person. It is also argued that the specific case put forward by PW1 was that the revision petitioner obstructed PW1 from discharging his official duties and to prove that fact, the only evidence available was that of the Food Inspector himself. It is argued that the evidence of PW.2, the so called independent witness examined to prove the presence of the revision petitioner at the shop, cannot be believed and the evidence adduced by the revision petitioner will clearly show that at that time PW2 was actually working inside a factory. It is also submitted that the revision petitioner had examined the Manager cum Accountant in charge of the business at that time and his evidence was rejected by the courts below without assigning any reasons. Finally it is argued that even if the complainant's case that the revision petitioner refused to accept a copy of Form No. VI notice is accepted as such that will not amount to an offence and the admission made by the Food Inspector himself shows that he could have taken the sample even in the absence of the revision petitioner.

4. The case of the complainant is that he inspected the shop at 11 a.m. on 18.3.1985 and at that time, the revision petitioner who was the licensee and owner of the grocery shop was found doing business in the shop. The specific case put forward by the revision petitioner is that he was neither the licensee nor the owner of the grocery shop and the business was conducted by another person. The revision petitioner produced certain documents to show that on 18.3.1985, the business was conducted by Smt. Kunjamma George. The complainant produced Exts. P4 to P6 to prove that the revision petitioner was actually doing the business in the shop in question. The revision petitioner relied on Exts. D1 to D8 series to show that the business was really conducted by Smt. Kunjamma George and the revision petitioner had nothing to do with the business. The documents produced by the revision petitioner show that the wife of the revision petitioner was the assessee under the Sales Tax Act for the business conducted in the shop room. Exts. P4 to P6 series show that the revision petitioner has also applied for the licence. The revision petitioner is disputing the genuineness of Exts. P4 to P6

series. I do not think it is necessary to decide who was the licensee of the shop. There is no allegation that the revision petitioner conducted the business without obtaining a valid licence. Both the Courts concurrently found that at the time when PW1 inspected the shop, the revision petitioner was present in the shop and he was doing business. The revision petitioner who gave evidence as DW4 had admitted that Smt. Kunjamma George is his wife and she was conducting the business. But according to the revision petitioner, even though they are living together, he does not know whether his wife was doing the business after obtaining the licence. According to him, he used to go to the shop of his wife for purchasing articles alone and every time when he purchases any article he used to pay its price. Even though he took up the stand that he never entered inside the shop, during cross-examination he admitted that at times he used to sit in the shop. But according to him, PW1 had not come to the shop while he was inside the shop. The revision petitioner examined DW. 7, who according to the revision petitioner, was the Manager of the business conducted by his wife. DW1 deposed that PW1 came to the shop in question on 18.3.1985 and he was present in the shop when PW1 came there. DW. 7 himself had admitted that the revision petitioner also used to come to the shop during day time and in the evenings. The Food Inspector as PW1 gave evidence to the effect that when he inspected the shop, the revision petitioner was physically present in the shop. The evidence of PW1 is corroborated by the evidence of PW2 an independent witness. Their evidence prove beyond any reasonable doubt that the revision petitioner was present in the shop at about 11 a.m. on 18.3.1985 when PW1 inspected the same. Both the courts have concurrently found that the revision petitioner was present when PW1 inspected the shop. I do not find any reason to interfere with that concurrent finding of fact and confirm the same.

5. Now I shall consider how far the argument of the learned counsel for the revision petitioner that a person can be held liable for an offence under Section 16(1) (c) and (d) of the Act only if he is the owner of the business is correct. Section 16(1) of the Act reads as follows:-

'Penalties.- (1) Subject to the provisions of Sub-section (1A) if any person-

xxx xxx xxx(c) prevents a Food Inspector from taking a sample as authorised by this Act; or

(d) prevents a Food Inspector from exercising any other power conferred on him by or under this Act or xxx xxx xxx'

So, it is clear that 'any person' who prevents a Food Inspector from taking sample or prevents the Food Inspector from exercising any power conferred on him is liable to be punished. There is absolutely nothing in Section 16 of the Act to show that only the owner of the business or licensee can be prosecuted for the offences punishable under Ss. 16(1) (c) or (d). If this argument of the learned counsel for the revision petitioner is accepted a person who conducts the business without obtaining the licence cannot be convicted for an offence under Section 16(1)(c) even if he physically prevents the Food Inspector from taking sample.

6. The word used is 'any person'. To constitute an offence under Section 16(1)(c) of the Act, all that is necessary that a person should prevent the Food Inspector from taking sample. A plain reading of Section 16(1)(c) of the Act shows that the liability is not cast on the owner or the salesman alone, but even a stranger. It is clear that even if a customer present in the shop prevents the Food Inspector from taking sample, he is liable under Section 16(1) (c) or (d) of the Act. It is always possible that a clever or unscrupulous vendor or seller to hire a person to prevent a Food Inspector from taking sample and such a person can plead that he has nothing to do with the business. If such persons are allowed to escape from penal liability on the ground that he has nothing to do with the business conducted in the premises, the Food Inspectors will not be able to discharge their function properly. So, it is not possible to accept the argument of the counsel for the revision petitioner that to proceed under Section 16(1) (c) or (d) of the Act the offender must be either the proprietor of the business or salesman in the shop.

7. The evidence adduced in this case shows that the revision petitioner was present when PW1 came to the shop. PW1 demanded 900 grams of coriander powder kept in nine small packets each containing 100 grams each. The accused refused to accept the notice issued to him and told PW1 that he had seen many Food Inspectors in the past and if PWI wanted a sample for analysis the accused

himself will decide food articles from which sample should be taken. He had added that that articles will be of good quality and if PWI wants he may take the same. The accused also told PWI that he was not prepared to give any documents which PWI requires. After uttering the said words, the revision petitioner went out of the shop and left the place in the scooter. The evidence on record clearly shows that the revision petitioner prevented the Food Inspector from taking the sample and also refused to acknowledge Form VI notice and then left the place.

8. The learned counsel appearing for the revision petitioner relying on a decision reported in Food Inspector, Methala Panchayat v. Gopinathan (1987 KLJ 1068) has argued that refusal to give a voucher for the price paid or refusal on the part of a vender to affix his signature in the copy of Form-VI notice prepared by the Food Inspector will not amount to prevention of exercise of the powers by the Food Inspector. It was held as follows:-

'If a vendor declines to affix his signature, can it be, said that the vendor prevented the Food Inspector from discharging his power? The answer cannot be in the affirmative, particularly in view of the proviso to Section 11(1)(b).

xxx xxx xxxMere refusal to give a voucher for the price paid, or refusal to sign the document prepared by the Food Inspector will not amount to prevention of excise of powers of the Food Inspector.'

In Gopinathan's case the salesman present in the shop sold the articles to the Food Inspector after accepting the price. He wrote his name and date also in the counterfoil of the Form-VI notice but refused to affix his signature on the counterfoil and in the mahazar prepared by the Food Inspector. In the present case position is entirely different. The accused refused to sell the sample and told the Food Inspector that if he intends to take a sample the nature of the food articles will be decided by the accused himself. He refused to accept the Form VI notice and refused to issue cash receipt or bill. So the principle laid down in Gopinathan's case (supra) can have no application to the facts of the present case. In Rajinder Pershad v. State of Haryana (AIR 1983 SC 878) the Apex Court considered the scope of Section 16(1)(c) of the Act and held as follows:

'Where the Food Inspector went to the grocery shop of the accused along with two witnesses and disclosed his identity and tendered the notice and cash and asked for a sample of the Dhania kept for sale in the shop and the accused bolted away from the shop under the pretext of passing urine without accepting the notice and the cash.

Held that the accused was rightly convicted for the offence under Section 16(1)(c) as he had prevented the Food Inspector from taking sample in accordance with the provisions of the Act and the rule made thereunder. No other overt act was necessary to constitute the offence'.

9. In *Achankunju v. State of Kerala* it was held by this Court that in order to constitute an offence under Section 16(1)(c) there need not be physical prevention. It was held as follows:

'Under Section 16(1)(d) what is made punishable is the prevention of the Food Inspector from exercising any other power conferred on him by or under the Act. In order to constitute an offence there need not be physical prevention or attempt to prevent the Food Inspector from purchasing or taking the sample by the accused. If the accused consciously refused to co-operate with the action of the Food Inspector and thereby on account of his acts or omissions made the action on his part impossible in any way, it will amount to prevention. Any conscious act or omission to interfere with that power will amount to prevention, which term, though not defined in the Act has a wide meaning'.

In *Food Inspector v. Alavikutty* (1987 (1) KLT 846), after considering various decisions including the one rendered by the Apex Court in *Rajinder Pershad's* case (*supra*), this Court found that no overt act is necessary to constitute an offence under Section 16(1)(d) of the Act. It was held as follows:-

'In order to constitute prevention not only no overt act apart from mere slipping away, refusal or non-co-operation is necessary, but it is also not necessary that prevention was successful. Difficulties caused to the Food Inspector by any conscious acts or omissions in discharging his functions or exercising his powers will be sufficient to constitute prevention. Use of force or show offeree is not

necessary. Threat also will amount to prevention. He need not be physically obstructed. Creating a row or conduct and demean or amounting to prevention will also be sufficient. Some positive or negative volitional act or omission on the part of the accused so as to hinder the Food Inspector from getting the sample will be sufficient.'

The learned counsel appearing for the revision petitioner strenuously argued that even accepting the entire case put forward by the complainant as such, no offence falling under Section 16(1) (c) or (d) of the Act is made out in this case. It is also argued that PW1 himself had admitted that there were other salesmen in the shop. So, even if the revision petitioner refused to handover a sample after accepting the price as he was neither the proprietor of the business nor a salesman that will not amount to preventing the Food Inspector from taking sample or from discharging his other duties. It is argued that when there are number of salesmen available in the shop, the Food Inspector cannot insist that a particular person who was present in the shop himself must handover the sample to him. It is argued that PW1 could have very well purchased the sample by offering the price from the other salesmen present in the shop and the admission made by PW1 himself would show that he could have taken sample in spite of his case that the revision petitioner went away from the shop.

10. According to the complainant, the revision petitioner was the owner-cum-salesman in the shop. The defence put forward by the revision petitioner was that the licensee of the shop was his wife and he has nothing to do with it. The evidence adduced by the revision petitioner himself shows that PW1 went back without taking sample. So, the fact that PW1 had to return without getting sample is admitted by the defence. So, the only question to be decided is whether PW1 voluntarily went back without taking sample or there was any act or omission on the part of the revision petitioner.

11. The evidence of PW1 shows that after stating that he will not give the sample demanded by the Food Inspector, the revision petitioner left the place in a scooter. It is true that during cross-examination PW1 had admitted that when he reached the shop, there was a boy aged about 14 in the shop and there were other

customers. PW1 had admitted that when the revision petitioner left the shop also, the boy was present in the shop. PW1 had admitted that he did not ask the name of that boy and he did not enquire what is his job. But, PW1 asserted that he was aware that that boy was not the owner of the shop. He had also admitted that he did not make a demand to that boy to give a sample. PW1 also admitted that even after the departure of the revision petitioner, he could have taken the sample; but he did not take the sample. So, the admission made by PW1, the Food Inspector, shows that there was at least one salesman present in the shop. The evidence also show that he did not demand that boy to sell a sample. The question to be decided in this case is whether on the ground that PW1 did not demand a sample from another person present in the shop or that failed to take sample by his own, the accused can be acquitted. Even if we accept the evidence of the revision petitioner as such, it shows that he is the husband of the licensee and was present in the shop. When he told the Food Inspector that he will get the particular substance demanded by him as sample, it is very futile to argue that a boy aged 14 would have sold the very same sample to the Food Inspector. In Rajinder Pershad's case (supra), the Food Inspector took sample from the shop after the departure of the accused in the case. So, the mere fact that the Food Inspector did not take sample or he did not make any demand to other salesmen present in the shop for sample is not a ground to acquit the accused. It is also argued that no evidence to hold that accused prevented the Food Inspector from discharging any other duties. The allegation in this case was that the accused prevented PW1 from taking sample. That allegation is proved.

12. The learned counsel for the accused-revision petitioner submitted that there is inordinate delay in filing the complaint. The sample was taken on 18.3.1985. The complaint was filed on 9.4.1985. There is absolutely nothing on record to show that there is unexplained or undue delay in filing the complaint. For filing the complaint, the Food Inspector has to collect various documents and no question was seen put to PW1, the complainant, regarding the delay. No such ground was taken either in the trial court or in the appellate court. I do not find any reason to give a go-by to the complainant's case in that ground.

13. The evidence adduced in this case was that the revision petitioner prevented the Food Inspector from taking the sample. Both the courts had considered all these aspects and concurrently found that the revision petitioner prevented the Food Inspector from taking sample. That is a finding of fact based on evidence. I do not find any reason to interfere with that finding. So the Criminal Revision Petition is only to be dismissed.

In the result, the Criminal Revision Petition is dismissed.

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