

K. Krishnankutty Nair Vs. the State

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Court : Kerala

Decided On : Nov-13-1981

Reported in : 1983CriLJ78

Judge : V. Khalid, J.

Appellant : K. Krishnankutty Nair

Respondent : The State

Judgement :

ORDER

V. Khalid, J.

1. The accused in C. C. No. 255 of 1977 before the Additional Judicial I Class Magistrate, Ernakulam, is the petitioner. On 14-11-1977 at about 12-30 p.m. when he was taking cow's milk to the Chottanikkara Milk Cooperative Society, the Food Inspector, the respondent herein purchased from him 675 ml. of milk for the purpose of sampling and analysis. On analysis the milk was found to be adulterated containing not less than 9% of added water. The petitioner was put on trial. He denied the charge. Prosecution examined one witness on its side and marked Exts. P1 to P8. The petitioner examined one witness on his side. After trial, the trial Magistrate found the petitioner guilty of the offence with which he was charged and convicted him and sentenced him to undergo simple imprisonment for six months and to pay a fine of Rs. 1000/-. Aggrieved by this judgment, the

petitioner filed an appeal before the Session Court, Ernakulam. The I Additional Sessions Judge, Ernakulam, by his judgment in Crl. A. No. 10 of 1979, confirmed the conviction and sentence. Hence this revision.

2. The revision petition as originally filed was grounded on the irregularities committed by the Food Inspector in sampling, in his failure to comply with Section 13 of the Act and also on the ground that conviction was based on evidence which was not wholly acceptable. The petitioner has now filed Crl. M. P. No. 1111 of 1981 raising an additional ground. This ground is based on Rule 9-A, Prevention of Food Adulteration Rules. The case put forward is that there was inordinate delay in forwarding the copy of the report of the result of the analysis in Form III to the accused. I have allowed this petition.

3. I am not impressed with the submissions made by the petitioner's learned Counsel on the grounds originally raised in the petition. However, the new ground deserves consideration. I allowed it to be raised because it vitally affects the case on hand. For a proper appreciation of the rigidity of this Rule it has to be read and more profitably juxtaposed with Section 11(3), Rules 7(3) and 17(a) and (b). Rule 9-A was introduced with effect from 4-1-1977. Before the introduction of this rule the rule that held the field was Rule 9-J. as per that Rule a copy of the report of the Public Analyst had to be sent to the accused within 10 days from the date of receipt of the report from the Public Analyst. Rule 9-A reads as follows:

9-A. Local (Health) Authority to send report to person concerned.- The Local (Health) Authority shall immediately after the institution of prosecution forward a copy of the report of the result of analysis in Form III delivered to him under Sub-rule (3) of Rule 7, by registered post or by hand, as may be appropriate, to the person from whom the sample of the article was taken by the Food Inspector, and simultaneously also to the person, if any, whose name, address and other particulars have been disclosed under Section 14-A of the Act: xx xx xx

This has to be read along with Section 13(2). The mandate contained in Section 13(2) and Rule 9-A on the Local Health Authority is to forward a copy of the report of the result of analysis by registered post immediately. Section 11(3) as well as Rule 7(3) and Rule 17(a) and (b) can be usefully read in this context:

11. (3) When a sample of any article of food or adulterant is taken under Sub-section (1) or Sub-section (2) of Section 10, the food inspector shall, by the immediately succeeding working day, send a sample of the article of food or adulterant or both, as the case may be, in accordance with the rules prescribed for sampling to the public analyst for the local area concerned.

7. (3) The public analyst shall, within a period of forty-five days from the date of receipt of any sample for analysis, deliver to the Local (Health) Authority a report of the result of such analysis in Form III.

Provided that where any such sample does not conform to the provisions of the Act or these rules, the public analyst shall deliver four copies of such report to the said Authority:

Provided further that the public-analyst shall forward a copy of such report also to the person who purchased an article of food and forwarded the same to him for analysis under Section 12 of the Act.

17. Manner of despatching containers of samples.- The containers of the samples shall be despatched in the following manner, namely:

(a) The sealed container of one part of the sample for analysis and a memorandum in Form VII shall be sent in a sealed packet to the public analyst immediately but not later than the succeeding working day by any suitable means.

(b) The sealed containers of the remaining two parts of the sample and two copies of the memoranda in Form VII shall be sent in a sealed packet to the Local (Health) Authority immediately but not later than the succeeding working day by any suitable means:

Provided that in the case of a sample of food which has been taken from container bearing Agmark seal, the memorandum in Form VII shall contain the following additional information, namely : - (a) Grade; (b) Agmark label No./Batch No.; (c) Name of packing station.

(Emphasis supplied).

An examination of the words used in the above provisions brings in sharp focus the intention of the legislature and the rule-making authority in wording Rule 9-A differently. In Section 11(3) and Rule 17(a) and (b) the word 'immediately' is followed by qualifying words; words that soften the rigidity of the word 'immediately' Not so Rule 9-A. Here the word 'immediately' is used in an absolute form. Section 11(3) requires the Food Inspector to send the sample taken by him by the immediately succeeding working day. Rule 17(a) requires the sealed container and a memorandum in Form VII to be sent in a sealed packet to the Public Analyst immediately but not later than the succeeding working day by any suitable means and Rule 17(b) requires the sealed containers of the remaining two parts to be sent to the Local (Health) Authority immediately but not later than the succeeding working day by any suitable means. These are important safeguards given to the accused so that unscrupulous officers are not allowed to tamper with the samples taken or with the containers in which the food articles are packed.

4. Now about Rule 9-A. It is useful to note that this Rule mandates the Local (Health) Authority to forward a copy immediately after the institution of the prosecution. The word immediately in this Rule is not qualified by any other words enabling the Local Health Authority to take its own time in forwarding a copy. This can be by registered post or by hand. The object of the rule-making authority in imposing this rigour is to enable the accused to pursue his remedies in expedition once he gets a copy of the report of the result of the analysis. A comparison of Rule 9-A with the above provisions leads to the conclusion that rigour imposed by Rule 9-A is, more stringent than the rigour imposed by the other Sections.

5. It is against this background that the facts of this case have to be considered. It is not disputed that the detection of crime in this case was on 14-11-1977, that the sample was sent for analysis on 21-11-1977, that the complaint was filed on 13-12-1977 and the report of the result of the analysis despatched only on 25-2-1978, causing a delay of nearly 74 days. It is clear that Rule 9-A has not been complied with in this case. For this reason, in my judgment the entire prosecution has to fail. The word 'immediate' postulates the absence of any supervening period. That word connotes occurring or doing without separation by an interval of space or time. Reliance on the dictionary meanings may lead to unhappy results

sometimes. But in this case the Food Inspector has taken his own time in despatching the report of the result of the analysis in gross violation of the rule which has rendered the prosecution bad.

6. Kader, J. in CrI. Appeal No. 464 of 1979 had occasion to consider the scope of this rule. In that case the complaint was filed in court on 15-11-1977 and the copy of the report of the Public Analyst was forwarded on 29-11-1977, i. e., 14 days after the institution of the prosecution against the accused. The learned Judge felt that the expiry of 14 days violated the statutory mandate contained in Rule 9-A and therefore upheld the acquittal of the accused and dismissed the appeal. I respectfully agree with the principle laid down therein. In *Perumal v. Kumbakonam Municipality* 1981 Cri LJ 1366 (Mad) Sathar Sayeed, J. of the Madras High Court had to consider a similar case. In that case the complaint was filed on 15-6-77, but the report of the result of the analysis was forwarded only on 28-9-1977, after a period of 2 months and 14 days. The learned Judge held (at p. 1368):

The court should not countenance with favour the laxity or negligence in cases where the report of the public analyst is sent very late to the party from whom the article of food is seized. Courts should also see that there does not occur any delay, ...

After referring to the Dictionary meaning of the word 'immediately' the learned Judge upheld the plea that the prosecution had been rendered bad on account of the non-compliance with the mandate contained in Rule 9-A,

7. The case on hand is stronger than the two cases mentioned above. In this case the delay is of 74 days. There is a clear violation of Rule 9-A. For this reason I hold that the entire prosecution has been vitiated.

8. In implementing the provisions of the Food Adulteration Act implementation by experience is trying and convicting milk vendors and petty shop keepers, it is necessary to scrutinise the procedure adopted by the food authorities carefully. The Act creates an absolute liability. Unlike offences under the general law, the prosecution is not called upon to prove mens rea to establish the crime. In rare cases courts may receive evidence from the side of the accused to establish

absence of mens rea. But invariably detection of crime carries with it the establishment of an offence. That being so, it is highly necessary to see that the authorities invested with the powers under the Act and the Rules, scrupulously and religiously adhere to the procedure laid down, so that prosecutions are not rendered fruitless on account of the non-compliance with the statutory requirements.

I quash the conviction and sentence entered against the petitioner and allow this Criminal Revision Petition.

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