

T.M. Suresh Vs. Food Inspector and anr.

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Court : Kerala

Decided On : Jul-25-1989

Reported in : 1989CriLJ2550

Judge : M.M. Pareed Pillay and; P.K. Shamsuddin, JJ.

Appellant : T.M. Suresh

Respondent : Food Inspector and anr.

Judgement :

M.M. Pareed Pillay, J.

1. Revision petitioner is the 2nd accused in S.T. 55 of 1986 of the Additional Chief Judicial Magistrate, Ernakulam. He was found guilty under Section 16(1)(a) of the Prevention of Food Adulteration Act and was convicted and sentenced to undergo imprisonment for 6 months and also to pay fine of Rs. 1,000/-. Appeal filed by him ended in dismissal.

2. The main contention raised by the revision petitioner is that the first respondent (complainant) has not adduced any evidence other than the oral evidence of P.W. 1 to establish that Rule 17 of the Prevention of Food Adulteration Rules has been complied with. Learned Counsel for the revision petitioner relied on State of Maharashtra v. Rajkaran 1988 SCC (Cri) 47 and contended that failure to prove the despatch of sample and memorandum in Form VII by adducing evidence, vitiates the prosecution and the conviction is liable to be set aside on that ground. In view of the decisions of this Court in Food Inspector v. Velayudhan (1987) 1 Ker LT 722 : 1987 Cri LJ 1137 and Mathukutty v. State of Kerala (1987) 2 Ker LT 867 : 1988 Cri LJ 898 (FB), Shamsuddin J. held that the question mooted deserves to be considered by a Division Bench.

3. Rule 17 of the Prevention of Food Adulteration Rules deals with the manner of despatching containers of samples. Rule 17(a) provides that 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. Rule 17(b) is concerned with the sending of sample to the Local (Health) Authority. Rule 18 provides that a copy of the memorandum and specimen impression of the seal used to seal the packet shall be sent, in a sealed packet separately to the Public Analyst by any suitable means immediately but not later than the succeeding working day. Revision petitioner contends that there is no acceptable evidence to hold that Rule 18 has been complied with in this case and as it is the bounden duty of the prosecution to establish the despatch of the documents referred to in Rule 18 separately, the entire trial is vitiated for the failure to do so. Learned Counsel for the respondents submitted that the decision reported in 1988 SCC (Cri) 47 has no application to the case in hand in view of the unchallenged evidence of the Food Inspector that copy of the memorandum and specimen impression of the seal were sent through special messenger.

4. Despatch of the sealed containers of the two parts of the sample and two copies of the memoranda in

Form VII to the Local (Health) Authority is evidenced by Ext. P 7. It is true that no document was produced to show that the sealed container of the sample and the memorandum in Form VII were despatched to the Public Analyst. But the Public Analyst's report Ext. P 10 reveals that the sample for analysis was properly sealed and fastened and that the seal was found intact and unbroken. P.W. 1 in his evidence deposed that he had despatched the sample and memorandum in Form VII through a special messenger. That part of the evidence of P.W. 1 has not been challenged in cross-examination. Rule 18 gives the choice to the Food Inspector to decide the means of sending the copy of the memorandum and specimen impression of the seal to the public analyst. In the Supreme Court case the Food Inspector's evidence was to the effect that he had sent it by registered post. The Supreme Court observed that when the prosecution came with the story that the material has been despatched by registered post, it has to establish its case of such despatch and in the absence of postal receipt to evidence the despatch by registered post it cannot be said that Rule 18 has been complied with. It is mandatory to have the materials mentioned in Rules 17 and 18 sent separately to the public analyst. The Supreme Court held that there is a purpose behind this requirement and when there is non-compliance, the prosecution has to fail. In the case in hand, the position is different as the mode of despatch chosen by the Food Inspector was to send it through a special messenger. As the Food Inspector has stated that he sent the sample and the memorandum in Form VII to the Public Analyst through a special messenger and as that evidence stands not challenged in cross-examination, it has to be necessarily held that there was sufficient compliance of Rule 18.

5. In *Food Inspector v. Velayudhan* (1987) 1 Ker LT 722 : 1987 Cri LJ 1137 a Division Bench of this Court held that when there is a certificate by a competent authority who had occasion to notice and verify the correctness of the same, it cannot be heard to say that the Food Inspector did not comply with Rule 17. In view of the evidence of P.W. 1 (in the case cited) that he had taken the sample and complied with all the formalities prescribed under the law, the Division Bench held that it has to be presumed that he followed the procedure laid down under Rules 14 to 22(b) in Part V of the Prevention of Food Adulteration Rules. In the case in hand, Ext. P10 analyst's report shows that the analyst found that the sample sent for analysis was properly sealed and fastened, and that it was intact and unbroken. The report further shows that the seal fixed on the container and the outer cover of the sample tallied with the specimen impression of the seal separately sent by the Food Inspector and the sample was in a condition fit for analysis. When there is such a certificate by a competent authority and as there is nothing to suggest that this is without any basis, it cannot be held that there was no sufficient compliance of Rules 17 or 18.

6. A Full Bench of this Court had occasion to consider the question of compliance of Section 13(2B) of the Act in *Mathukutty v. State of Kerala* (1987) 2 Ker LT 867 : 1988 Cri LJ nd it held that even in the absence of evidence, a presumption can be drawn that the official act has been regularly performed in view of Section 114(e) of the Evidence Act As there is affirmative evidence of P.W. 1 that he had despatched the sample and memorandum in Form VII and as the report of the Public Analyst (Ext. P10) also mentions that he received the same intact and as the mode of despatch was within the discretion of P.W. 1, it cannot be said that absence of any documentary evidence regarding despatch would be fatal to the prosecution.

7. Another contention is that there was no sale of milk by the petitioner to P.W. 1. It is argued that the revision petitioner is only a driver of an autorikshaw and as the milk belonged to the first accused and as she has been acquitted, there is no material to connect the petitioner with the offence. P.W.1's evidence shows that on 20-12-1984 at about 2 : 45 p.m. he purchased from the revision petitioner 675 ml of cow's milk for analysis after giving him Rule 12 notice and also the price of the milk Rs. 2.60. His evidence would also show that at the time of purchase of the milk revision petitioner was having with him a brass vessel with the capacity of 15 litres and containing approximately 9 litres of milk. Evidence of P.W. 1 is corroborated by the testimony of P.W. 2 and Exts. P4 and P6 documents. The trial court as well as the tower appellate Court accepted the evidence and held that it cannot be disputed that there was sale of milk by the revision petitioner to P.W. 1. As against the concurrent findings of fact with regard to the sale, we find no reason to interfere.

There is no merit in the criminal revision petition. It is dismissed petition dismissed.

