

In Re: Krishna Aiyar

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SooperKanoon Citation : sooperkanoon.com/773648

Court : Chennai

Decided On : Jan-06-1939

Reported in : (1939)IMLJ266

Appellant : In Re: Krishna Aiyar

Judgement :

ORDER

Pandrang Rao, J.

1. The petitioner has been convicted of an offence punishable under Section 5, Clause 1(d) of the Madras Prevention of Adulteration Act III of 1918. The charge is that he sold milk below the standard of purity prescribed by Government. The charge that was framed against the accused did not state whether it was buffalo's milk or cow's milk that was said to have been sold by him contrary to law. The certificate of analysis in this case by the Government Analyst is to the effect that the sample contained 60.5 parts of genuine milk, 35.0 parts of added water and 4.5 parts of cane sugar in a total of 100 parts. But this opinion as to the composition of the sample was based according to the certificate on the fact that the sample contained only 34 per cent, milk fat and only 0.321 per cent, nitrogen and 4.5 per cent, cane sugar whereas it is laid down in G.O. No. 1867 P.H. dated 1st September, 1932, that genuine buffalo milk contains at least 4.5 per cent, milk fat and at least 0.53 per cent, nitrogen. It is obvious therefore that this opinion was based on the assumption that the milk that was sent as sample, that is, the milk

that was sold by the petitioner, was sold as buffalo's milk. There is no basis for this assumption that it was buffalo's milk that was sold. The evidence of the Sanitary Inspector is also to the effect that he merely asked for a cup of milk and it was given to him. He does not say that he asked for any particular kind of milk, cow's or buffalo's. Rule 22 of the rules framed under Section 20 of the Act by the Government provides that:

Where milk is sold or offered for sale without any indication as to whether it is derived from the cow or the buffalo, the provisions of Rules 16, 17 and 18 shall apply thereto in all respects as if it were cow's milk sold or offered for sale.

2. It is therefore clear in this case that the sample in respect of which the offence is said to have been committed must be dealt with as if it were cow's milk that was offered for sale or sold. The minimum percentage of milk fat is only 3 per cent, under Rule 16. The sample contained 3 : 4 percent, milk fat. It cannot therefore be said that the sample was below the minimum prescribed so far as milk fat is concerned. It is contended, but there is no evidence to show, that the quantity of solid found in the sample was below the prescribed minimum. Rule 18 does not seem to apply to this case in view of the note that is found below Rule 21. In these circumstances it must be held that the offence has not been established in view of the analysis which is relied upon by the prosecution. The conviction and the sentence imposed upon the petitioner are therefore set aside and he is acquitted and the fine if paid must be refunded to him.