

In Re: Ayyavoo Accused

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SooperKanoon Citation : sooperkanoon.com/774411

Court : Chennai

Decided On : Jan-08-1964

Reported in : AIR1964Mad490; 1964CriLJ560

Judge : Anantanarayanan, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 2 and 13

Appeal No. : Criminal Revn. Case No. 233 of 1963 and Crl. Revn. Petn No. 232 of 1963

Appellant : In Re: Ayyavoo Accused

Advocate for Pet/Ap. : S. Ramalingam, Adv.;A.C. Munuswamy Reddy, Adv. for
;Public Prosecutor

Disposition : Revision dismissed

Judgement :

ORDER

Anantanarayanan, J.

1. In my view, the revision petitioner, Ayyavoo, was very properly convicted upon the merits by the two courts below of the offences Under Sections 7 and 16(1)(a)(ii) read with Section 2(1)(a) and (i) of the [Prevention of Food Adulteration Act, 1954](#). Indisputably, the sentence, rigorous imprisonment for one year and fine

of Rs. 2000, though apparently heavy, is the minimum, that has to be awarded under the law for a second commission of the offence, as is the case here.

2. Learned counsel for the petitioner urges only two grounds. The first is that there was no 'sale' within the meaning of the Act, because the revision petitioner (Ayyavoo) is only a servant of an employer, and he was taking milk to a relative of his master, the milk not being intended for sale at all. The point has no substance. The evidence which has been accepted by both the courts below, is very clearly to the effect that the Food Inspector, P.W. 1, purchased this milk from the revision petitioner, for cash paid on the spot, and that is certainly a 'sale' within the meaning of the Act.

3. The 2nd ground is that the milk might have deteriorated in its constitution or content, during the appreciable period that has elapsed between the seizure of the milk and the analysis by the Public Analyst. Related to this ground is another contention urged on behalf of the revision petitioner, that there is a slight difference between the results of this analysis and a later analysis of the same sample by the Central Food Laboratory, Calcutta. This slight difference in the percentage of fat and solids non-fat might itself indicate the inference that milk is liable to change or deterioration in its composition by lapse of time, notwithstanding the addition of a preservative such as formalin in the prescribed quantities.

4. I have carefully considered the two related grounds, which together form the second line of attack in this case. I am unable to see that there is any substance in them, or that they are really tenable. Under Rules 19, 20 and 21 of the rules framed by the Ministry of Health, under the Act, formalin has to be added as a preservative in prescribed quantities, to ensure that there is no deterioration in the composition of the milk, between the time of seizure and the time of analysis. These very rules contemplate that some period may elapse, such as the period of three months which has actually elapsed in the present case. There are authorities of courts for the view that if the formalin or other prescribed preservative is not added in the specified quantities, it may be unsafe to assume that the sample did not deteriorate owing to natural causes; but, admittedly those decisions have no

application here. In the present case, the Public Analyst has given a certificate in unambiguous terms that 'no change had taken place in the constitution of the article that would interfere with the analysis'. In the appellate court some reliance was placed upon an observation in a text book on 'Milk and Milk Products' by Eckles, to the effect that a particular quantity of preservative will preserve one quart of milk for a week or more. That does not at all imply that the quantity prescribed under the rules will not suffice to preserve the sample from deterioration during the period of three months that has actually elapsed between the seizure and the analysis. The, related ground is that there is a very slight difference between the results, as furnished by the Public Analyst, and later by the Central Food Laboratory of Calcutta. The difference is only this. According to the Public Analyst the fat content was 2.6 per cent whereas according to the Central Food Laboratory the fat content was 2.4 per cent. I am unable to see how this could justify any inference that, notwithstanding the addition of formalin as a preservative in prescribed quantities, the sample seized might have undergone such alteration by natural causes as to render the analysis unreliable, with regard to proof of adulteration. As the facts appear in the record, the report of the Analyst is clear evidence for the view that the milk had been adulterated.

5. It was always open to a party like the revision petitioner to have insisted upon the examination in the witness box of some officer actually responsible for making the chemical analysis, and to have cross-examined him upon these points. The prosecution had established its case prima facie, and there was no duty cast upon the prosecution to anticipate some line of defence, and to exclude it by further expert testimony. In my view, upon the material on the record, the courts below came to the correct conclusion in holding that the offence of adulteration of the milk had been established as against the revision petitioner, who was the party in actual possession of the milk and who sold it. The fact that he was an employee is not, in my view, a mitigating circumstance of such character as would justify the court in making a special departure, and in imposing less than the minimum sentence prescribed by statute for a second offence. The conviction and sentence of imprisonment and fine are accordingly both confirmed, and the revision is dismissed.

