

**In Re: Vanka Bhimaraju**

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**Court :** Chennai

**Decided On :** Nov-26-1948

**Reported in :** 1949CriLJ839

**Judge :** Rajagopalan, J.

**Appellant :** In Re: Vanka Bhimaraju

**Judgement :**

ORDER

**Rajagopalan, J.**

1. The petitioner was convicted under B. 39 for contravention of Rule 27-A of the Rules framed under Section 20 (2) (f), Madras Prevention of Adulteration Act; under the same Section 22 (2) (f), he was sentenced to a fine of Rs. 100.

2. The accused did not deny that the oil which was found in his possession contained 50 per cent, of gingelly oil and 50 per cent, of groundnut oil. The accused pleaded from the commencement that be kept that oil not for sale as food but for sale as lamp oil. The learned trial Magistrate apparently did not accept that defence. The learned Sub-Divisional Magistrate on appeal held that even if that composition was kept by the accused for sale as lamp oil that was in contravention of Rule 27-A.

3. Assuming for the purposes of this case that the defence was true and the composition was kept by the accused for sale as lamp oil, *The Public Prosecutor v. Kachi Mohideen Marakayar* : AIR1948 Mad218 , should really conclude the question at issue of the liability of the accused for punishment under E. 29. Yahya Ali J. observed: 'the prohibition is absolute for whatever purpose the consumer may take it or the seller may sell it.' What B. 27-A states is 'No person shall sell Cr have in his possession for the purpose of sale a mixture of gingelly oil with groundnut oil.

4. To reiterate that the accused kept the composition for sale was common ground. Only his contention was that he did not keep it for sale as food.

5. No doubt Yahya Ali J. did not specifically consider the question whether B. 27 (ft) was ultra vires the Provincial Government. Section 20 (2) (f) runs:

In particular and without prejudice to the generality of the foregoing power the Local Government may make rules prohibiting or regulating in the interests of Public health (1) the addition of water or other diluent or adulterant to any food ...

I am unable to see anything in B. 27-A inconsistent with the provisions of Section 20 (2) (f) (i) of the Act. There was nothing in Section 20 (2) (f), requiring the Government to restrict its rule-making power to food offered for sale for consumption as food. The learned advocate for the petitioner pointed out that the preamble recited that the Act was designed in the interests of Public health to prevent adulteration of food. Had the preamble run that it was designed to prevent adulteration of food offered for sale for consumption as food there might have been some substance in the contention, that B. 27-A, which has much larger scope, was beyond the scope of the rule-making powers conferred on Government by statute. Though Yahya Ali J. did not go specifically into the question whether E. 27-A was ultra vires Cr intra vires the reasoning there made it quite clear that the rule was perfectly intra vires. It was not necessary that that rule should be applied only to food offered for sale for consumption as food. As the learned Judge pointed out the rule was absolute in its scope and that scope was well within the rule-making power by Section 20 (2) (f).

6. The sentence of fine of Rs. 100 for a second offence was by no means excessive. The petition is dismissed.

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