

**In Re : Rathamani**

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**Court :** Chennai

**Decided On :** Apr-30-1964

**Reported in :** 1965CriLJ452

**Judge :** Anantanarayanan, J.

**Appellant :** In Re : Rathamani

**Judgement :**

ORDER

**Anantanarayanan, J.**

1. The revision petitioner has been convicted under Section 2(1)(a) and (1) and Section 7(1) read with Section 16(1)(a)(ii) of the Prevention of Food Adulteration Act, 1954, and sentenced to rigorous imprisonment for 12 months and to a fine of Rs. 1,000 in default to rigorous imprisonment for six months. The conviction and sentence were confirmed in appeal by the learned Sessions Judge of Madurai.

2. The point which is stressed in this revision by the learned Counsel for the revision petitioner, Sri Kumaramangalam, is a very interesting one. As the lower appellate court itself remarks, the fact that a sample of the adulterated milk was purchased by the inspector, P. W. 1, is not in dispute. As far as the analysis of the milk is concerned, we have the report of the Public Analyst to the effect that the sample contained 8.8 per cent of solids not fat, whereas the proper percentage for the relevant freezing point, with regard to a mixture of genuine cow-milk and

buffalo milk must be 9.4 per cent. Hence as far as the scientific standard of purity prescribed in the rules is concerned this is an adulterated sample. If it was intended for sale or was being taken for sale, the revision petitioner would certainly be liable to be convicted as found by the courts below.

3. But there is considerable difficulty in holding that the revision petitioner was carrying this mixture of cow and buffalo milk for the purpose of sale, when the sample was seized by the Food inspector, P.W. 1. There is some evidence that the revision petitioner is a milk vendor, by profession. But that evidence, which is really the evidence of P.W. 2 is very indefinite. In Chief-examination P.W. 2 states 'that the accused is a vendor of milk'. In cross-examination he concedes that the accused was vending milk till about two years previously, and that for the last two years the accused has been doing business 'in tin curd'. Now, this is of some importance, in the context of the defence of the accused that this milk was being taken by him, not for being sold as milk, but in order to manufacture 'tin curd' in the course of the business in which the accused was engaged. That claim of the accused is corroborated by his statement, Ex. P. 3, which is a contemporaneous statement made by the accused to the Food Inspector, P.W. 1. As confirmed by P. Ws. 2 and 3 in further cross-examination, the accused has explicitly stated in that document that he was taking the milk in question to Madurai 'for purposes of curd'.

The learned Sessions Judge was much exercised by the particular place at which this interlineations has been made in the statement. I am unable to see how it is at all relevant. Whether the interlineations is in the proper place or not, the accused has affirmed in his earlier statement, Ex. P. 3, itself that this milk was being taken by him, not for being sold as milk but 'for purposes of curd'. The learned Additional First Class Magistrate who tried this accused, thought that it was unlikely that the accused, a resident of Tirumangalam, would be taking three tin cans of milk at 6 a.m. through West Veli Street of Madurai, about ten miles away, if the object was not to sell this milk but to prepare 'tin curd from it'.

4. The argument is clearly inconclusive. It is quite possible, and even probable, that the accused was taking the milk for manufacture of curd, which was his business. As stressed by Mr. Kumaramangalam, if the accused manufactured curd

with this milk, which is adulterated milk from the point of view of the scientific standard of purity enjoined by the rules, and then sold that curd, he may be guilty of some other offence. The learned Public Prosecutor further pointed out that the accused might be guilty under Section 16(1)(d) of the Act, if he, as a manufacturer of curd, had in his possession this adulterated milk, which adulterant could be regarded as material to be employed for adulteration. But, that again is a totally different question. The accused was not prosecuted for any offence under Section 16(1)(d) of the Act, and the necessary facts were not established. Hence, on the facts of the present case, the accused would appear to be entitled to acquittal, unless it can be construed that when P.W. 1 purchased a sample of milk from this accused for purposes of analysis, that delivery of the sample itself amounted to 'sale' within the meaning of the Act, and hence rendered the accused liable for prosecution for sale of an adulterated article.

5. Upon almost identical facts, the point was elaborately considered in *Foot inspector v. Parameswaran* 1962 1 Cri LJ 152 (Kerala). Raman Nair J. pointed out during the course of his judgment that a sale was a voluntary transaction and that a seizure or compulsory acquisition in the exercise of a statutory power by such a person as a Food inspector, clothed with the authority to take a sample would not be a sale in the ordinary connotation. The learned Judge then stressed that the definition of 'sale' in Section 2(13) would include a sale of food stuff for purposes of analysis, but that even this definition did not obviate the necessity, first, to establish the fact of the 'sale'. It is not necessary for me to set forth here the rest of the discussion, since the crux of the question is whether, when a Food inspector obtains a sample under Section 10 of the Act, and pays for that sample in accordance with Section 10(3) of the Act itself this delivery of the concerned food stuff under statute to the official, it may be for consideration, will or will not amount to a 'sale' as ordinarily understood.

As pointed out by Raman Nair J. in the decision above referred to, it is conceivable that a Food Inspector may purchase a sample in the ordinary course of business, though he intends it for analysis, as a voluntary sale and purchase. For instance, the vendor may be unaware of the identity of the purchaser, or the purpose of the purchase. He may sell the milk or the concerned food stuff thinking that he is

selling it to a member of the public, precisely like a sale to any other customer. But, if the vendor is aware that the sale is a forced one, in the sense that an official of the department is compelling the vendor to part with the sample, because of the statutory obligation and further lie-cause prevention of the taking of such a sample by the Food Inspector is itself an offence under Section 1(3(1)(b) of the Act, then there is no 'sale'; this is only a case of a seizure or compulsory acquisition though it may externally wear the form or semblance of a sale. Upon that interpretation, even if the sample had been adulterated, this single act of delivery of the food stuff to the official, will not render the person in possession of the food stuff liable for the offence of a sale of adulterated food.

6. It is pertinent to observe that in *B. Kanakayya In re* 55 MLW 464: AIR 1942 Mad 609 Horwill J. had also to deal with a very similar situation. The learned Judge observed as follows:

A sale is a voluntary transaction even when it is preceded by an agreement to sell. When a person exhibits articles in his shop, he is making a general offer to sell them, and any person who comes into the shop and offers the price accepts his offer; but the intending purchaser cannot use physical force or threats to compel the owner to part with the goods. If he does, the transaction is not a sale. If the sanitary Inspector had not exercised his powers under Section 14 but had merely tendered the money and the petitioner had voluntarily handed over the goods, then there would have been a sale.

I agree, with respect, with the reasoning and inferences in both these decisions that I have cited, and hold that there is no offence under Section 7(i) of the Act, if there is merely a compulsory seizure of a sample by an officer of the department, because such seizure, even if money be paid therefor, will not amount to a sale. It is the common law concept that must govern the interpretation here, and the fact that as 'sale' is referred to in the Act, it would include a sale even for the purpose of analysis, cannot make any essential difference.

7. This is only by way of repelling the argument raised on the facts that the seizure of the sample by the Food Inspector amounts to a sale. Once this is repelled, it is obvious that the revision petitioner cannot be convicted, because he was not

taking the milk in question for the purpose of sale at all, but for purpose of manufacture of 'tin curd' in which business he was then engaged.

8. The revision is accordingly allowed and the revision petitioner will be acquitted, and the fine, if paid will be refunded.

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