In Re : K. Chandran

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Court : Chennai

Decided On : Apr-07-1964

Reported in : 1965CriLJ454

Judge : S. Ramachandra Iyer, C.J. and ;Venkatadri, J.

Appellant : In Re : K. Chandran

Advocate for Pet/Ap. : Mr. R. Santanam

Judgement :

S. Ramachandra Iyer, C.J.

1. This revision case raises a question of importance on which there exists a difference of opinion amongst the learned judges of this Court The petitioner is a grocer at Virudhunagar. On 27.4.1961, P.W. 1, the Food Inspector attached to the municipality of that town, made a surprise visit to his shop, and purchased a small quantity of groundnut oil, which had been kept for sale The Food Inspector made no secret that the object of his purchase was to send the oil for analysis as to its purity. Indeed, he gave the usual notice in form No. VI intimating the same. The oil Was put into three bottles, duly corked and wrapped up, one of them having been delivered to the petitioner, the other sent for analysis to the Public Analyst and the third retained with the Food Inspector for production in court, if it became necessary. Five days later, the sample intended for the Public Analyst was sent to him. But that authority conducted the analysis only a fortnight later, that is, on

17.5.1961. His report as to the results of the investigation was delayed by over six months and it was received by the municipality on 21.11.1961. The petitioner was given a copy of the same a month later.

It is clear from the evidence that the Public Analyst conducted the test immediately after the bottle containing the sample oil was opened; there was practically no exposure of the oil contained in the bottle to the atmosphere before it was tested. The Analyst found that the free fatty acids calculated as oleic were 6,9 per cent, the prescribed maximum for that oil being only 3 per cent. In due course the petitioner was prosecuted under Section 16(1) read with Section 7 of the Prevention of Food Adulteration Act. The Additional First Class Magistrate, Virudhunagar, convicted him of the offence and sentenced him to pay a fine of Rs. 300. Die conviction and sentence were confirmed on appeal. Hence this revision case.

2. Mr. R. Santanam appearing for the petitioner has contended that the delay in the testing of the sample and in submitting the report by the Public Analyst would itself be fatal to the prosecution. In the course of an able and interesting argument, learned Counsel has pointed out that there is an inherent quality in the edible oils which, due to certain natural causes will bring about an increase in the free fatty acid content thereof, the major contributory factor for such natural process being exposure to light and air. On the basis of this contention it was argued that if there was an interval of time between the taking of the sample and its analysis, the presence of excess free fatty substance in the oil should be attributed to such lapse of time and that, therefore, the result of the analysis in such a case could not be taken as a sure indication of the acid contents of the oil at the time of taking the sample; at any rate there will be doubt that the increased free fatty content was there at the lime when the sample was taken. This contention does derive support from the judgment of Veeraswami J., in Mohammud Sheriff Saheb v. State 1961 MWN 195 : AIR 1962 Mad 342 where the learned Judge, after referring to certain scientific books pointed out the unreliability of tests conducted after a delay. The learned Judge further held that as it would he for the prosecution or establish its case beyond doubt, it would be for it to satisfy the court that the delay if there be one in the examination of the sample, did not cause the excess percentage of fatly

content in the oil.

This view has been accepted by Kunhammed Kutti J in in re Krishnamurthi. Petitioner-Accused Cri. B. C. No 407 of (Mad). We are with respect, unable to go so far. in our view, the question of accepting the Public Analyst's report, based on an analysis conducted sometime after the oil was seized, will be one of prudence rather than of law. Edible oil can, in certain circumstances, exist without there being a natural increase in its free fatty acid content. Veeraswami J has referred to the following passage in Industrial and Manufacturing Chemistry by Martin & Cooke, 7th Edn. page 62 under the heading, Acid Value:

This is a measure of the quantity of potassium hydroxide required to neutralize the tree tatty-acids in oil. Gradual decomposition of the geyserites into their components glycerol and free fatty acids takes place when a fat is exposed to the action of light and air, with the result that the acid value steadily rises. This value may therefore be a test' of the freshness of an oil. Oil and rancid fats sometimes have very high acid values.

Earlier at page 21 the learned authors state:

Pure fats are tasteless, odorless, and keep for years. When, however, they contain small quantities of nitrogenous animal or vegetable impurities, they often turn rancid in the presence of air, decomposing into free acids and glycerol by a process of enzyme hydrolysis. Oxygen is absorbed during this change, and the acids formed are often oxidized to oxyacids, while the glycerol is also partially destroyed. In air-tight vessels, in the absence of oxygen, fats do not become rancid.

The opinion cited above shows that it is only it the oil comes in contact with air that there is a change and thereby an increase in its free fatty acid. It would follow, that where sufficient safeguards are taken to prevent exposure to moisture, air and light, there would the very little change for such natural process. This aspect of the matter has been dealt with in 'Chemical Technology and Analysis of Oils, Fats and Waxes' by Lewkowitsch 1921 Edn Vol I, page 51, where it is stated:

It is well known that oils and fats, if kept fully protected from light, air, and moisture, retain indefinitely their state of neutrality, whereas, if they are not carefully preserved, moist air easily gains access (as in imperfectly corked bottle, barrels etc) and free fatty acids, of the same composition as those which are combined with glycerol in the neutral fat, are produced.

Again at page 52:

I therefore ascribe the primary cause of rancidity, namely, the formation of free fatty acids, to the action of moisture in the presence of soluble ferments, which act as catalysts or accelerators.

Then, at page 53:

Rancidity is rather due to the direct oxidation of free fatty acids by the oxygen of the air, assisted1 and intensified by the exposure to light. The exposure of fatty acids to air and light gives rise to the formation in a less degree of the same decomposition products as does exposure to the action of zone....

It cannot, therefore, be stated that the keeping up of oil for any particular period of time would, by itself, be, subject to deterioration in the sense that its free fatty content is increased. Such an increase of fatty content will come about only if there be an exposure of the oil to light and air. If therefore, at the time of taking the samples, the oil has been perfectly packed, there would he little chance of such decomposition, of the oil in the sample bottle. It is with a view to ensure against such decomposition that Rule 16 of the Prevention of Food Adulteration Rules prescribes a particular manner of packing and sealing the samples. It requires that the stopper of the bottle should first be securely fastened, so as to prevent leakage; the bottle containing the sample should then be completely wrapped in fairly strong thick paper, the paper Cover should be further secured by means of strong twine or thread. These safeguards will, undoubtedly ensure against the action of air and light on the contents of the bottle.

3. Mr. Santanam, however, contends that if the bottle be only partially filled with oil intended for analysis, the remaining part of it, which would contain air, might, in

course of time, affect the fatty contents of the oil. There is no doubt force in this contention. But there is no evidence in this case that there was any air within the bottle, which, we assume, was filled up to the full with the sample oil before it was closed by means of a stopper. As Anantanarayanan J. has observed in Cri. R.G. No. 321 of 1963 (Mad):

Each case will naturally have to be decided upon its own facts; presumably no rigid rule can be laid down concerning the appreciation of the technical evidence upon this aspect

We agree.

4. In our view, Rule 16 provides sufficient safeguards to prevent decomposition of the oil by natural causes. It will however be always open in to an accused, in any particular case, to show that the packing was inadequate, or that it was so defective that it could not have prevented air and light affecting the sample oil contained in the bottle. In the present case it is not contended that there was any defect in the packing of the sample oil; and we must, therefore, accept the report of the Public Analyst as showing the condition of the oil exposed for sale by the petitioner on the relevant date.

5. Mr. Santanam then criticised the long delay on the part of the Public Analyst in submitting the report of his test. Rule 7, relating to the duties of the Public Analyst, prescribes that after the analysis has been completed, he shall forthwith supply to the person concerned a report in form No. III of the result of such analysis. There has undoubtedly been a breach of this rule, in the present case. In Cri. R.C. No. 273 of 1960 (Mad), In re Muthiah Chettiar Petitioner-Accused 3 - Kunhammed Kutti J impressed upon the authorities the need for expedition in the matter. We share with the learned Judge that view. But at the same time, it cannot be said that mere delay in the communication of the results of test would, while it may expose the officer making the analysis to departmental. action, have any effect on the correctness of the. analysis. It was then argued that as the person who conducted the analysis has not been examined, the report which was proved by the Public Analyst who did not conduct the tests could not be relied on. The short answer to this objection is Section 510 Cr.P.C.

6. The conviction in the present case cannot, therefore, be successfully assailed. The sentence is not excessive. The revision case fails and is dismissed