

**In Re: Abdul Salam**

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**Court :** Chennai

**Decided On :** Oct-25-1956

**Reported in :** AIR1957Mad268; 1957CriLJ516

**Judge :** Ramaswami, J.

**Acts :** Madras Prevention of Adulteration Rules, 1955 - Rules 28 and 37; Madras Prevention of Adulteration Act, 1918 - Sections 5(1); Prevention of Adulteration Act, 1954 - Sections 2 and 25(2)

**Appeal No. :** Criminal Revn. Case No. 857 of 1956 and Cri. Revn. Petn. No. 795 of 1956

**Appellant :** In Re: Abdul Salam

**Advocate for Pet/Ap. :** N.C. Ragavachari, Adv.;V.V. Radhakrishnan, Adv. for  
;Public Prosecutor

**Judgement :**

ORDER

**Ramaswami, J.**

1. This criminal revision is directed against the conviction and sentence pi the learned Sub-Divisional Magistrate of Tirupattur in G. C. No. 71 of 1956.

2. The (acts are: The Sanitary Inspector of Vaniyambadi purchased from the shop of this accused a packet of tea dust and which on being sent to the public analyst was found to contain artificial colouring matter derived from coal tar, and which the public analyst considered constituted an infraction of Rule 37 (E) of the Madras Prevention of Adulteration Rules, which prohibited the sale or possession for the purpose of sale a mixture of tea and any substance prepared in imitation or as the substitute for tea.

The position taken by the accused was that he did not sell tea to the Sanitary Inspector, that the tea was taken from his shop and that he did not know that any substance was added to the tea and that he has not committed any offence. The learned Magistrate convicted the accused as charged and sentenced him to pay a fine of Rs. 10.

3. Two points are taken before me by the learned Advocate Mr. Raghavachari. First of all, he contends that this addition of coal tar derivative to the tea dust did not constitute a mixture of tea with any substance prepared in imitation or as a substitute for tea. I am unable to agree with the contention of the accused. What is sought to be hit at under this old Rule 37(E) (b) was that there should be no adulteration of the pure tea offered for sale by the admixture of colouring substance derived from coal tar. Under Section 5 (1) (a) of Act III of 1918, adulteration is selling any food which is not of the nature, substance or quality of the article demanded by the purchaser. There can be no dispute therefore that the admixture of this coal tar derivative constituted an adulteration which is within the purview of Rule 37 (E) (b) of the old rules.

4. Therefore, the next argument of the learned advocate is that under Section 2 (j) of Act XXXVII of 1954 an article of food shall be deemed to be adulterated only if any colouring matter other than that prescribed in respect thereof and in amounts not within the prescribed limits of variability is present in the article. In accordance with this provision rules have been framed and RULE 28 of the Prevention of Food Adulteration Rules, 1955 states:

'No coal tar dyes except the following shall be used in foods:

(a) Indigotine (F. D. C. Blue No. 2)

(b) Orange I (F. D. C. Orange No. 1)

(c) Amarnath (F. D. C. Red. No. 3)

(d) Erythrosine (F. D. C. Red No. S)

(e) Tartrazine (F. D. C. Yellow No. 5)

Therefore, the learned advocate contends that as it is not known whether this coal tar derivative present comes within these five categories, no offence could be said to have been committed by this accused. This argument would be valid but for the saving clause in Section 25 (2) of Act XXXVII of 1954, which lays down:

'Notwithstanding the repeal by this Act of any corresponding law, all rules, regulations and bye laws relating to prevention of adulteration of food, made under such corresponding law and in force immediately before the commencement of this Act shall, except where and so far as they are inconsistent with or repugnant to the provisions of this Act continue in force until altered, amended or repealed by rules made under this Act.'

On the date on which this seizure was made and the prosecution was launched and the conviction was recorded, this new rule giving a category of five coal tar derivatives which could be used, had not come into operation. Therefore, the old Rule 37 (E) cannot be considered to be repugnant to the rule framed under Act XXXVII of 1954. Consequently, it cannot be said that by reason of the coal tar derivative used in this case falling within one or more of the five categories mentioned in the new rule, the accused would be saved.

5. But in view of the fact that the learned advocate mentions that a number of cases of this nature are pending, the Public Analyst should in future frame his report in the light of the rules framed under the new Act showing whether the coal tar derivative comes within the five categories or not. The certificates of the Public Analyst cannot afford to be in Future of the same vague description as before because they have to be in conformity with the rules framed under the new Act

and which have been published by the Central Government.

6. In the result, I confirm the conviction but set aside the sentence of fine, because when these rules have come into force and tradesmen are ignorant of what is prohibited and what is not prohibited, it would be enough if he is admonished through his advocate to be careful in future and purchase copies of the new rules and see that he does not violate any of the rules giving room for prosecutions of this nature. The fine amount, if collected, will be refunded.

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