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Court : Chennai

Decided On : Nov-19-1991

Reported in : 1992CriLJ3115

Judge : Janarthanam, J.

Appeal No. : Criminal Appeal No. 585 of 1986

Appellant : The State

Respondent : Kumaresan

Advocate for Def. : A. Packiaraj, Adv.

Advocate for Pet/Ap. : R. M. Kannappa Rajendran, Govt. Advocate (Criminal Side)

Judgement :

1. This appeal by the State is against acquittal.
2. On 28-8-1984, at 12-30 p.m., P.W. 1, the Food Inspector attached to Virudhunagar Municipality accompanied by Sanitary Maistry, inspected the Oil Store situate at Door No. 110, Main Bazar, Virudhunagar. At that time, the respondent/accused, the proprietor of the Oil Store, was transacting the business. He was, it is said, dealing in various kinds of oil, such as gingelly oil, coconut oil and ground-nut oil. P.W. 1, it is said, expressed his intention of drawing of samples

of coconut oil for purpose of analysis. The respondent/accused agreed for the same. Samples of coconut oil were drawn by P.W. 1, by complying with all formalities. One such sample had been sent to the Public Analyst, after due intimation to the Public Health Authority, to whom other two samples had been sent. The sample so sent to the Public Analyst was found to be adulterated, as revealed by his report, Exhibit P. 10.

3. After complying with the other formalities of serving with S. 13(2) notice etc., a complaint, in fact, had been laid before the Judicial First Class Magistrate, Virudhunagar on 10-11-1984 against the respondent/accused for offences under sections 7(i) and 16(1)(a) read with S. 2(i-a) and (m) of the Prevention of Food Adulteration Act, 1954 (for short 'the Act') which was taken on file as C.C. No. 598 of 1984.

4. The case of the respondent/accused is one of denial.

5. Learned Magistrate, on consideration of the materials placed before him and after hearing the arguments of respective learned Counsel for the parties, rendered a verdict of acquittal on 23rd February, 1985 on the sold and lone ground on the Public Analyst, no expressing any opinion in his report to rule out the possibility of the non-conformation of the standard prescribed being solely due to natural causes and beyond the control of human agency, placing reliance on the decision in Gaffar Khan v. State of M.P. 1984 FAJ 108.

6. Learned Government Advocate would submit that the aforesaid decision, on which reliance had been placed by the trial Court for rendering the verdict of acquittal, is the resultant product of misconstruction and misreading of the relevant provisions of the Act and if the relevant provisions had been properly construed and interpreted, the intention reflected by those provisions would emerge to the surface, in crystal clear a fashion and therefore it is - he would say - that it is but proper for this Court to set aside the verdict of acquittal.

7. Learned Counsel for the respondent/accused though commenced his arguments in a flamboyant style, repelling the arguments of learned Government Advocate, however after some time, feeling that such arguments, if pursued,

would not pay any dividend at all, was rest content in submitting that even in the extreme case of accepting the arguments, as projected by the other side, the verdict of acquittal, which has remained all along for the past six years and more, need not at all be disturbed, taking into account that the accused/respondent had undergone the agony and anguish of facing the prosecution on and from the time of taking the sample, that is to say, from 28-8-1984 till up to the rendering of the verdict of acquittal and thereafter also he had the agony of a long wait as to what is to happen to the appeal preferred by the State against acquittal till to-day, the date of hearing of this case.

8. Section 2(ia) and (m) of the Act defining the expression 'adulterated', which is necessary for our purpose, runs as under :-

'2. Definitions. - In this Act unless the context otherwise requires. -

.....

(ia) 'adulterated' an article of food should be deemed to be adulterated -

(a) if the article sold by a vendor is not of the nature, substance or quality demanded by the purchaser and is to his prejudice, or is not of the nature, substance or quality which it purports or is represented to be;

(m) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability but which does not render it injurious to health;

Provided that, where the quality or purity of the article, being primary food, has fallen below the prescribed standards or its constituents are present in quantities not within the prescribed limits of variability, in either case, solely due to natural causes and beyond the control of human agency, then, such article shall not be deemed to be adulterated within the meaning of this sub-clause

9. The expression 'primary food' is referred to in the proviso, extracted as above and it is put necessary to understand the meaning of the said expression. There is a provision under S. 2(xii-a) defining 'primary food' and it is as under :

'(xii-a) 'primary food' means any article of food, being a produce of agriculture or horticulture in its natural form.'

10. The expression 'primary food' occurs only in the proviso and not in the main clause (m). According to the main clause (m), even if the article of food is not injurious to health, such an article of food shall be deemed to be 'adulterated', if the quality or purity of such article falls below the prescribed standard or its constituents are present in quantities, not within the prescribed limits of variability. But if the quality or purity of 'primary food' falls below the prescribed standards solely due to natural causes and beyond the control of human agency, such articles shall not be deemed to be adulterated and the part played by natural causes and human agency is of no concern in the case of other articles. Unless this vital distinction is borne in mind, confounding confusion is likely to permeate in applying this provision to the facts of a given case.

11. In the case on hand, the article of food, subjected for analysis is admittedly coconut oil, which can, by no stretch of imagination, be stated to be 'primary food', in the light of the definition of such food, as adumbrated in S. 2(xii-a) of the Act. Such being the case, the proviso has no application to the case on hand and the main clause alone is applicable.

12. The standard prescribed for coconut oil is given in Appendix B as 'A. 17.01' to the Rules framed under the Act which reads thus :

'A. 17.01 Coconut Oil (Narayaal Ka tel) means the oil expressed from copra obtained from the kernel of *Coccoloba nucifera* nuts. It shall be clear and free from rancidity, suspended or other foreign matter, separated water, added colouring or flavouring substances, or mineral oil. It shall conform to the following standards :
(a) Butyro refractometer reading at 40 degree C 34.0 to 35.5 (b) Saponification value not less than 250 (c) Iodine value 7.5 to 10.0 (d) Polenske value not less than 13.0 (e) Free fatty acid as Oleic acid. not more than 3.0 per cent.'

13. The relevant portion of the report of the Public Analyst, Exhibit P. 10, which is necessary for our purpose, is reflected in the following terms :

'I further certify that I have caused to be analysed the aforementioned sample and declare the result of the analysis to be as follows :-

----- Analysis done Results
Values prescribed under Clause A. 17.01 in Appendix-B to the PFA Rules, 1955 for Coconut Oil. ----- from Fatty Acids as Oleic acid 0.3% Butyro-refracto-meter reading % 40 degree C 40.2 34.0 to 35.5 Iodine Value (Wij's Method) 32.77 7.5 to 10.00 Saponification Value 232.6 Not less than 250 Polensko Value 8.1 Not less than 13.0 Reichert Value 6.27 Baudouin Test, Halphen's Test Caster Oil Test & Holde's Test Negative Turbidity Temperature Whereas in my opinion (Bellier Test - Acetic 29.0 degree C genuine Coconut Oil Acid Method) has a value of 12 to 14 degree C.
----- and am of the opinion that the sample does not conform to standards for Coconut Oil in respect of Butyro-refracto-meter reading, Iodine value, Polansk Value and Saponification Value. Hence it is adulterated.'

Except Free fatty acid as Oleic acid, as given in Clause (e) of the Standard, the other standard, as had been prescribed under Clauses (a) to (d) is not at all satisfied and because of such non-conformation of the standards in those clauses, the Public analyst expressed opinion that the sample of Coconut Oil sent for the purpose of analysis, was adulterated.

14. Learned Judge of the Madhya Pradesh High Court, who decided the case, as referred to above, on which reliance had been placed by trial Magistrate, did not at all take into account, the vital distinction between the main clause (m) and the proviso appended thereto, in the sense of understanding the distinction between any 'article of food' and an article of food falling under the category of 'primary food' and that perhaps was the be stated to be adulterated. Further, it is to be noted that the article of food subjected to analysis in that case was the mustard oil, which also cannot be stated to be a 'primary food' falling under the proviso to clause (m). In such circumstances, I am unable to agree with the opinion expressed by learned Judge, who decided the case. Consequently, the finding of the trial Magistrate for canvassing the verdict of acquittal is not at all sustainable in

law.

15. The question that now looms large is as to whether the verdict of acquittal, which remained for quite a long period, could be disturbed by the reversal of the finding of learned trial Magistrate, as stated above. Taking into account the fact that the respondent accused had been facing the mental agony of the Damocles' Sword of prosecution hovering over his head, right from the day of taking of the samples, till up to the time of rendering of the verdict of acquittal and again from the time of subsequent proceeding by way of appeal against acquittal till to-day, I feel it would not be besides justice in not disturbing the verdict of acquittal, despite the fact that the finding of the trial Magistrate, on which the verdict of acquittal is based is set aside. I, therefore, allow the verdict of acquittal to remain as it is, without being disturbed, reason for his coming to the conclusion that in the absence of any expression of opinion by the Public Analyst in the report, ruling out the possibility of non-conformation being solely due to natural causes and beyond the control of human agency, the article of food cannot in the peculiar circumstances of the case.

16. The appeal is thus dismissed with the above observations.

17. Order accordingly.

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