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**In Re: Valaguru Asari**

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**SooperKanoon Citation** : sooperkanoon.com/788093

**Court** : Chennai

**Decided On :** Sep-19-1967

**Reported in** : AIR1969Mad85; 1969CriLJ394

**Judge** : Krishnaswami Reddy, J.

**Acts** : Prevention of Food Adulteration Act, 1954 - Sections 16(1)

**Appeal No.** : Criminal Revn. Case No. 85 of 1966 and Crl. R.P. No. 84 of 1966

**Appellant** : In Re: Valaguru Asari

**Advocate for Pet/Ap.** : N. Suryanarayanan, Adv. for ;R.T. Gopalakrishnan, Adv.;Calvin Jacob, Adv. for ;Public Prosecutor

**Disposition** : Revision allowed

**Judgement** :
ORDER

**Krishnaswami Reddy, J.**

1. The revision petitioner has been convicted under Section 16(1)(b) of the Prevention of Food Adulteration Act and sentenced to pay a fine of Rs. 100, in default to undergo simple imprisonment for two months by the District Magistrate, Tiruchirapalli. On appeal, the Sessions Judge. Tiruchirapalli, confirmed the conviction and sentence. The following facts are not disputed before me:--

2. The Food Inspector. (P. W. 1) found the petitioner carrying milk in a chombu covered with a tumbler at about 8 a.m. on 13-3-1965 in the outskirts of Manapparai. P. W. 1 called the petitioner for the purpose of taking sample milk when the petitioner was going at a distance of half a furlong from him. The petitioner poured the entire milk from the chombu in the paddv field, threw away the chombu and the tumbler and ran away. P. W. 1 seized the chombu and the tumbler and filed a complaint against the petitioner alleging that he prevented him from taking the sample.

3. It is contended by the learned Counsel appearing for the petitioner that the conviction under Section 16(1)(b) of the Prevention of Food Adulteration Act cannot be sustained for the reason that there was nothing to show from the evidence of the Food Inspector that he either demanded sample from the petitioner or that he expressed his intention to take sample from the petitioner. There appears to be substance in the contention of the learned counsel.

4. It is necessary, to appreciate the contention of the learned counsel, to set out the relevant portions of Section 16 of the Prevention of Food Adulteration Act.

'16. (1) If any person -- (a) ..... (b)prevents a food inspector from taking a sample as authorised by this Act or (c) prevents Food Inspector from exercising any other power conferred upon him by or under this Act, or ..... he shall .....be punishable. .....'

5. Section 16(1)(c) deals with preventing the Food Inspector from exercising any other power conferred on him under the Act This clause deals generally, since a Food Inspector has got several powers to exercise. Though the power of taking sample is also one of the powers conferred on him under the Act, It is specially carved out from the other powers and specifically brought in clause (b) of Section 16(1). It is therefore, necessary for the prosecution to show that the person who prevented the Food Inspector from exercising this power, knew, to bring him within the mischief of Section 16(1)(b), that the Food Inspector wanted to take sample from him. He may be made known either by a demand of sample or a communication of the intention to take sample, by the Food Inspector. It must be strictly proved that the accused, knowing the Food Inspector wanted to take

sample, prevented the Food Inspector deliberately from taking such sample. There is no evidence that the Food Inspector either expressed his intention to the petitioner that he was going to take sample or that he, demanded the sample from the petitioner. In the absence of such evidence, the conviction under Section 16(1)(b) of the Act cannot be sustained. However, he would be liable under Section 16(1)(c) of the Act. The powers of the Food Inspector are enumerated in Section 10 of the Act. Under Section 10, Clause (3), any Food Inspector may exercise the powers of a Police Officer under Section 57 Cr. P. C. When the Food Inspector called the petitioner while he was taking milk with him. he had prevented the Food Inspector from coming to him and ascertaining his name and residence and other details, by his pouring the milk, throwing the choumbu and tumbler and running away.

6. The learned Public Prosecutor contended that though the Food Inspector had not communicated his intention to take sample from the petitioner, he had stated on oath that he called the petitioner with the intention of taking sample from him and that this would suffice to bring him within Section 16(1)(b) of the Act I am unable to agree with his contention. He relied upon the following decisions in support of his contention: Public Prosecutor v. Murugesan, : AIR1954 Mad199 . Municipal Board v. Jhammanlal, : AIR1961 All103 . Perumal Konar. in re 1964 MLJ Crl 661 U965 (1) Cri LJ 389 and Nazim v. State, : AIR1957 All829 .

7. In the first three decisions, there was a demand of sample by the Food Inspector. In : AIR1954 Mad199 , the maistrv and a cooly of a Panchavat Board deputed by the Sanitary Inspector to take sample of milk asked the accused to give sample; but the accused instead of giving a sample went into the hotel and handed over the milk to a servant who poured it into a milk pan containing other boiled milk. The conviction of the accused was upheld for having prevented the officer from taking the sample. In : AIR1961 All103 , the Food Inspector asked the accused to give him a sample of mustard oil; but he left the shop promising to come shortly. The Food Inspector waited for some time and the accused did not turn up. The accused was prosecuted for having prevented the Food Inspector from taking the sample by abruptly leaving the shop without giving him the sample. The conviction was upheld. In 1964 MLJ Crl 661 (1965 (1) Crl LJ 389, the Food

Inspector stopped the person carrying milk and demanded sample for analysis: hut the accused instead of complying with the demand of the officer placed the can inside the hotel, took to his heels and ran away. The accused was prosecuted under both the clauses 16 (1) (a) and 16 (1) (c) of the Act. The conviction was upheld under both the clauses by Anantanarayanan, J., (as he then was). Anantanarayanan, J.. held that the accused was clearly guilty of an offence under Section 16(1)(c) of the Act as the Food Inspector was prevented by the accused from exercising any other power conferred on him by or under the Act. The conviction under Section 16(1)(b) was also confirmed. In these three cases, it is clear that there was a demand for sample by the Food Inspector.

8. In this case, as already stated, there was no demand by the Food Inspector; nor he expressed his intention to take sample. Hence, these decisions do not support the contention of the learned Public Prosecutor.

9. In : AIR1957 All829 the accused who was passing by the road with a bucket of milk in his hand was asked by the Food Inspector to stop, but the accused instead of complying with the request took to his heels and when chased by the peon threw away the milk from which the Food Inspector intended to take a sample. The accused in this case was charged under Section 30 of the U. P. Pure Food Act and Rule 4 framed under the said Act. Section 30 of the U. P. Pure Food Act is substantially similar to that of Section 16(1)(c) of the Act. There is no provision in the U. P. Pure Food Act similar to that of Section 16(1)(b) of the Act. Section 30 of the U. P. Pure Food Act U as follows:

'A person who willfully obstructs any person acting in the performance of any duty under this Act or any rule, by-law, order or warrant made or issued thereunder, shall be guilty of an offence'.

This decision may not be of any use for the contention of the learned Public Prosecutor as we are concerned in this case with Section 16(1)(b) of the Act. This decision will, of course, have relevancy if the petitioner was prosecuted under Section 16(1)(c) of the Act.

10. As stated already, if the petitioner was prosecuted under Section 16(1)(c) of the Act, he would have been guilty of having prevented the officer from exercising his powers conferred on him by the Act. I am not inclined to alter the conviction to Section 16(1)(c) of the Act as the complaint was not laid under the said section and opportunity to meet the charge under Section 16(1)(c) was not given to the petitioner by the trial Court.

11. The revision petition Is allowedand the petitioner is acquitted. Fineamount, if paid, will be refunded.

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