

**In Re: Narayana Iyer**

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**SooperKanoon Citation :** [sooperkanoon.com/796596](http://sooperkanoon.com/796596)

**Court :** Chennai

**Decided On :** Sep-13-1932

**Reported in :** AIR1933Mad99

**Appellant :** In Re: Narayana Iyer

**Judgement :**

ORDER

**Burn, J.**

1. The petitioner has been convicted of an offence under Section 5, Sub-section 1(b) and (d) and Section 20(d), Madras Prevention of Adulteration Act 3 of 1918 and fined Rs. 50. There is no dispute about the facts. The petitioner is the proprietor of a Coffee Club in Coimbatore. On 23rd October 1931, the Sanitary Inspector, P.W. 1, bought from him one measure of milk. On analysis the milk was found to contain 40 per cent, of added water. The Bench held that this was a sale of food not of the nature, substance or quality which it purported to be [Section 5(1)(b) 7]. By rules framed under Section 20(e) of the Act the Local Government prescribed a standard of purity for milk. The milk sold by the petitioner was certainly not up to the standard of purity fixed by the Government and hence the Bench held that the petitioner had committed an offence under Section 5(1)(d) of the Act. By rules framed under Section 20(d) of the Act the Local Government prescribed the manner in which the notice of addition, admixture or deficiency should be given to the purchaser of any article of food. It was alleged for the

petitioner that he had put a notice to the effect that there was an admixture of water with the milk. But it was not contended that he had given such a notice as is prescribed by the Local Government in this behalf and hence the Bench held that the petitioner was guilty also of a breach of Section 20(d) of the Act. Mr. Jayarama Iyer for the petitioner contends that since 'milk' is provided for in Section 5(1)(d) the petitioner cannot be held to be guilty under Section 5(1)(b) which deals with food in general. Milk no doubt falls within the definition, or rather the interpretation, of the term food which is given in Section 2 of the Act as follows:

Food includes every article (other than drugs or water) used by man for food or drink, and all materials used or admixed in the composition or preparation of such article, and shall also include flavouring matter and condiments.

2. From this it would follow that any person who sells milk which is not of the nature, substance or quality which it purports to be, would be guilty of a violation of Section 5(1)(b). But in Section 5(1)(d) special provision is made for the offence of selling milk which is not up to the standard of purity prescribed by the Local Government. Hence it is argued that the offence of selling adulterated milk cannot fall under Section 5(1)(b). Mr. Jayarama Iyer relies on Maxwell on the Interpretation of Statutes, p. 527. I cannot however agree that this principle is applicable to this case. As will be seen in a moment, Mr. Jayarama Iyer is contending that the rules prescribing a standard of purity for milk have never been applied to the Coimbatore Municipality. If that is so, nobody in Coimbatore can commit any offence under Section 5(1)(d). There is no doubt that the Act is in force in Coimbatore since 1929, and therefore Section 5 is in force. But if Mr. Jayarama Iyer's contention is correct Section 5(1)(b) is a more dead letter as far as milk is concerned, and anyone may sell in Coimbatore anything whatever instead of milk. This is quite impossible. It might be reasonable to say that where a standard of purity for milk has been prescribed under Section 5(1)(d), a person could not be guilty both under Section 5(1)(b) and under Section 5(1)(d). It is in my opinion quite unreasonable to argue that Section 5(1)(b) has been made of no effect as far as milk is concerned by the enactment of Section 5(1)(d), when it is at the same time contended that Section 5(1)(d) is not in force.

3. Milk is food, water is not food. To sell as milk a substance which is 40 percent, water and only 60 per cent, milk is without any doubt a breach of Section 5(1)(b). Mr. Jayaram Iyer says that the petitioner never pretended to be selling pure milk, and he was in fact selling milk though with water added. This is to neglect the words of the Act. Milk as defined in the Act does not permit the addition of any water. To sell as milk a mixture of milk and water is to sell as food a substance which is partly food and partly not food, and which is therefore not of the nature, substance or quality which it purports to be. The Bench was therefore right in convicting the petitioner of an offence under Section 5(1)(b). The propriety of the conviction under Section (1)(d) and Section 20(d) depends on the answer to the question whether the rules framed by the Local Government under Section 20(d) and (e) are or are not in force in the Coimbatore Municipality. These rules were published in the Port St. George Gazette on 24th August 1926, Part 1-A, p. 319. But the Act itself was not applied to the Coimbatore Municipality till 1st July 1929: vide Port St. George Gazette dated 11th June 1929, Part 1-A, p. 330. Section 20 of the Act which gives power to make rules begins as follows:

The Local Government may, after previous publication, make 'rules consistent with this Act for the whole or any part of the area to which this Act may have been extended.

4. Mr. Jayarama Iyer contends, and as I think with considerable force, that the rules framed in the exercise of this power can only be applied to any particular area after the Act has been brought into force in that area. That is in my opinion the natural meaning of the words. The learned Public Prosecutor refers to Section 6, Madras General Clauses Act. But that only provides that rules may in certain cases be framed before the Act comes into force, but shall not take effect until the Act itself is put into force. I respectfully agree with the opinion of Jackson, J., in Criminal Revision Case No. 73 of 1931 that Section 6, General Clauses Act, does not provide for the application to one area of rules framed for another area. In the Prevention of Adulteration Act, there is no provision, as in some other Acts, for example, the Factories Act and Motor Vehicles Act, that rules when framed shall take effect 'as if enacted in the Act itself.' Section 20 appears to contemplate the possibility of different rules for different areas. As Jackson, J., observed in the

case already referred to: 'rules applicable to one part of this Presidency are not necessarily applicable to another part.'

5. This principle is expressly recognized in Section 1 of the Act itself. For these reasons I hold that the petitioner is not guilty of any offence under Section 5(1)(d) or Section 20(d) of the Act. The convictions under those sections are set aside. One fine was imposed for all the three offences of which the petitioner was convicted. I reduce it to a fine of Rs. 40. The balance if paid must be refunded.

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