

**State Vs. C. Sambandam**

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**Court :** Chennai

**Decided On :** Jan-18-1980

**Reported in :** 1980CriLJ1198

**Judge :** Varadarajan, J.

**Appellant :** State

**Respondent :** C. Sambandam

**Judgement :**

**Varadarajan, J.**

1. This criminal appeal has been filed by the State against the acquittal of the respondent-accused, by the learned Sessions Judge, East Thenjavur Dn., Nagapattinam in Crl. Ap. No. 42 of 1977, which had been preferred by the accused against his conviction by the learned Sub-Divisional Judicial Magistrate, Nagapattinam in C. C. 589 of 1976 of an offence punishable under the Prevention of Food Adulteration Act and a sentence of rigorous imprisonment for three months and fine of Rs. 500 imposed for that conviction.

2. The case of the prosecution was this; P. W. 1, the Food Inspector of Nan-nilam Panchayat purchased 660 ml. of milk from the accused's tea shop on Kumbakonam road at Kolathumangudy village at 11 a! m, on 7-9-1976 for 84 paise, after serving a form VI notice, Ex. P-I, under the acknowledgment, Ex. P-3

and obtaining the receipt, Ex. P-2 for the said purchase. P. W. 1 observed the necessary formalities viz., dividing the milk purchased by him into three equal parts, putting them in three separate clean bottles and sealing them and handing over one of the said bottles to the accused and sending one bottle to the Court and the third to the Public Analyst.

3. The Analyst's report, Ex. P-4 showed that the milk was deficient in solids-not-fat to the extent of at least 76 per cent. sub-sequently, the accused has been prosecuted under the Prevention of Food Adulteration Act. The accused stated that he was not running the tea shop and it was run by his brother-in-law Kalyanasundaram, examined as D. W. 1. D, W. 1 stated that he was running the tea shop and that the sample milk was taken from out of the milk which was being boiled in a vessel in the tea shop and that the milk was not intended for sale, but was only intended for preparing tea. It was suggested to P. W. 1 that the accused's signatures were obtained in Exs. p-2 and P-3 in his house and not in the tea shop. The learned Sub-Divisional Judicial Magistrate accepted the evidence of P. W. 1 that it was the accused who sold the milk to P. W. 1 under the receipt Ex. P-2 and that Exs. p-1 to P-3 had been signed by the accused only in the tea shop where the milk was purchased by P. W. 1. He accepted the Public Analyst's Report Ex. P-4, and found that the accused sold adulterated milk. He accordingly convicted and sentenced the accused as mentioned above. But, on appeal, the learned Sessions Judge of East thenjavur Dn., at Nagapattinam, found that the sample of milk had been taken from out of the milk that was being boiled in the tea shop and that it was not intended to be sold and therefore, there was no sale of milk as a primary food in this case. Accordingly, he acquitted the accused and set aside the conviction and sentences of rigorous imprisonment and fine awarded to the accused by the learned Sub-Divisional Judicial Magistrate.

4. The learned Public Prosecutor invited my attention to the decision of the Supreme Court in Food Inspector, Calicut v. Gopalan : 1971 CriLJ1277 and submitted that in view of that decision, the finding of the learned Sessions Judge that there was no sale of milk in this case as primary food is unsustainable. On the other hand, the learned Counsel for the accused relied upon a decision of Subramonian Poti J. of the Kerala High Court in State of Kerala v. Abdul Khader

1979 Cri LJ 295 : . In that case also, according to the accused, the milk was kept for the purpose of preparing tea and, therefore, no sample ought to have been taken from him. The learned Magistrate who tried the case found that the sample milk was kept in the tea shop for preparation of tea and not for sale as such milk and that as such, sample ought not to have been taken under Section 10(2) of the Prevention of Food Adulteration Act, 1954. Section 10(2) of the Act and the proviso thereto read:

Any Food Inspector may enter and inspect any place where any article of food is manufactured, or stored for sale, or stored for the manufacture of any other article of food for sale, or exposed or exhibited for sale or where any adulterant is manufactured or kept, and take samples of such article of food or adulterant for analysis: Provided, that no sample of any article of food, being primary food, shall be taken under this sub-section if it is not intended for sale as such food.

Subramonian Poti J. observed in his judgment:

By the proviso, taking of sample of primary food is prohibited and unless when such primary food, sample of which is taken, is intended for sale as such food. If milk is primary food and it is not intended for sale as milk, then the proviso to Section 10(2) prohibits taking of the sample. that the milk was not intended to be sold as such but was kept for use as an ingredient of tea is evident from the case of the complainant himself. Therefore, the only question is whether milk is a primary food. If it is, taking of the sample was not authorised by law and a conviction on the basis of result of analysis of such sample cannot be made.

The learned Judge confirmed the acquittal of the accused in that case, and held that interference with the judgment of the trial court acquitting the accused was not called for. The learned Judge has referred to the aforesaid decision of the Supreme Court in his judgment, but has not stated how that decision of the Supreme Court cannot be made applicable to the case before him. In Food Inspector, Calicut v. Gopalan : 1971 CriLJ1277 , referred to above, the Food Inspector of Calicut Corporation purchased from the first respondent in that case 600 grams of sugar for 78 paise for analysis from the stock of sugar kept in the premises to be used for preparation of tea sold to customers in the said tea stall

run by the second respondent under the licence issued by the Corporation. The Analyst's report in the case showed that the sample contained artificial sweetener saccharin equivalent to about seven per cent of cane sugar and therefore, it was adulterated. Vaidia-lingam J. who spoke for the Bench in that case observed-

There is no controversy that sugar with which we are concerned in this case is an article used as food for human consumption or at any rate, it is an article which ordinarily entered into or is used in the composition or preparation of human food. Even according to the respondent, the sugar so kept in their tea stall was intended to be used in the preparation of tea which was being sold to the customers. A reference to the definition of 'sale' will also show that a sale of any article of food for analysis comes within that definition. that the sample of food purchased by the Food Inspector in this case satisfies the definition of 'sale' in Clause 14 is also beyond controversy.

Their lordships have held that it is not necessary to establish that the person from whom the article of food was purchased was a dealer as such in that article. In view of the decision of the Supreme Court, it is not possible to agree with the learned Sessions Judge, in this case, that merely because the milk sold to P. W. 1, was taken out from the milk which was being boiled in the tea shop and that milk was intended for being used in the preparation of tea to be sold to the customers there was no sale of milk as such to P. W. 1. Following the decision of the Supreme Court, I hold that there was sale of adulterated milk by the accused in this case to P. W. 1.

5. However, it is not possible to interfere with the judgment of the learned Sessions Judge, acquitting the accused for. another reason, and that is, that the requirements of Section 13(2) of the Prevention of Food Adulteration Act have not been complied with in this case. Sub-section (2) of Section 13 of the Act reads-

On receipt of the report of the result of the analysis under Sub-section (1) to the effect that the article of food is adulterated, the Local (Health) Authority shall, after the institution of prosecution against the person from whom the sample of the article of food was taken and the person, if any, whose name, address and other particulars have been disclosed under Section 14-A forward, in such manner as

may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both of them may make an application to the court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory.

6. The Supreme Court (Madras High Court?) has held in P.K. Moorthy v. Food Inspector, Kumbakonam Municipality 1979 Mad LW (Crl)139 : 1980 Cr. LJ 51, that Section 13(2) of the Prevention of Food Adulteration Act is mandatory. There is no evidence in the present case to show that after the prosecution was launched in this case, any notice as required by Section 13(2) of the Act was sent to the accused in this case. Therefore, I have no reason to interfere with the acquittal of the accused by the learned Sessions Judge. The criminal appeal fails and is dismissed.

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