

Damodaran Vs. the Food Inspector

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Court : Chennai

Decided On : Mar-21-1975

Reported in : 1976CriLJ273

Judge : Ratnavel Pandian, J.

Appellant : Damodaran

Respondent : The Food Inspector

Advocate for Pet/Ap. : Mr. Nagarajan

Judgement :

ORDER

Ratnavel Pandian, J.

1. This revision petition is filed by the accused against the judgment of the learned Sessions Judge, North Arcot, in C. A. 51 of 1973 on his file, confirming the conviction, but modifying the sentence, passed, by the learned District Munsif-cum-Sub-divi-sional Magistrate, Cheyyar, in C. C. 138 of 1973 on his file.

2. The petitioner-accused on a complaint filed by the Food Inspector of Tiruvattipuram town Panchayat under Sections 7 and 16 (1) (a) (i) read with Section 2 (1) (a) of the Prevention of Food Adulteration Act and rule 44 (a) of the rules framed thereunder, with the allegation that on 30-12-71 at 3-15 p.m. he was

found in possession of five litres of gingili oil for sale and sold 300 millilitre for the purpose of analysis and that on analysis, it was found that the sample contained 12 per cent of groundnut oil and hence adulterated, was found guilty under the said charge, convicted thereunder and sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs. 1000 in default to undergo rigorous imprisonment for three months. On appeal, the learned Sessions Judge, after confirming the conviction, modified the sentence by reducing it to the period already undergone and maintaining the sentence of fine,

3. The only point that has been urged before me by the learned Counsel for the petitioner is that the samples were not taken in accordance with the provisions of the Act and the rules framed thereunder. Rule 22 states that in the case of gingili oil (edible oil) the approximate quantity of sample to be taken for purposes of analysis is 375 grams which in turn has to be divided into three equal parts and one such part has to be sent for analysis; in other words, 125 grams has to be sent to the analyst.

4. In this case, as per the evidence of P.W. 1, only a total quantity of 300 millilitres has been taken by him and divided into three parts, that is, each part containing 100 millilitres of oil. As there is no table available for my ready reckoning, to find out the exact equivalent quantity in grams, Mr. Nagarajan, appearing for the petitioner, demonstrated in open court in the presence of the learned Public Prosecutor, by weighing 300 millilitres of gingili oil and it was found to weigh 273 grams. Then I asked the prosecution to verify the weighment of the quantity by taking instructions from the Government Analyst. Learned Public Prosecutor presented a memo annexed with the opinion of the Government Analyst in the King Institute, Guindy, Madras 32, stating that 300 millilitres of gingili oil would weigh 275 grams, I have marked the said memo for convenience' sake as Ex. C. 1. From the demonstration made by the defence Counsel and the memo Ex. C. 1, it is clear that the quantity that was seized by the I Food Inspector from the petitioner is less 'than the quantity prescribed under the Act,

5. At this stage, Mr. Nagarajan relies on a decision of the Supreme Court in *Rajaldas G. Pammani v. State of Maharashtra* : 1975 CriLJ254 where their

Lordships have observed as follows

The appellant also contended that: samples were not taken in accordance with the provisions of the Act (Prevention of Food Adulteration Act) and the rules thereunder. Rule 22 states that in the case of asafoetida the approximate quantity to be supplied for analysis is 100 grams and in the case of compounded asafoetida 200 grams. The Public Analyst did not have the quantities mentioned in the rules for analysis. The appellant rightly contends that non-compliance with the quantity to be supplied caused not only infraction of the provisions but also injustice. The quantities mentioned are required for correct analysis. Shortage in quantity for analysis is not permitted by the Statute'.

6. Following the principles laid down in the above decision, I find that the quantity of the sample taken by the Food Inspector in this case is less than the quantity prescribed in the rules and therefore the conviction cannot be sustained.

7. In the result, the revision petition is allowed and the conviction and the sentence are set aside. The petitioner is acquitted of the offence charged. The fine, if collected, shall be refunded to the petitioner.