

State by Public Prosecutor Vs. Chelliah Filial and anr.

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Court : Chennai

Decided On : Aug-01-1975

Reported in : 1976CriLJ1509

Judge : Ratnavel Pandian, J.

Appellant : State by Public Prosecutor

Respondent : Chelliah Filial and anr.

Judgement :

Ratnavel Pandian, J.

1. The State represented by the Public Prosecutor has preferred this appeal against the judgment of the learned Sub-divisional Judicial Magistrate, Sattur in C. C. No. 26 of 1974 on his file, acquitting the accused of the offence under Sections 7 and 16 (1) read with Section 2 (1) (j) of the Prevention of Food Adulteration Act.

2. It is the case of the prosecution that on 13-11-1973 at about 5-00 P. M. in Door No. 176, No. 4 Road, Sattur, in the coffee hotel of the 1st accused, the 2nd accused was found selling Halwa which was intended for human consumption and which contained coal tar dye. It was not permitted for use in any food article for human consumption.

3. The prosecution examined one witness, i.e., P.W. 1 who is the Food Inspector. P.W. 1 testified that he visited the 1st accused's hotel and purchased 300 grams of Halwa, divided the same into three parts, put the same in three clean dry bottles and one bottle was sent to the Public Analyst and on his report (Ex. P-4) it was found that the sample was artificially coloured by the addition of Metanil Yellow coal tar dye which is not in the list of permitted coal tar dyes to be used in food. The estimation of Metanil Yellow in the sample was 3-2- mgm. per 100 grams of sample. On receipt of Exhibit P-4, P.W. 1 filed the complaint against accused 1 and 2. P.W. 1 was recalled and cross-examined.

4. When the accused were questioned on the evidence against them, the 1st accused filed a written statement stating that he was not present at the time of the inspection by P.W. 1 and he was not aware of the taking of sample and he was not managing the affairs of the Hotel though the licence stands in his name. The 2nd accused has stated that he did not know anything about the occurrence. AS I have already stated, P.W. 1 has deposed that he has complied with all formalities as contemplated under the said Act and purchased the sample.

5. The learned Magistrate has acquitted the accused on the following two grounds:- (1) that though the bottle was packed in the presence of the witnesses, those witnesses have not been examined by the prosecution before the Court and if they were examined, they would speak whether the bottle was clean and dry and it was packed in their presence; and (2) that it was admitted by P.W. 1 that there was some gap in M. O. 1 and the Halwa was not packed in butter paper.

6. In my view, the above reasoning of the learned Magistrate is totally incorrect in view of Exhibit P-4, wherein the Public Analyst has stated that he received the sample of Halwa properly sealed and fastened and found that the seal was intact and unbroken. Therefore, the abovesaid reasoning cannot be sustained.

7. The second point raised by the learned Magistrate viz. whether the sample is adulterated has to be decided by the court on the date so supplied and in doing so, the date supplied by the Central Food Laboratory will have to be given precedence in accordance with Section 13 (3) of the Act and in the process of analysis prudence dictates that borderline variations have to be ignored and it has

to be remembered that the fat and solid standards are likely to vary due to extraneous causes as well, and that the principle of marginal error and the various factors which contribute to such error cannot be ruled out. He further states that according to Exhibit P-4, the estimation of metanil yellow in the sample was 3-2-milligrams per 100 grams of the sample and therefore the question is whether in the process of analysing the article, the agency analysing is prone to commit marginal errors and whether the benefit of such errors should not be given to the accused and thus giving the benefit of doubt arising from the variation, he has acquitted the accused on the second ground.

8. After going through the records, I am unable to conceive the second reasoning of the learned Magistrate. It has been held in *Abdul Azeeze, In re.* : AIR1964 Ker107 by a Division Bench of Kerala High Court thus:

Rule 28 of the Food Adulteration Rules insists that coal-tar dyes except those mentioned therein should not be used in food-stuffs. Where the analysis shows that such a prohibited dye is used, the food-stuff must be considered adulterated under the Act irrespective of the quantity of the adulterant Where extraneous matter of a type like prohibited varieties of coal tar dye is used, the Analyst's report certifying to its presence in the food without specifying the exact quantity of the adulterant is sufficient to support a conviction.

The certificate shows that Metanil Yellow a prohibited coal-tar dye was used, In such a case there is no need for the court to insist that the report should contain the technical processes by which the presence of the dye was identified.....It may also be pointed out that the accused here could not have escaped liability even if the certificate did not name the type of coal-tar dye used. Rule 29 lays down that even the permitted varieties of coal-tar dyes cannot be used in foodstuffs except those enumerated therein and dhall is not among the items mentioned.

The same view has been taken by various High Courts in various decisions.

9. The learned Magistrate, it seems, is completely ignorant of the fact that Metanil Yellow is a prohibited variety of coal tar under Rule 28 of the Food Adulteration Rules and therefore the question of variations of data does not arise and has no

consequence. Therefore, applying the abovesaid principle laid down in the decision in Abdul Azeeze; In re. : AIR1964 Ker107 I hold that the second ground: on which the learned Magistrate has acquitted the accused is completely incorrect and cannot be sustained. For the above reasons, I set aside the order of acquittal passed by the learned Magistrate and convict the accused in respect of the charge framed against them. But on the question of sentence I am of the view that the ends of justice will be met if the respondents herein (accused) are released on probation of good conduct. Accordingly I direct the respondents herein to be released under Section 4 (1) of the Probation of Offenders Act, on their each executing a bond for a sum of Rs. 500/-, to appear and receive sentence whenever called upon during a period of one year and in the meantime to keep peace and be of good behaviour. The bonds shall be to the satisfaction of the Sub Divisional Judicial Magistrate, Sattur. The State appeal is allowed.

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