Public Prosecutor Vs. Mayakrishnan

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Court : Chennai

Decided On : Apr-02-1969

Reported in : (1970)1MLJ275

Appellant : Public Prosecutor

Respondent : Mayakrishnan

Judgement :

P.S. Kailasam, J.

1. This appeal is filed by the State of Madras for setting aside the order of acquittal of the respondent passed by Additional first Class Magistrate, Virudhunagar, in C. C. No. 382 of 1966. The respondent was tried for an offence under Section 7 read with Section 2 (i) (a) and (l) punishable under Section 16 (1) of the prevention of Food Adulteration Act for his having been in possession of adulterated groundnut oil for sale.

2. According to the complainant, the Food Inspector of Virudhunagar Municipality under the powers conferred on him to take samples of food articles for analysis under the Prevention of Food Adulteration Act, went to the grocery shop of the respondent in which he was selling groundnut oil in Door No. 51. Sevathipuram, II Street in Muthurampatti within Virudhunagar Municipal limits. At about 8-30 A. M. on 22nd November, 1965, he went to the respondent's shop. The respondent was in possession of groundnut oil in a tin which contained 4 or 5 litres of groundnut oil.

The Food Inspector purchased 375 ml. from the respondent for Rs. 1. 50 on a receipt Exhibit P-l signed by the respondent in the presence of witnesses Kaiuppiah and Dharmar who attested Exhibit P-l. The Food Inspector divided the oil into 3 equal parts, poured them in 3 empty, clean and dry bottles and sealed and labelled them. He also prepared a notice and served a copy of it on the respondent and got his signature on it. He gave one of the sample bottles to the respondent and got his acknowledgment endorsed in Exhibit P-l. He sent a sample to the Public Analyst, Guindy. He received a report of the Public Analyst which disclosed that the groundnut oil contained free fatty acids in excess of the permitted limit 10 the extent of 73 per cent.

3. Karuppiah (P. W. 2) who was the attesting witness was examined by the prosecution to prove his attestation in Exhibit P. 1. But he turned hostile and in reply to question by the Assistant Public Prosecutor, in cross-examination he admitted that he signed Exhibit P-l after he read the same and that the contents of Exhibit P-l are true. There can be no difficulty in coming to the conclusion that this witness-was gained ever. In cross-examination after having been treated as hostile, he stated that the contents in Exhibit P-l are true. The defence of the respondent was that he was not doing oil business, that his shop is situate in his house itself and that in spite of his refusal to sell groundnut oil which he had purchased for lighting the lamp in his house, the Food Inspector purchased the same by compulsion. The Analyst's report Exhibit P-5 shows that the sample contained 6.2 per cent as against 3 per cent of Free Fatty Acids as permitted by clause A-17-03 in Appendix B to the Prevention of Food Adulteration Rules, 1955.

4. The Additional First Class Magistrate Virudhnugar found that P. W. l's evidence and Exhibit P-l proved that the sale of groundnut oil was voluntary by the respondent. He rejected the contention of the defence that there was no sale of groundnut oil. The trial Court, on a consideration of the question whether the respondent had sold edible oil for consumption by the public, observed that P. W. 1 has not deposed that the respondent had groundnut oil in his possession intended for sale as food for human consumption and that Exhibit P-l does not contain that P. W. 1 bought the groundnut oil intended for human consumption as food from the respondent. Relying on a decision of this Court in Manickam

Chettiar, In re (1966) L.W. 22,. the trial Court held that the prosecution had not proved beyond all reasonable doubt that the oil which the respondent had sold to P. W. 1 was kept by the respondent as food intended for human consumption. According to the trial Court, groundnut oil can be used for burning light and can also be used for soap manufacture. Giving the benefit of doubt, the trial Court acquitted the respondent.

5. On the facts, the trial Court accepted the evidence of P.W. 1. We have also no difficulty in accepting the testimony of P. W. 1 that the respondent was running a grocery shop in which he was selling groundnut oil and that at 8-30 A. M. on 22nd November, 1966, he went to the shop of the respondent who was in possession of the groundnut oil and purchased 375 ml. from the respondent for Rs. 1. 50 after getting a receipt signed by him. The facts thus proved are that the respondent was running a grocery shop, that he was selling groundnut, oil, that he was in possession of groundnut oil in a tin which contained 4 or 5 litres of groundnut oil and that the Food Inspector purchased it from him. We have also considered the suggestion made in the cross-examination that the respondent purchased the oil for use in his house for lighting lamps and we have no hesitation in rejecting it. We are in agreement with the finding of the trial Court that the respondent did sell groundnut oil and the sale was voluntary. The acquittal is on the ground that the prosecution has not proved beyond all reasonable doubt that the groundnut oil which the respondent had sold to P. W. 1 was kept by the respondent as food intended for human consumption. The evidence is that the respondent was running a grocery shop in which he was selling groundnut oil. Groundnut oil is admittedly an article of food and it was being sold in a grocery shop. On the facts, there cannot be any doubt that the article of food, namely, the groundnut oil, was intended to be sold for human consumption. We are unable to accept the view of the trial Court that the prosecution has not proved that the respondent kept groundnut oil as food intended for human consumption. In the context of the respondent having it in his grocery shop and for sale, we have no hesitation in coming to the conclusion that the respondent was keeping the groundnut oil as an article of food intended for human consumption. On this finding of fact, no question of law arises.

6. This matter is placed before us on a reference by a single Judge of this Court. We are at a disadvantage as we do not know the conclusion arrived at by the learned Judge on the facts of the case. If the learned Judge had accepted the prosecution case, in our view, no question of law would arise. In the absence of findings on fact we are unable to deal with any question of law. The points on which there is conflict of opinion between two learned single Judge's of this Court is also not stated.

Ramakrishnan, J.

7. I agree with the judgment just now pronounced by my learned brother (Kailasam, J) After a consideration of the two decisions, one that of myself reported in Public Prosecutor v. Palaniswami I.L.R. : AIR1965 Mad98 , and the other that of Ramamurthi, J., in Manickam Chettiar, In re (1966) L.W.22 wish to state that there was no conflict between the two decisions. They dealt with entirely different points. In the decision in Public Prosecutor v. Palaniswami I.L.R. : AIR1965 Mad98 , the article sold was asafoetida which is an article of food for which standards of quality are specified in Appendix B of the prevention of Food Adulteration Act read with Rule 5 of the Prevention of Food Adulteration Rules. The plea of the accused was that though he had sold the asafostida from the provision shop, it was understood as between him and the buyer that the asafostida should be used for cattle and not for human consumption. The decision held that it was not open to the accused to raise such a plea because the crux of the offence does not lie in the use to which the buyer may put an article, but whether intrinsically the article sold or exposed for sale is one used for human consumption or not. It was sold to the Food Inspector from a shop where articles of food were sold. These facts were not denied. In the decision in Manickam Chettiar, In re (1966) L.W. 22 the facts were different. Ramamurti, J., at page 27 of this decision observed that it was a case in which on the evidence, and on the probabilities the accused should be given the benefit of doubt, in the sense, that the prosecution has not proved beyond reasonable doubt that the oil tins in question were kept or stored for sale for human consumption and not for being taken to and consumed at the soap factory of the owner. In other words, on the facts, the learned Judge held that the oil in question was not stored for sale at the

premises but was stored only for the consumption of the owner of the shop. In such a context, it was held by the learned Judge that the sale to the Food Inspector of a sample of the oil would not attract the penalty under the Act even if the oil was found to be adulterated. The learned Judge also invoked the provisions of Section 10 which defines the powers of the Food Inspector. That section says that the person from whom the sample is taken must be selling the goods or storing the goods, sale and storage being interpreted in terms of the definitions under the Act. In other words, ordinarily a Food Inspector would not take a sample of an article of food in exercise of the powers under the section unless he has reason to believe that the person from whom he takes the sample is selling the article for human consumption, use and the like. He would not take a sample from a person who has stored the article for his own consumption, for a festival and the like. Therefore, the very fact that the Food Inspector makes an inspection and selects a sample for analysis pre-supposes that the article is being exhibited for sale and is also an article of food within the definition of Section 2 of the Act. These provisions are interlinked and if while dealing with the facts of the case, all these interlinked provisions namely, the definition of Sale, the definition of article of food and the powers of the Food Inspector are all taken into account, there will be little or no difficulty in applying provisions of the Act.

8. The difficulty which arose in the present case Primarily turned on the issue of fact whether the article was seized from the provision shop or the house of the accused. The evidence was that it was seized from the provision shop where articles of food provisions and the like were kept and sold. It was that circumstance which made the Food Inspector enter the shop and seize the sample of oil Therefore the vital ingredients for the purpose of the penalty namely, sale of the article by the dealer from a place where ordinarily food articles are sold and the article itself being an article of food which ordinarily enters into preparation of other food articles and thirdly the requirement, of a sale for analysis to the Food Inspector were all satisfied.

9. In the above circumstances, there is every reason for coming to the conclusion that the penalty under the Act was incurred by the respondent for the sale of an adulterated article of food within the several definitions under the Act No doubt.

Ramamurti J., has made certain categorical observations in the course of his judgment viz., that the parson from whom the sample is taken for analysis must either be selling for human consumption, or must have stored or kept the article of food for sale for human consumption. He has also stated that a sale for analysis simpliciter, without anything more is not sufficient to constitute an offence under the Act. But it is not necessary for us to express an opinion as to how far these views are justified because the present case can be dealt with on the short basis of facts mentioned above and on the applicability of the sections of the law mentioned above to those facts. What we wish to stress, however, is that in applying the observations of the learned Judge, the main provisions of the sections mentioned above to which we have adverted to, should be clearly borne in mind. They do not for example lay down any restriction about the sale to a Food Inspector. But the restriction if necessary has to be inferred from Section 10 which in turn depends upon the definition of 'sale and storage '. These sections have to be construed and applied to the facts of a given case without adopting any general principle that the sale should be hedged in particular conditions or restrictions beyond what the definition of the Act itself lays down.

10. So far as the punishment is concerned, the respondent is fined Rs 250 in default to undergo simple imprisonment for six weeks. Time for payment three weeks.