

(1991) 05 KL CK 0004
In the High Court Of Kerala
Case No : Criminal R.P. 482 of 1990

Anil T. John

APPELLANT

Vs

Chief Food Inspector, Mavelikara Municipality and Others

RESPONDENT

Date of Decision : 29-05-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Penal Code, 1860 (IPC) — Section 272, 273, 274, 275, 276

Prevention of Food Adulteration Act, 1954 — Section 13(2), 13(2A), 13(3), 13(5), 16

Citation : (1991) 2 KLJ 24

Hon'ble Judges : K.G. Balakrishnan, J

Bench : Single Bench

Advocate : M.N. Sukumaran Nair, for the Appellant; Teresa Rani, Public Prosecutor, for the Respondent

Judgement

K.G. Balakrishnan, J.—Accused in C.C 131 of 1987 on the file of the Judicial First Class Magistrate, Chengannur is the revision Petitioner. He was tried for various offences under the Food Adulteration Act and found guilty of offence punishable u/s 16(1)(a)(i) of the Act and sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs. 1000 in default of payment of fine to undergo rigorous imprisonment for three months.

2. The prosecution case is that on 24th January 1985 at about 1-30 p.m. the Chief Food Inspector Mobile Vigilance Squad, Trivandrum purchased 900 gram milk ice from the shop of the accused. The Food Inspector after completing the legal formalities prepared three samples and one such sample was sent to the Public Analyst and it was reported that the sample did not conform to the standard prescribed for milk ice. The accused was later prosecuted and he was given notice u/s 13(2) of the Act. The accused filed application u/s 13(2-A) for sending the sample to the Central Food Laboratory. The Central Food Laboratory analysed the sample and issued a certificate. But the case records show that the certificate issued by the Central Food Laboratory was not marked and was not considered by the trial Magistrate and the accused was found guilty as aforesaid.

3. The accused had challenged the conviction and sentence before the I Additional Sessions Judge, Mavelikara. In the Sessions Court also the accused contended that the trial Magistrate went wrong in accepting the report of the Public Analyst. The learned Sessions Judge observed that the report of the Central Food Laboratory also proved that the milk ice was adulterated and, therefore, the non-consideration of the report of the Central Food Laboratory is of no cop sequence. The courts below have patently done a procedural irregularity. If the sample is sent to the Central Food Laboratory for examination and a report is obtained from the Central Food Laboratory u/s 13(3) of the P.F.A. Act the report issued by the Public Analyst will be superseded. This Court in Mathukutty v. State of Kerala 1987 (2) KLT 867 (F.B.) held that the report of the Central Food Laboratory will supersede the report of the Public Analyst and if there is a report by the Central Food Laboratory the earlier report of the Public Analyst cannot be used even for comparing the results of the two reports. The certificate issued by the Director of the Central Food Laboratory does not require any formal proof u/s 13(5) of the Act. It is made clear that the certificate signed by the Director of Central Food Laboratory may be used as an evidence of the facts stated therein in any proceeding under this Act or u/s 272 - 276 of the Indian Penal Code. Proviso to Sub-section (5) of Section 13 states that the report signed by the Director of Central Food Laboratory shall be final and conclusive evidence of the facts stated therein. The Counsel for the accused points out that, in the instant case, the certificate issued by the Central Food Laboratory was not put to the accused when he was questioned u/s 313 Code of Criminal Procedure.

4. In view of the above procedural irregularity I set aside the conviction and sentence entered against the revision Petitioner-accused and direct the trial Magistrate to re-bear the matter and the accused shall be questioned u/s 313 Code of Criminal Procedure having regard to the certificate issued by the Central Food Laboratory. The Judicial First Class Magistrate, Chengannur is directed to consider the evidence afresh and dispose of the case in accordance with law. The accused will continue to be bound by the bail bond executed by him.