(1962) 02 KL CK 0017

In the High Court Of Kerala

City Corporation of Trivandrum APPELLANT

Vs

T.R. Reddiar RESPONDENT

Date of Decision : 14-02-1962

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 438

Citation : (1963) CriLJ 123

Hon'ble Judges : P. Govindan Menon, J;J.K. Joseph, J

Bench : Division Bench

Judgement

Joseph, J. 1. This reference arises from a prosecution launched by the Food Inspector, Corporation of Trivand-mm under Sections 7 and 16 of the Prevention of Pood Adulteration Act, 37 of 1954, The case against the accused was that he sold lac dhal otherwise known as kesari dhal as ''thuvaraparippu.'' On analysis, the public analyst certified that the sample consisted of lac dhal, otherwise known as kesari dhal (Lathyrus sativus). The accused was convicted by the Corporation First Class Magistrate. Trivandrum u/s 7(2) read with Section 16 of the Act and he was sentenced by him to pay a fine of Rs. 50/- and in default, to undergo simple imprisonment for ten days. The accused took up the matter in revision before the Sessions Judge, Trivandrum who found that the conviction could not be upheld. The learned Judge has. accordingly made this reference u/s 438 of the Code of Criminal Procedure.

2. The grounds on which the learned Sessions Judge held that the conviction was not legal were (i) that there was no sale of the article to the Food Inspector and (2) that the certificate of the Public Analyst could not be acted upon, as he failed to give the data on which his opinion, was based.

3. As regards the first point, the finding that there was no sale is based on the decision reported in Food Inspector Vs. Parameswaran Chettiar, In that case the Food Inspector obtained a bottle of milk from the accused who was taking it to a hotel. The charge was that he sold milk adulterated with water and the sale relied on was the transaction by which the Food Inspector obtained the milk. It

was held that the transaction did not amount to a sale. This decision cannot have any application to the facts of this case. It is admitted that the dhal obtained by the Food Inspector was from what was exposed for sale in the accused shop. "Sale" has been defined in Section 2(XIII) of the Act as follows:

Sale with the grammatical variations and cognate expressions means the sale of any article; of food, whether for cash or on credit or by way of exchange and whether by wholesale or retail, for human consumption or use, or for analysis, and includes an agreement for sale, or offer for sale, the exposing for sale or having in possession for sale of any such article and includes also an attempt to sell any such article.

4. The offer for sale, exposing for sale, or having in possession for sale amount to a sale under the Act. The accused was examined as D. W.I. and his case was that the dhal from which the Food Inspector purchased a small quantity was what he had obtained from the wholesale dealer. It is therefore clear that there was sale of dhal in this case, and we are unable to agree with the conclusion reached by the learned Sessions Judge that there was no sale.

5. The second point is that the Public Analyst has not given the data on which his conclusion was based and that the certificate, Ex. P. 5, issued by him could not be acted upon. Several decisions English and Indian were cited before us in support of the argument that a certificate containing merely the opinion, and not the data on which the same is based, cannot be acted upon. In Newby v. Sims, (1894) I QB 478 the conviction of the accused was set aside on the ground that the, certificate did not state the proportion of water mixed with rum. Fortune v. Hanson (1896) 1 QB 202 was a case in which the certificate was held to be bad as evidence of adulteration, as it did not state the constituent parts of the sample of milk analysed. The judgment in Goulder v. Rook (1901) 2 KB 290 - four cases disposed of together - is also to the above effect. The absence of relevant data was held to be bad in Din Dayal Vs. State, ; State Vs. Sahati Ram and Another, ; Municipal Board, Kanpur Vs. Badloo, and Gurcharan Dass Nand Lal Vs. The State, . These were cases of adulteration of ghee, milk and pepper.

6. Is is not possible to lay down any hard and fast rule as to what particulars should be shown in the Analyst''s report as the same may vary in such case. Thus while it may be necessary to give the data regarding the proportion of the component parts in commodities like milk, ghee, etc., the position may be different where the article sold may be misbranded or entirely different from what it purported to be.

The certificate of the Analyst in this case stated:

I further certify that I have analysed the aforesaid sample, and declare the result of my analysis to be as follows:

Microscopic Examination:

Characteristic of lac dhall otherwise known as kesari dhall (Lathyrus sativus)and am of the opinion that the said sample consists of lac dhall otherwise known as kesari dhal Lathyrus sativus and is therefore adulterated. The consumption of lac dhall Lathyrus sativus is injurious to public health.

7. The opinion of the Analyst was that the commodity was not ''thuvaraparippu'' but lac dhal and this was arrived at as a result of microscopic examination. The complaint of counsel for the accused is that it is not possible to ascertain from the certificate what the characteristics noticed by the analyst were. This criticism cannot be said to be unfounded. Counsel for the respondent submitted that he was prepared to examine the analyst if an opportunity is given for further evidence. In view of the fact that the transaction is more than two years old we do not consider it necessary to grant this request. We accordingly accept the reference, quash the conviction and sentence, and acquit the accused. The fine if realised will be refunded to the accused.

