

(1963) 10 KL CK 0005
In the High Court Of Kerala
Case No : Criminal R.P. No. 399 of 1962

Damodara Prabhu

APPELLANT

Vs

Food Inspector, Ernakulam Municipality and Another

RESPONDENT

Date of Decision : 18-10-1963

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 19(2), 3

Citation : (1963) KLJ 1237

Hon'ble Judges : Anna Chandy, J

Bench : Single Bench

Advocate : V. Rama Shenoi and R. Raya Shenoi, for the Appellant; V. Balakrishna Eradi and State Prosecutor, for the Respondent

Judgement

Anna Chandy, J.—The revision petitioner is a dealer in grocery articles. On 1-2-1961 the Food Inspector purchased from his shop 180 grams of compounded asafoetida for the purpose of analysis. When analyzed by the Public Analyst it was found adulterated. The petitioner contended that the asafoetida sold was out of the consignment purchased by him from M/s. Narandas Kesurdas and Sons, Madras with a written warranty and pleaded exoneration u/s 19 (2) of the Prevention of Food Adulteration Act. He has further submitted to the Food Inspector a copy of the warranty with a written notice stating that he intends to rely on it and specifying the name and address of the person from whom he has received it and has also sent a like notice of his intention to that person. The petitioner gave evidence as D. W. 1 that the asafoetida sold to the Food Inspector was out of the stock purchased by him under Ext. D. 2 invoice and that Ext. D. 1 printed letter by the company containing the requisite warranty was sent along with the invoice. The correctness of these facts is not disputed before me.

2. The short point arising for determination in this revision is whether Ext. D. 1 would amount to a warranty as contemplated in Section 19 (2). For claiming the benefit of Section 19 (2) a vendor shall have to prove three facts.

(i) that the article of food purchased by him was the same in nature, substance and quality as demanded by the purchaser and with a written warranty in the prescribed form, if any, to the effect that it was of such nature, substance and quality;

(ii) that he had no reason to believe at the time when he sold it that the food was not of such nature, substance and quality; and

(iii) that he sold it in the same state as he purchased it. It is not in dispute in this case that the conditions prescribed in clauses (ii) and (iii) as also in the first half of clause (i) are satisfied. It is not also disputed that the consignment was purchased from the company with Ext. D. 1 letter. The only objection taken by Shri. Eradi the learned counsel for the complainant is that Ext. D. 1 is not a warranty in the prescribed form.

3. The form of warranty is prescribed under form VI A. It has to bear the invoice No., the name of the person from whom the article is sold as well as the person to whom it is sold, the place and the date of sale at the top and in the body of the form, the date of sale, the nature and quality of the articles, the quantity sold and the price are to be stated. It should also bear a certificate that the food mentioned in that invoice is warranted to be the same in nature, substance and quality as demanded by the vendor.

4. Ext. D. 1 gives the invoice No. as 460 and the date of sale as 27-6-1959 and also specifies the case number of the stock covered by the invoice as 1479. It contains the information that the articles were sold to N. Damodara Prabhu, Ernakulam (the revision petitioner) by Narandas Kesurdas & Sons (the vendor). The last clause of the letter reads as follows: Please note that N "Deccan Queen" K. L.N. NKS, etc. etc., etc. compounded asafoetida supplied to you by us, complies with the definition and standard of quality for Compounded Asafoetida or Bandhani Hing (for definition etc. please refer to the Gazette of India, Part II, Section 3 dated 24th November 1956 at page 1965) under the Prevention of Food Adulteration Act, 1954 and Rules thereunder.

I should feel that it goes even further than the words of warranty given in Form VI A and says that the compounded asafoetida supplied to the Vendor complies with the definition and standard of quality for compounded asafoetida (as defined in the Prevention of Food Adulteration Act of 1954 and rules framed thereunder). A reference to Ext. D. 2 which is admittedly the relevant invoice shows that the information given in Ext. D. 2 as to the date of sale, the nature and quality of the article sold and the invoice number tally. Thus Ext. D. 1 is in substance as warranty in the prescribed form and the only information that is not available is as to the quantity sold and the price of it and these minor details can be obtained from Ext. D2 itself. (The essential requisite in the form of warranty is the certificate and the other information called for is only to assure that the certificate is in respect of the particular consignment sold. Ext. D1 is no doubt a general circular letter printed in 1959. But when addressed to a particular vendor

and sent with an invoice to him it is virtually a letter addressed to him. When that object is achieved I do not feel that it is proper to ignore the substance and clutch at the form so as to deprive an innocent and bona fide vendor of the benefits conferred by Section 19 (2) of the Act). Sri. Eradi cited the Bench decision of this Court in Criminal R. P. 39 of 1962 to which I was a party in support of his case that a warranty in the form prescribed by the Act alone would serve the purpose of Section 19 (2). In that case we were no doubt dealing with the same printed leaflet issued by the same Firm. However in that case leaflet was not addressed to the Vendor and did not accompany the invoice and even the plea that an undertaking to give a warranty was one of the terms of the contract of purchase was found against on the evidence. The question whether the letter would serve the purpose of a warranty did not arise for consideration as such, nor was it considered. On the facts of this case I hold that Ext. D1 serves the purpose of a warranty and set aside the conviction of the accused. The fine if levied will be refunded to him.