

(1986) 06 KL CK 0009

In the High Court Of Kerala

Case No : Criminal Appeal No. 349 and 399 of 1986

Food Inspector and Another

APPELLANT

Vs

K.V. Aboobacker and Others

RESPONDENT

Date of Decision : 19-06-1986

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16, 16(1), 17, 2, 7
Prevention of Food Adulteration Rules, 1955 — Rule 23, 24, 28, 29, 32

Citation : (1986) 23 KLJ 878

Hon'ble Judges : Kumari Fathima Beevi, J; Balakrishnan, J

Bench : Division Bench

Advocate : K.J. Joseph, for the Appellant; N. Viswanatha Iyer, M.V. Ibrahimkutty and K. Jagadischandran Nair, for the Respondent

Final Decision : Dismissed

Judgement

Fathima Beevi, J.—These are appeals directed against the acquittal of the Respondents who are prosecuted for offence under the Prevention of Food Adulteration Act, 1954. Sreedharan, J. before whom these appeals came up for hearing, doubted the correctness of the decision of Padma-nabhan, J. in *Sathyaseelan v. Food Inspector, Alleppey* 1 1985 KLT 1073, bearing on the question involved in these cases. Accordingly the appeals have been referred to a Division Bench.

2. In *Sathyaseelan*""s case 1985 KLT 1073 the learned Judge held that when the sample sold was one for which no standard has been fixed and when the sample does not contain any prohibited or injurious material it is impossible to say that it is adulterated. The learned counsel for the Appellants stated that in the view of the definition of the term "adulterated" in Section 2(ia) of the Act the proposition stated is too wide and it requires reconsideration.

3. u/s 2(ia) of the Act an article of food shall be deemed to be adulterated, if any one of the clauses (a) to (m) is attracted. Under Clause (m) if the quality or purity of the article falls below the prescribed standard or its constituents are

present in quantities not within the prescribed limits of variability but which does not render it injurious to Health, the article of food shall be deemed to be adulterated. That covers articles for which standards have been prescribed. But there are several clauses which can apply to articles for which standards have not been prescribed under the rules. Under Clause (j) if any colouring matter other than that prescribed in respect thereof is present in the article, or if the amounts of the prescribed colouring matter which is present in the article are not within the prescribed limits, it would be a case of adulteration. Similarly under Clause (k) the article of food shall be deemed to be adulterated if it contains any prohibited preservative in excess of the prescribed limits. In the decision referred to above, the articles subjected to analysis were "yellow water milk" and "ice milk". The learned Judge noticed that yellow water milk is the name given by the accused for some cool drinks prepared by him with milk, water and some other components. It was analysed by the Public Analyst as if it is milk and found to be adulterated only because it contained added water to the extent of 73 per cent. The Food Inspector had no case that it was exposed for sale or sold as milk. His case was that it was exposed for sale only as yellow water milk and what he demanded and purchased was only yellow water milk. The ice milk was also analysed by the analyst as if it was milk ice for which standards are fixed under Appendix B to the Rules. Ice milk was the name given by the vendor for a preparation made of milk, sugar, custard powder, egg and ice-cream essence for adding in fruit salad or ice cream, soda etc. There was no case that the sample was a misbranded item of food or that it was a substitute for milk ice for which standard has been fixed. Therefore, on the facts of the case the learned Judge was justified in holding that when the sample sold was one for which no standard has been fixed and the sample does not contain any prohibited or injurious material it is impossible to say that it is adulterated, without considering whether any other clauses in Section 2 would be attracted on the facts. In a case where the prosecution alleges only contravention of a particular clause in that the article of food is adulterated on account of the quality or purity of the article is not in conformity with the prescribed standards, it would be correct to say that if no standard is prescribed under the rules and the sample does not contain any prohibited or injurious articles it cannot be treated as adulterated as alleged. That does not mean that the prosecution should fail even in cases where other clauses are attracted and a specific charge thereunder is sustainable. We understand the aforesaid decision as confined to the facts of that particular case and subject to the clarification which we have attempted.

4. In the appeals before us the article of food involved is "rose milk". For rose milk no standard has been prescribed under the Rules. The view taken by the lower Court is that rose milk cannot be compared with the standards of flavoured milk or cow's milk and that the prosecution cannot therefore succeed. The learned counsel for the Appellant referred to Rule 37A and various other rules and attempted to show that even in respect of articles for which no standard has been prescribed under the rules, when there is clear proof of contravention of the

rules attracting the ingredients of one or more of the clauses of Section 2(ia), a charge could be sustained. He pointed out that the articles could be considered as flavoured milk in view of paragraph All.01.05. Therein it is provided that flavoured milk, by whatever name called, may contain nuts (whole, fragmented or ground) chocolate, coffee or any other edible flavour, edible food colours and cane sugar. Flavoured milk shall be pasteurised, sterilised or boiled. The type of milk shall be mentioned on the label. The report of the Public Analyst in both these cases revealed that coaltar dye is one of the ingredients. It is because of the presence of the added water that the Public Analyst certified that it was adulterated. Rule 37A states that in all types of proprietary foods, where fancy names or trade names are used, the name of the food or category under which it falls in these rules shall also be mentioned on the label. In case it cannot be classified in any of the standards prescribed in Appendix B, then the names of the ingredients used in the products in descending order of composition shall be indicated on the label subject to approval of the Central Committee for Food Standards. Rule 23 provides that the addition of a colouring matter to any article of food except as specifically permitted by the rules is prohibited. Under Rule 28 no coaltar dye or a mixture thereof except the specified category shall be used in food. Rule 29 states that use of permitted coal tar dyes in or upon any food other than those enumerated thereunder is prohibited. Dairy products except milk etc. fall under the prohibited category. Under Rule 44(b) no person shall either by himself or by any servant or agent sell milk which contains any added water. It is required under Rule 32(f) that where any permitted colouring agent is added, a statement to the effect that it contains such permitted colouring agent shall be specified on every label. Where an extraneous colouring matter has been added to any article of food there shall be written on the label attached to any package of food so coloured a statement as specified in Rule 24.

5. These rules have been referred to only for the purpose of showing that even if rose milk is an article of food for which no standard is prescribed under the Rules it is a special preparation. Contravention of any of the aforesaid rules will be attracted in a given case and such contravention would be punishable u/s 16 read with sections 2 and 7 of the Act.

6. We cannot, however, accept the contention in these cases that the article of rose milk is to be treated as milk or flavoured milk for the purpose of determining whether the report of the Public Analyst could be accepted to find that the article is adulterated. It is a special preparation for which the standard prescribed for flavoured milk or milk cannot attract. Prosecution is launched only on the basis that the Respondents have sold adulterated article in that the prescribed standard has not been maintained. When that charge cannot be sustained because no standard has been prescribed for rose milk, in the absence of specific allegation of contravention of other rules, no conviction can be sustained. We are supported in this view by the decision in *M.V. Krishnan Nambissan Vs. State of Kerala*, where the Court said:

No standard for the contents of butter-milk either specifically or with reference to other items is prescribed. A comparative study of item 11 in Appendix B to the Ruks leaves no room for doubt that the rule making authority for reasons, which are obvious, has not thought fit or feasible to prescribe any standard in regard to the contents of butter-milk. Hence, a person selling butter-milk cannot be convicted for an offence under sections 16(1)(a)(i) and 17 of the Prevention of Food Adulteration Act, 1954 read with Rule 44 of the Prevention of Food Adulteration Rules, 1955.

The Court also observed:

We should not be understood to have expressed any view on the question whether a prosecution could be launched for adulteration of butter-milk under some other clauses of the definition of "adulterated" in Section 2 of the Act for in the present case the prosecution was only for not maintaining the standard.

In that view the conviction in that case was set aside.

Following the above decision we uphold the acquittal in these cases and dismiss the appeals.