

(1961) 10 KL CK 0038
In the High Court Of Kerala

Food Inspector

APPELLANT

Vs

Indian Medical Practitioners Co-operative Pharmacy Stores
Ltd.

RESPONDENT

Date of Decision : 23-10-1961

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 19, 2, 23

Citation : (1962) CriLJ 433

Hon'ble Judges : Anna Chandy, J

Bench : Single Bench

Judgement

Anna Chandy, J.—This is an appeal against acquittal. The appellant the Food Inspector, Kozhikode Municipality had filed" a complaint under (the Prevention of Food Adulteration Act (Central Act 37 of 1954) against the Secretary and Branch Manager of the Calicut Co-operative Stores Ltd. The case against them was "that they sold adulterated honey. As the honey was seen to have been purchased by "the Calicut Co-operative Society from the Indian Medical Practitioners Cooperative Pharmacy and Stores Ltd., Adayar, Madras under a written warranty of purity a separate case was filed against that company & presented by its Secretary. Both the cases tried "together by the District Magistrate, Kozhikode, who while acquitting the accused in the first case (C.C. 332 of 1959) convicted the accused in the second (C, C, 333 of 1959) u/s 16(g) read with Section 19 of the Food Adulteration Act and sentenced him to pay a fine of Rs. 300/- or in default to undergo simple imprisonment for three months. The judgment was taken in appeal before the Kozhikode Sessions Judge who reversed the conviction and sentence on the ground that "it was not proved beyond reasonable doubt that the honey itself was adulterated and if adulterated by whom it was done". This appeal is against the above order.

2. The" main point urged by the appellant is that the finding of the learned Sessions Judge that the honey has not been proved to be adulterated is unsustainable.

3. Clause A.O7.03 in Appendix B of the Rules under Prevention of Food Adulteration Act (hereinafter referred to as the Act) defines honey and fixes its standard of quality as follows :

Honey means the food derived entirely from the work of bees operating upon the nectar of flowers and other sweet exudation of plants. It shall not contain more than (a) 25 per cent of moisture, (b) 0.9 per cent of ash, and (c) 10 per cent of sucrose. The minimum reducing sugar content shall be 60 per cent. Fiehe's test should be negative.

In Ext. P-3 report of the Food Analyst he has given his opinion that the sample of honey sent for analysis contained artificial invert sugar and was therefore adulterated. The Analyst was examined a P.W- 1 and he gave evidence that he applied two tests, namely Fiehe's test and Aniline Chloride test on the sample of honey sent to him for analysis and both the tests showed positive (reaction indicating the presence of artificial invert sugar. There is no suggestion in his cross-examination that the tests were not properly conducted". No such argument was also advanced before me nor does it appear to have been, advanced before the appellate court. The stand taken before this Court as well as before the Sessions Court was that the test itself is not a conclusive one in that even pure honey if it had been heated previously will give a positive reaction and as such no inference that the honey is adulterated can be drawn from the mere fact that the Fiehe's test was positive. (The evidence in this case is that the honey was heated by the accused for the removal of wax and other foreign bodies so that the honey could be used in medicinal preparations). This contention is based on the observation made by J- R. Nicholls in his book on Aids to Analysis of Food and Drugs Seventh Edition Page 248 that:

Heated wire honeys frequently give a positive Fiehe's test;

However the above observation is only the first part of a sentence the latter portion of which goes on to say that;

...but unless the heating has been so drastic as to affect the flavor of the honey, no hydroxy-methyl furfuraldehyde can be detected by ultra-violet absorption.

Woodman in his book on Food Analysis which is also a standard book on the subject gives expression to the same opinion. On page 335 when dealing with resorcin test (Fiehe's) the learned author observes :

Honey that has been boiled or strongly heated for some time, especially if somewhat acid in reaction, will sometimes give a similar reaction, but such high temperatures are seldom used with the commercial product because the appearance and flavour are thereby impaired, the colour being much darker. Experimental tests have shown that honey must be heated almost to incipient caramelizing to give a good positive action.

H. C Cox in his book on Chemical Analysis of Foods page 35 has this to say about Fiehe's test:

This test is characteristic of artificial honeys and is not given by genuine honeys, even if they have been heated and long stored, although a momentary pink colour sometimes appears if they have been much heated.

When it was suggested to the Food Analyst that heated pure honey gives a positive Fiehe's test his reply was that it gives "a fairly positive test" but he maintained that he was positive that the sample of honey analysed by him was adulterated. It is seen that besides applying the Fiehe's test which is the only test prescribed by the rules the Food Analyst by way of abundant caution has also applied the Aniline Chloride test which also yielded a positive result and thereby minimised the possibility of error. Woodman at page 335 observes :

The Aniline Chloride test is less delicate than the Fiehe Test, but at the same time less sensitive to the effect of age and temperature, hence one supplements the other.

It was admitted by the Analyst that from these two tests he will not be able to give the percentage of artificial invert sugar present in the sample. The learned Sessions Judge seems to have accepted the suggestion made by the defence counsel that the failure to mention the percentage of artificial invert sugar in the honey affects the efficacy of the test. Neither the rules nor the textbooks prescribe that the percentage of artificial invert sugar should be determined before the result of the test could be classed as positive. Taking all things into consideration I think it is safe to accept the verdict of the Food Analyst that the sample of honey sent to him contained artificial invert sugar and was therefore adulterated.

4. Moreover even if one were to recognise the possibility that the positive result was due to the honey having been heated as claimed by the defence I do not think that so long as the honey does not conform to the standards prescribed by the Act, it is open to the accused to contend that the honey is not in fact adulterated. Section 2(1)(i) of the Act provides that an article of food shall be deemed to be adulterated if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities which are in excess of the prescribed limits of variability. As mentioned earlier one of the standards prescribed for honey is that Fiehe test should be negative. When that test yielded a positive result as in this case¹, the quality or purity of the article has fallen below the standard prescribed by the said rule and it shall be deemed to be adulterated within the meaning of Section 2 of the Act. As observed by the Supreme Court in *M.V. Joshi Vs. M.U. Shimpi and Another*, :

... if the quality or purity of the article falls below the standard prescribed by the said rule, it shall be deemed to be adulterated within the meaning of Section 2 of the Act. If the prescribed standard is not attained, the statute treats such article by fiction, as an adulterated article though in fact it is not adulterated. To put it in other words by reason of the fiction it is not permissible for an accused to prove that though the standard prescribed is not attained the article of food

is in fact not adulterated. The nonconformity with the standard prescribed makes the article an adulterated food.

The honey was sold as homey and whether it was heated or not it must conform to the standards prescribed in the Act or it must be deemed to be adulterated. It is not open to the accused to contend that the honey he sold though it did not conform to the standards prescribed by the Act was in fact not adulterated. The Order of acquittal cannot be sustained on this basis.

5. The learned Counsel for the accused attempted to support the order of acquittal on other grounds as well. The defence case is that the honey in question sold by them to the Calicut Cooperative Society came from a consignment purchased by them from Dw. 3 and under Ext. D-1, warranty. The learned defence counsel argues that this warranty would absolve the accused of all liability. Section 19(2) provides that:

A vendor shall not be deemed to have committed an offence if he proves:

(i) that the article of food purchased by him was the same in nature, substance and quality as that 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 in which it was purchased.

The Section does not appear to be applicable to case of successive warranties; Halsbury in his Laws of England in dealing with "Successive Warranties" (third edition Vol. 17, page 601) observed that:

The case of successive warranties, however, does not fall within the statutory provisions; thus, if A sells to B with a warranty, and B re-sells to C with a like warranty, though C on being prosecuted for adulteration, may rely successfully on the warranty from B, B on being prosecuted for giving a false warranty cannot plead as a substantive defence, A.

Moreover in this case there is no cancelable evidence that the consignment covered by Ext. D-3 warranty is identical with that covered by Ext. D-1 and considering the lapse of about nine months between the supply of the honey covered by the warranty and the sale of the disputed honey to the Calicut Society, it is not possible to find that they are identical. Further the honey that is covered by the warranty was not supplied to the Calicut Society in the same condition as it was received; it was admittedly heated.

6. Another ground urged was that there is excessive and arbitrary delegation of powers to the executive u/s 23 Sub-section (1) (b) which empowers the Central Government to frame rules under the Act defining the standards of quality of articles of food. No question of any unconstitutional delegation of powers arises

in this case. There is ample indication in the Act as to the object for which it was made and it is only the power to frame rules consistent with the Said Object that was delegated to the Executive.

7. The order of acquittal is therefore set aside and the accused is convicted u/s 16(8) read with Section 19 of the Prevention of Food Adulteration Act and sentenced to pay a fine Rs. 300/- and in default to undergo simple imprisonment for three months. The fine will be paid within a month.