

(1981) 07 MAD CK 0020

In the Madras High Court

Case No : Criminal Appeal No. 51 of 1978

Food Inspector, Pondicherry

APPELLANT

Vs

T.S. Subramania Iyer and Another

RESPONDENT

Date of Decision : 23-07-1981

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 5(1), 7(1), 7(2)

Citation : (1982) CriLJ 1140

Hon'ble Judges : M.N. Moorthy, J

Bench : Single Bench

Advocate : Govindaswami, for the Appellant; Stanislas, for the Respondent

Judgement

1. This is an appeal by the State of Pondicherry against the order of acquittal of the accused by the learned Sub-Divisional Magistrate, Pondicherry

for offences under Sections 7(1) and 7(2) of the Prevention of Food Adulteration Act, 1954.

2. The prosecution case is the first accused is in-charge of the hotel Messrs. Mathru Cafe. The second accused is the licensee of the said hotel.

P.W. 1, the Food Inspector, inspected the said hotel on 23-12-1974, at about 4-15 a.m. The first accused was running the business at that time.

After disclosing his identity, P.W. 1 purchased sample of rose milk and paid the cost of Rs. 3.75 and obtained a receipt. After observing the

formalities, P.W. 1 sent one sample to the public analyst on 24-12-1974. The report of the Public Analyst states that the rose milk is deficient in

solids not fat to the extent of at least 56 per cent and is also deficient in fat to the extent of 48 per cent and also contains non-permitted basic coal

tar dye Rhodamine B. The report of the Public Analyst is marked as Ex. P. 3 in the case.

3. The learned Magistrate acquitted (him) on the ground that sample was taken on 23-12-74, and it was sent to the Public Analyst on 24-12-

1974, without keeping the sample in ice or any other refrigerator. The Public Analyst, according to Ex. P. 3, received the sample on 24-12-1974.

Even after receiving the sample, analysis was made only on 26-12-1974. As there is a delay of two days in analysing the sample sent to him, the

learned Magistrate acquitted the accused on the ground that there is a delay of analysis and the Public Analyst has not stated in his report what was

the condition of the rose milk at the time of analysis. But in the report itself, the Public Analyst has stated that the sample was fit for analysis.

4. The learned Magistrate acquitted the accused relying on the decision reported in Dattappa Mahadappa Vs. Secretary, Municipal Committee, .

In that case, the sample of the milk was analysed by the Analyst after a week after the sample was taken and the learned Judge thought that no

presumption of adulteration under S. 5(1) could be drawn in the absence of proof of the manner in which the sample was sent and the condition in

which the milk was received by the Analyst. The acquittal on this ground by the learned Sub-Divisional Judicial Magistrate may not be sustained.

Two days" delay cannot be said to be a long delay, especially when there is evidence in the analyst"s report itself showing that the rose milk sent

was fit for analysis.

5. The learned Public Prosecutor also does not subscribe to the reason for acquittal of the accused by the lower court. But according to the Public

Prosecutor, R. 9(j) was not observed in the present case. R. 9(j) states to send by registered post, a copy of the report received in form III from

the Public Analyst to the person from whom the sample was taken within 10 days of the receipt of the said report. According to a Bench decision

of our High Court reported in P.K. Moorthy Vs. Food Inspector, Kumbakonam Municipality, should be complied with. In the light of the above

decision, the learned Public Prosecutor does not press this appeal-against acquittal. Hence, the appeal is dismissed.

6. Appeal dismissed.