

(1986) 08 KL CK 0018
In the High Court Of Kerala

Food Inspector, Tellicherry Municipality

APPELLANT

Vs

K.V. Beerankoya and Another

RESPONDENT

Date of Decision : 29-08-1986

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 13, 2

Citation : (1987) CriLJ 521

Hon'ble Judges : M. Fatima Beevi, J;K.G. Balakrishnan, J

Bench : Division Bench

Judgement

K.G. Balakrishnan, J.—All these cases have been referred to the Division Bench as Qur learned Brother Sreedharan, J. felt that some common questions of general importance are involved in these cases.

2. Criminal Appeal No. 316 of 1982 has been filed against the order of acquittal passed in S.T.C. 147 of 1979 on the file of the Additional Judicial First Class Magistrate, Tellicherry. On 15-3-1979 the Food Inspector of Tellicherry Municipality purchased 3 bottles of vinegar from the shop of the 2nd accused, who is a dealer in vinegar and other food stuffs. Each bottle contained 650 m.l. of vinegar with a label thereon "coconut vinegar". After all the formalities were complied with, the sample was sent to the Public Analyst. After analysis it was found that the article did not conform to the standard prescribed for vinegar as given in A. 20 of Appendix B of the Prevention of Food Adulteration Rules, 1955. The first accused is the proprietor of Venus Swadeshi Fruit Products, Calicut, who is alleged to be the manufacturer of the vinegar purchased by the Food Inspector.

2A. Prosecution was launched against the accused persons on 31-5-1979. The accused-respondents made an application to the trial Court to have one of the samples sent to the Central Food Laboratory for further analysis. The report of the Central Food Laboratory also showed that the sample of vinegar was deficient in solid substance. Ext. P. 23 certificate issued by the Central Food Laboratory shows that the sample contained .46% w/w of solid as against the required quantity of 1.5% solids w/w and .11% ash as against the required quantity

of .18% of ashes. No other deleterious materials were found in the sample. It has been certified that the sample does not conform to the standard laid down for vinegar under the provisions of the P.F.A. Act and the rules thereof for the reasons (a) total solids contents fell below the minimum specified limit of 1.5% w/w and (b) ash content falls below the minimum specified limit of 0.18%. The accused-respondents were acquitted mainly on the ground that the sample taken from the shop of the 2nd accused was "coconut vinegar" and no standard is prescribed for coconut vinegar in the P.F.A. Act and the Rules and the standard prescribed for vinegar is not applicable to the "coconut vinegar". It was also held that Rules 9 A and 7(3) were also not complied with and the non-compliance of these rules was fatal to the prosecution. The acquittal is being challenged by the complainant.

3. Clause A. 20 in Appendix B of the P.F.A. Rules defines vinegar as follows:

A. 20. Vinegar means a liquid derived from alcoholic and acetous fermentation of any suitable medium such as fruits, malt, molasses, sugarcane juice, etc.

Vinegar shall conform to the following standards:

1. It shall contain at least 3.75 grammes of acetic acid per 100 ml.
2. It shall contain at least 1.5 per cent w/w of total solids and 0.18 per cent of ash.
3. It shall not contain (i) sulphuric acid or any other mineral acids, (ii) lead or copper, (iii) arsenic in amounts exceeding 1.5 parts per million, and (iv) any foreign substance or colouring matter except caramel.
4. Malt vinegar, in addition, shall have at least 0.05 per cent of phosphorous pentoxide (≥ 5) and 0.04 per cent of nitrogen.

Brewed vinegar shall not be fortified with acetic acid.

From the definition it is clear that vinegar is a substance derived by alcoholic and acetous fermentation of any suitable medium, such as fruits, malt, molasses, sugarcane juice etc. There are ever so many articles from which vinegar can be made. In Kerala generally vinegar is taken from toddy. Toddy has been defined in A. 29.01 in Appendix B of the Rules.

A. 29.01- TODDY : Toddy means the sap from coconut, date, toddy palm tree or any other kind of palm tree which has undergone alcoholic fermentation. It shall be white cloudy in appearance which sediments on storage and shall possess characteristic flavour derived from the sap and fermentation without addition of extraneous alcohol. It shall be free from added colouring matter, dirt, other foreign matter or any other ingredient injurious to health. It shall also be free from chloral hydrate and paraldehyde.

Toddy is admittedly an alcoholic substance and vinegar is prepared from this alcoholic substance after acetous fermentation. It is clear that the name

"coconut vinegar" has been given by the manufacturer for the reason that the medium used for the preparation of vinegar was toddy. If any other fruits or malt or molasses were used, some other connotation could have been given to the product. For example "cider vinegar" is a product prepared by the alcoholic and subsequent acetous fermentation of fresh apple juice. Vinegar is made also by the similar fermentation of wine, malted cereals or other saccharine substances, yielding wine, malt or sugar vinegar according to the material employed. The definition given in the Food Adulteration Rules is in a general sense so as to include all types of vinegar. It would be impossible to give definition for each type of vinegar prepared from various mediums such as grape, apple or cashew, wheat and similar other substances. In all these preparations, the basic chemical change that takes place is alcoholic and acetous fermentation. Merely because the word "coconut" has been added to qualify the word "vinegar" it cannot be said that it is not vinegar at all. If such an interpretation is given it would only lead to an anomalous situation that no type of vinegar would come within the purview of the vinegar defined in the Rules. In the decision in *Pyarali K. Tejani Vs. Mahadeo Ramchandra Dange and Others*, his Lordship Justice Krishna Iyer in his inimitable style repelled the contention that "pansupari" was not an article of food. It has been observed:

We are here concerned with a law regulating adulteration of food which affects the common people in their millions and their health. We are dealing with a commodity which is consumed by the ordinary man in houses, hotels, marriage parties and even routinely. In the field of legal interpretation, dictionary scholarship and precedent based connotations cannot become a universal guide or semantic tyrant, oblivious of the social context, subject of legislation and object of the law. The meaning of common-words relating to common articles consumed by the common people available commonly and contained in a statute intended to protect the community generally, must be gathered from the commonsense understanding of the word. The Act defines "food" very widely as covering any article used as food and every component which enters into it, and even flavouring matter and condiments. It is commonplace knowledge that the word "food" is a very general term and applies to all that is eaten by men for nourishment and takes in subsidiaries. Is supari eaten with relish by men for taste and nourishment? It is. And so it is food. Without tarrying further on this unusual argument we hold that supari is food within the meaning of Section 2(v) of the Act.

4. The reasoning given in the above judgment applies with all force to the present case to negative the contention that "coconut" vinegar" is not vinegar, but something else. The learned Magistrate was seriously in error in finding that "coconut vinegar" was a different substance for which no standard was prescribed in the P.F.A. Rules. The counsel for the respondents cited the decision in *R.M. Kalia and Another Vs. Union of India and Another*, where the sample taken was flavoured cornflour. It was analysed as if it was cornflour and it contained some added materials. The Food Inspector did not send the printed

colour cartons with the food stuff, nor he brought to the notice of the Public Analyst that it was "flavoured" cornflour. The above decision is not applicable to the facts of this case.

5. In an earlier decision of this Court in K.R. Gopinathan Nair Vs. Jacob Kurian and Others, the food inspector purchased aerated water and it contained admixture of saccharin in proportion higher than that prescribed for carbonated water. The Court held that the article of food demanded by the Food Inspector was aerated water for which there was no prescribed limit for inclusion of saccharin under the old Act and therefore it could not be said that the accused therein committed any offence. Aerated water and carbonated water have been separately dealt with under the P.F.A. Rules and the two are different substances. The above decision also has not much relevance to the point in issue in this case.

6. Another decision cited is the one reported in Jagan Nath v. State of Haryana 1985 EFR 467 (Punj & Har). The food inspector therein initiated prosecution against the accused for selling chewing golis, as the same did not conform to the standard prescribed for sweet golis. In that case also chewing golis and sweet golis are different substances and one may not come within the definition of the other. In the instant case "coconut vinegar" is only one form of vinegar for which a separate definition has been given in the Rules.

7. The finding of the Magistrate that there was a violation of Rule 9A is also not correct. The accused got information under Rule 9A and they in fact sent the 3rd sample for analysis by the Central Food Laboratory. No prejudice has been caused to the accused. It has been held in Tulsiram Vs. State of Madhya Pradesh, that the expression "immediately" used in Rule 9A is intended to convey a sense of continuity rather than urgency and what must be done is to forward the report to the person from which the sample has been taken at the earliest opportunity so as to facilitate the exercise of the statutory right u/s 13(2) in good and sufficient time. It was held:

the real question is, was the Public Analyst's Report sent to" the accused sufficiently early to enable him to properly defend himself by giving him an opportunity at the outset to apply to the Court to send one of the samples to the Central Food Laboratory for analysis? If after receiving the Public Analyst's Report he never sought to apply to the Court to have the sample sent to the Central Food Laboratory, as in the present case, he may not be heard to complain of the delay in the receipt of the report by him, unless, of course, he is able to establish some other prejudice.

In the instant case the sample was sent to the Central Food Laboratory and it was analysed and there was no case that the sample was deteriorated and thereby prejudice was caused to the accused. Therefore, the delay, if any; of 4 days in sending the report to the accused is not of any consequence. So also the finding of the learned Magistrate that there was violation of Rule 7(3) also is not correct. It has been held in Shambhu Dayal Vs. State of Uttar Pradesh, that the

delay, if any, u/s 7A is not fatal unless it is proved that prejudice has been caused to the accused.

8. The learned Magistrate acquitted both the accused on the basis of these technical reasons. The first accused is said to be the manufacturer of the vinegar in question. He is said to be the proprietor of "Venus Swadeshi Food Products", Calicut. The counsel for the first respondent urged before us that the prosecution has not satisfactorily adduced evidence to prove that the first respondent was the proprietor of that concern. The learned Magistrate has not seriously adverted to this point. The grounds stated by the trial Court to acquit the accused are not correct. Therefore the order of acquittal passed against both the accused is set aside. The Court below has not considered the culpability of each accused. Hence the case is remanded to the lower Court to dispose of the same in accordance with law as early as possible.

Cri. M. C. 1100 of 1985

This criminal miscellaneous case has been filed challenging the prosecution of the petitioner in S.T. 383 of 1985 on the file of the Judicial I Class Magistrate's Court, Pattambi. In this case 3 bottles of coconut vinegar were purchased by the Food Inspector and the Public Analyst, Calicut certified that the articles did not conform to the standard prescribed for vinegar under the P.F.A. Rules, 1955. The contention of the petitioner is that the article purchased was "coconut vinegar" and it does not come within the purview of the definition for vinegar in the P.F.A. Rules and therefore the prosecution has to be quashed. The contention of the petitioner cannot be accepted. We see no reason to quash the prosecution proceedings. The Cri. M.C. is dismissed.

Cri M.C. No. 1101 of 1985

This criminal miscellaneous case has been filed challenging the prosecution of the petitioner in S.T. No. 998 of 1985 on the file of the Chief Judicial Magistrate's Court, Pattambi. In this case the sample of coconut vinegar purchased by the Food Inspector was sent to the Public Analyst for analysis and the Public Analyst, Calicut certified that the article did not conform to the standard prescribed for vinegar under the P.F.A. Rules, 1955. The contention of the petitioner is that the article purchased was "coconut vinegar" and it does not come within the purview of the definition of vinegar in the P.F.A. Rules and therefore the prosecution has to be quashed. The contention of the petitioner cannot be accepted. We see no reason to quash the prosecution proceedings. The Criminal M.C. is dismissed.