

(1987) 10 KL CK 0019
In the High Court Of Kerala

Food Inspector, Thakazhy Panchayat

APPELLANT

Vs

P. Viswanatha Pillai

RESPONDENT

Date of Decision : 05-10-1987

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 10

Citation : (1988) CriLJ 323

Hon'ble Judges : K.G. Balakrishnan, J

Bench : Single Bench

Judgement

This Judgment has been overruled by : T.V. Usman Vs. Food Inspector, Tellicherry Municipality, Tellicherry, AIR 1994 SC 1818 : (1994) 1 JT 260 : (1994) 1 SCALE 179 : (1994) 1 SCC 754 : (1994) 1 UJ 365

K.G. Balakrishnan, J.—This is an appeal preferred by the State against the acquittal of the accused in C.C. No. 81 of 1980 on the file of Judicial First Class Magistrate Court, Ambalapuzha.

2. The Food Inspector of Thakazhy Panchayat in Alleppey District purchased 600 grams of coffee - chicory mixture from the shop of the respondent. After complying with the necessary formalities the sample was sent to the Public Analyst. Ext. P9 report issued by the Public Analyst showed that coffee-chicory mixture contained only 0.44% of caffeine and 58.6% of aqueous extract. Had the coffee-chicory mixture been unadulterated it should have 0.6% of caffeine and the percentage of the aqueous extract should not have been more than 50. Prosecution was launched against respondent on 11-3-1980 and Rule 9-A report was sent to the respondent on 17-3-1980.

3. Learned Magistrate acquitted the accused mainly for the reason that the prosecution failed to comply with the Rules 9-A and 10(7) and also relied on the decision Augustine v. State of Kerala reported in 1973 KLT 509.

4. The learned Public Prosecutor seriously challenged the judgment. It is true that the decision reported in 1973 KLT 509 has no application to the facts of the

case. One of the reasons given by the Magistrate for acquittal was the violation of Rule 10(7) of the Prevention of Food Adulteration Rules, 1955. Section 10(7) of the Prevention of Food Adulteration Act, 1954 states that where the Food Inspector takes any action under Clause (a) of Sub-section (1), Sub-section (2), Sub-section (4) or Sub-section (6) of Section 10 he shall call one or more persons to be present at the time when such action is taken and take his or their signatures. Here PW 4 was present and his signature was taken in the mahazar. The fact that he turned hostile to the prosecution is of no consequence and it cannot be taken as an infraction of Section 10(7) of the Act.

5. The learned Magistrate also found that there was six days" delay in sending the report to the respondent and hence the violation of Rule 9A of the Prevention of Food Adulteration Rules, 1955. As per the then existing rule the Local Health Authority should have forwarded a copy of the report of the analysts in Form No. 3 to the persons from whom the sample was taken, immediately after the institution of the prosecution. Here such a report was sent within six days. A Full Bench of this Court in Food Inspector, Chalakudy Municipality and Another Vs. Prabhakaran and Others, held that Rule 9-A of the Rules only mean that the report should have been sent within the reasonable time. So the acquittal based on the violation of Rule 9-A is also not sustainable.

6. Even though all the three reasons given by the learned Magistrate for acquitting the accused are not sustainable, there is yet another lethal snag in the prosecution. Ext. P9 certificate shows that the sample was received by the Public Analyst on 12th October, 1979. P.W. 3, the Local Health Authority deposed before the court that he received the report from the Public Analyst on 3-12-1979. If that be so it is clearly after 45 days. Rule 7(3) of the Prevention of Food Adulteration Rules, 1955 reads as follows:

The public analyst shall, within a period of forty-five days from the date of receipt of any sample for analysis, deliver to the Local (Health) Authority a report of the result of such analysis in Form III.

The Rule 7(3) is enacted on the basis of certain salutary principles. This is intended not merely to avoid delay in issuing the report when various samples of food items are taken for analysis. Certain food items are likely to get deteriorated even if some preservatives are added to it. In some cases the sample itself may contain some micro bacteria or other live organism. By the passing of time, the organism may multiply and cause the food Item defective for analysis. The time limit 45 days is prescribed after having regard to all these contingencies. Therefore from the very nature it is mandatory and even the delay of few days will cause prejudice to the accused. A Division Bench of this Court in the decision The Food Inspector, Palghat Municipality Vs. K.M. Moose and Others, also held the same view.

7. Therefore, even though the acquittal has been ordered by the Magistrate on unsustainable grounds, if the case is viewed from this angle it is only to be held

that the respondent was entitled to acquittal for violation of Rule 7(3) P. F. A. Rules 54. The order of acquittal is confirmed and the appeal is dismissed.