

(1989) 12 KL CK 0001

In the High Court Of Kerala

Case No : Criminal R.P. No. 775 of 1987

J. Dhanarajan

APPELLANT

Vs

Food Inspector and Another

RESPONDENT

Date of Decision : 13-12-1989

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 11, 11(1)(b), 16(1)

Citation : (1990) 1 KLJ 107

Hon'ble Judges : D.J. Jagannadha Raju, J

Bench : Single Bench

**Advocate : M.N. Sukumaran Nayar and S. Vijayakumar, for the Appellant;
Aiysha Youseff, for the Respondent**

Judgement

D.J. Jagannadha Raju, J.—This revision is by the second accused in C. C. No. 69 of 1986 on the file of the Chief Judicial Magistrate, Quilon. The accused was convicted for an offence u/s 16 (1) of the Prevention of Food Adulteration Act, 1954 (the "Act"), and he was sentenced to suffer rigorous imprisonment for three months and to pay a fine of Rs. 500/-, in default of payment if fine, simple imprisonment for two weeks. The accused preferred Crl. A. No. 32 of 1987, and the IInd Addl. Sessions Judge, Quilon, by judgment dated 27-11-1987 dismissed the appeal and confirmed the conviction and sentence. Aggrieved by the same, the present Revision is filed. The facts pertinent for a decision of this case are: The first accused, who is now acquitted, is the licensee of a Bakery by name. "New General Bakery" situated at M. C. 17/1063 in Andamukkam Ward of. Quilon Town. The Food Inspector inspected the shop at 3 P. M. on 29-1-1986 while the second accused was conducting the business and took a sample of 9 bottles described as pineapple squash, out of 24 bottles of "pineapple squash" the commodity kept in the refrigerator for sale. Each bottle was found corked and it was containing an yellow liquid in gold spot bottles. A2 informed the Food Inspector that each bottle costs Re. 1- Having purchased 9 bottles for the purpose of analysis, the Food Inspector divided these 9 bottles into 3 different parts of three bottles each, and sealed the bottles together into three samples.

Ext. P4 mahazar was prepared evidencing the taking of the sample. The Public Analyst analysed the sample by applying the standards prescribed for fruit squash, which is given as item No. A16 04 of Appendix 8 of the Act, He found that the sample contained total soluble solids 19.8% weight by weight, while it should contain 49% weight by weight and he found the total Sugar 28. 6% wt by wt. There was a negative result for test for artificial sweetness. He certified that the sample does not conform to the standard prescribed for fruit squash under the Act and the Rules. Hence it is adulterated.

2. Both the trial court as well the appellate court applied the standard prescribed in A16.04 of Appendix Band convicted the accused for selling an adulterated fruit squash.

3. In this revision Shri. Vijayakumar contends that in taking the sample there is violation of Section 11 (1) (b) and Rule 22-A. He also contends that the commodity purchased as sample by the Food Inspector is not fruit squash, but it is only a fruit juice in the ready drink form, kept in the refrigerator and cooled for ready consumption. For fruit juice the standard prescribed is A16. 01. Due to a wrong description of the commodity the accused was found guilty for an offence u/s 16(1) of the Act. He also contends that even at the time of sale of the sample, A2 represented to the Food Inspector that he is selling synthetic material and not natural fruit juice. No standard is prescribed for synthetic fruit juice. Hence the accused is not liable for conviction. As a last argument he contends that for the sample purchased by the Food Inspector from the second accused, either the standards prescribed for fruit juice in A16.01 may be applied or at the most the standard prescribed in A16. 05 for fruit beverage or fruit drinks may be applied. If the sample purchased is treated either as fruit juice described in A16.01 or as fruit beverage "or fruit drinks described in A16.05, the accused is not guilty of the offence because the sample conforms to the standards prescribed in these two items.

4. The points that arise for consideration in this revision are: (1) whether in taking the sample there is any violation of Section 11(1)(b) and Rule 22-A: (2) what is the real nature of the commodity sold by A2 to the Food Inspector in this case; and (3) is the Public Analyst justified in treating the sample as a "fruit squash" or is the sample liable to be considered only as "fruit juice" described in A16.01 or fruit-beverage or fruit drinks as described in A16. 05.

5. Point No. 1: Section 11 deals with the procedure to be followed by the Food Inspectors when taking samples of food for analysis. The usual method is that the sample purchased should be divided into three parts and then they should be corked and packed as prescribed under the Act and the Rules. Rule 22-A indicates the procedure where the sample is found in sealed containers having identical labels and in such case how the sample is to be taken. Under Rule 22 the quantity of sample of food to be sent to the Public Analyst or Director of Central Food Laboratory for analysis is specified. It can at once be said that Rules 22 and 22-A and Section 11 deal with procedural aspects whereby the Statute

enjoins a duty on the Food Inspector to take sample of adequate quantity and send a part of the sample for analysis to the Public Analyst. The Food Inspector for the purpose of these Rules has to see that adequate quantity is available for conducting necessary tests. Where the Public Analyst or Director of Central Food Laboratory does not complain that the quantity sent is not adequate, there is absolutely no prejudice caused. Variation in quantity of the sample, this way or that way, does not affect the result of the case. I hold that there is no violation of Section 11(1)(b)"or Rule 22-A. Even if there is any violation, it does not prejudice the accused. The Food Inspector has taken a huge bulk of quantity by purchasing 9 bottles and making three bottles into each sample. I hold this point against the Revision Petitioner.

6. Point Nos 2 and 3 : It is clear from Ext. P4 mahazar that what was purchased by the Food Inspector is a coloured drink in a corked bottle kept in the refrigerator to be sold for ready consumption. In popular parlance it is a cool drink. It should be remembered that "fruit squash" is not a commodity which can be readily consumed. For the purpose of consumption it has to be diluted and occasionally sugar has to be added. A diluted fruit squash is not considered as one of the items under Appendix B. An analysis of Appendix B indicates the following facts. Item A16 deals with fruit products. While item A16.01 deals with fruit juice "in the unconcentrated form, the other items like 16.02, 16.03, 16.04, 16.05 16.06 and 16.07 deal with different other items which are all fruit products 16.04 deals with "fruit squash". A careful reading of the description of this item clearly indicates that the words "unconcentrated form" are not there for fruit squash while for 16.01 fruit juice it is described as unfermented and unconcentrated liquid". It is also common knowledge that fruit squash is not a thing which is in the form of real drinkable substance. It has necessarily to be diluted before its consumption. It is also common knowledge that fruit squash in corked and sealed bottles is stored in shelves and it is never stored in the refrigerator. Though the Food Inspector and A2 described the commodity sold as "pineapple squash", it is a wrong description given for the commodity. It is nothing but a pineapple juice in the readily drinkable form. It was rightly kept in corked bottles in the refrigerator. I hold that the commodity sold to the Food Inspector by A2 is "pineapple fruit juice" and not "pineapple fruit squash". In this case by a wrong description of the commodity, the prosecuting agency has come to the conclusion that the sample is adulterated. If we apply the standard prescribed in A16.01 which deals with fruit juice, we find that in the present case the sample fully satisfies the standards prescribed. According to A16.01 the total solids for fruit juice shall not be less than 10%. In the sample analysed the total soluble "solids was found to be 19.8% wt. by wt. The coal tar dye identified by the Public Analyst is tartrazinet which is a permitted colour as can be seen from Rule 29. The total sugar as cane sugar was found to be 18.6% wt. by wt. Under A16.01 sugar can be present but no particular standard is prescribed. As far as artificial sweetness are concerned, it is indicated that the result of the test is negative. The sample taken from the revision petitioner fully conforms to the

standard prescribed for "fruit juice" which is described in item A16.0

7. From the price charged for the sample also we can come to the conclusion that the article sold to the Food Inspector cannot be fruit squash. It is impossible to sell fruit squash of 200 ml. bottle for Rs. 1 and in the very nature of things fruit squash as described in A16.04 is not a commodity which can be consumed straightaway.

8. This commodity cannot be treated as fruit-beverage or fruit drinks considered as item No. A16.05 of Appendix B. For fruit beverage or fruit drinks a minimum percentage of fruit juice is prescribed. The minimum percentage of fruit juice in the final product shall be not less than 5% wt. by wt. The Public Analyst has not given the minimum percentage of fruit juice found in the sample. Obviously he has not tested it to find out whether it is a fruit beverage or fruit drinks. He has only conducted the test to ascertain whether it conforms to the standard prescribed under A16.04 for fruit squash. For a fruit squash the "minimum percentage of fruit juice in the final product should not be less than 25% wt. by wt. I hold that the commodity sold by the revision petitioner, A2, to the Food Inspector is only "fruit juice". The Public Analyst's report clearly shows that the sample conforms to the standards prescribed for fruit juice in A16.01. The accused is not guilty of selling any adulterated article. I hold points 2 and 3 in favour of the revision petitioner. In the result, the Revision is allowed. The conviction and sentence are set a side. Fine, if paid, shall be refunded.